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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 362 and 315

RIN 3206–AH53

Presidential Management Intern Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations for the Presidential Management Intern (PMI) Program. Part 362 is amended to clarify nomination, selection, and employment procedures, to modify the career development portion of the Program, and to make editorial changes. We are amending part 315 to clarify that PMI's do not serve probation when converted to career or career-conditional appointments.

DATES: Effective date: January 22, 1997. Written comments will be considered if received on or before March 24, 1997.

ADDRESSES: Send or deliver written comments to Joseph Stix, Director, Philadelphia Service Center, U.S. Office of Personnel Management, Federal Building, Room 3400, 600 Arch Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Joseph A. McMaster, Jr. 215–597–7136 or Kathleen Keeney, 215–597–1920, FAX 215–597–8136.

SUPPLEMENTARY INFORMATION: To revitalize the PMI Program, the President's Management Council requested that OPM and the Human Resources Development Council (an interagency group of training officials) analyze the PMI Program and meet with agencies that use the Program. Their recommendations were adopted by the President's Management Council. The goals are to encourage maximum use of the PMI Program as authorized in Executive Order 12645 (July 12, 1988) and to assure uniformity in Program operations. The recommendations are incorporated into these regulations.

The clarification of part 315 reflects longstanding policy that PMI's do not serve a probationary period when they are converted to career or career-conditional because the 2-year intern program serves the same purpose as a probation.

Originally, interim regulations on the PMI Program were issued in March 1995. No final regulations were issued. Because of program changes needed to implement the President's Management Council recommendations, we are again issuing interim regulations for comment.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the current PMI applicants have already started the evaluation process for final selection. A delay would result in the postponement of job offers and loss to the Federal Government of the most highly qualified participants in the program.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 315 and 362

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 315 and part 362 of title 5, Code of Federal Regulations, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.
Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.
Sec. 315.603 also issued under 5 U.S.C. 8151.
Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.
Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.
Sec. 315.607 also issued under 22 U.S.C. 2506.
Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.
Sec. 315.610 also issued under 5 U.S.C. 3304(d).
Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.
Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

2. Section 315.708 is revised to read as follows:

§ 315.708 Conversion based on service as a Presidential Management Intern.

(a) Agency authority. An agency may convert noncompetitively to career or career-conditional employment, a Presidential Management Intern who:

(1) Has satisfactorily completed a 2-year Presidential Management Internship, under § 213.3102(ii) of this chapter, at the time of conversion;

(2) Is recommended for conversion within 90 calendar days before completion of the Internship; and

(3) Meets the citizenship requirement.

(b) Tenure on conversion. (1) Except as provided in paragraph (b)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he or she has completed the service requirement for career tenure or is excepted from it under § 315.201(c) of this chapter.

(c) Acquisition of competitive status. A person converted to career or career conditional employment under this section does not serve probation and acquires competitive status immediately upon conversion.

3. Part 362 is revised to read as follows:

PART 362—PRESIDENTIAL MANAGEMENT INTERN PROGRAM

Subpart A—Purpose and Definitions

Sec.
362.101 Purpose.
362.102 Definitions.

Subpart B—Program Administration

362.201 Nomination and selection.
362.202 Appointment and extentions.
362.203 Conversion to competitive service.
362.204 Resignation, termination, and reduction in force.
362.205 Movement of interns between departments or agencies.
362.206 Career development.

Authority: E.O. 12364, of May 24, 1982, 3 CFR, 1982 Comp., p. 185.

Subpart A—Purpose and Definitions

§ 362.101 Purpose.

The Presidential Management Intern (PMI) Program is designed to attract to Federal service outstanding men and women from a wide variety of academic disciplines who have a clear interest in, and commitment to, a career in the analysis and management of public policies and programs.

§ 362.102 Definitions.

(a) A *Presidential Management Intern* is appointed in the excepted service under § 213.3102(ii) of this chapter, in an executive agency or department. The individual must have completed a graduate course of study at a qualifying college or university, received the nomination of the dean or academic program director, successfully completed an OPM-administered assessment process, and been selected and appointed by an agency for a 2-year Presidential Management Internship.

(b) A *qualifying college or university* is an academic institution formally accredited by an accrediting organization recognized by the Secretary of the U.S. Department of Education (34 CFR part 602).

Subpart B—Program Administration

§ 362.201 Nomination and selection.

(a) Eligibility. Individuals eligible to be nominated for the Program are graduate students from a variety of academic disciplines completing or expecting to complete, during the current academic year, an advanced degree from a qualifying college or university. These individuals must demonstrate an exceptional ability, a clear interest in, and a commitment to a career in the analysis and management of public policies and programs.

(b) Nomination procedure. (1) The college or university making nominations for the Program shall establish a competitive nomination process to ensure that all eligible students are aware of the PMI Program and how to apply for nomination. The process will also ensure that applicants receive careful and thorough review, and that all receive equal opportunity for nomination.

(2) Students must be nominated by the dean, chairperson, or academic program director.

(3) Students who apply to be nominated must be rated qualified or not qualified for nomination. Nominations are made by school officials through completion of the PMI application form.

(4) Students eligible for veterans' preference who apply for nomination and are found qualified must be nominated. Based on the documentation provided by the student, the college or university must determine preliminary eligibility for veterans' preference. Students eligible for veterans' preference who believe they met the college or university's nomination qualification requirements, but were not nominated, may request a review by the OPM PMI Program office.

(c) Selection. Selection of Program finalists will be based on an OPM evaluation of the PMI application and a structured assessment center process. Veterans' preference will be adjudicated by OPM.

§ 362.202 Appointment and extensions.

(a) Appointing Authority. The appointment authority for Presidential Management Interns is 5 CFR 213.3102(ii). Appointments cannot exceed 2 years unless extended for up to 1 additional year by the agency with the approval of OPM under § 362.202(b).

(b) Completion of degree requirements. Agencies must assure that all graduate degree requirements have been met at the time of appointment. Interns may not be appointed prior to the completion of all graduate degree requirements. Exceptions may be made on an individual basis, but in no case will an intern be allowed to remain in the program if all degree requirements are not completed by August 31 of the year in which the intern was selected as a finalist.

(c) Time period. Agencies may appoint individuals with formal notification of their selection as PMI finalists no later than December 31 of the year in which they were selected as finalists. Exceptions may be granted on a case-by-case basis upon request of the agency to the OPM PMI Program office no later than December 15 of the year in which the interns were finalists.

(d) Grade and pay. Initial appointments must be made at the grade 9, step 1 level of the General Schedule. If an intern has had prior higher level Federal Government service, the individual may be placed at a higher step within the GS–9 rate consistent with the maximum payable rate rules under 5 CFR 531.203(c). Promotion to the GS–11 level may occur after satisfactory completion of 1 year of continuous service. Under 5 CFR 213.3102(ii), intern positions are authorized only at the GS–9 and GS–11 levels. Therefore, the agency has the option of promoting an intern to the GS–12 level on or after the date of conversion to the competitive service.

(e) Citizenship. Interns do not need to be United States citizens during their internship. However, if a noncitizen intern is hired, the agency must make sure that:

(1) The intern is lawfully admitted to the United States as a permanent resident or otherwise is authorized to be employed by the U.S. Immigration and Naturalization Service;

(2) The agency is authorized to pay the noncitizen under the annual appropriations act ban or any agency-specific enabling appropriation statute; and

(3) The intern acquires United States citizenship prior to conversion under 5 CFR 315.708.

(f) Extensions. Agencies must request, in writing, OPM approval to extend an internship for up to 1 additional year beyond the authorized 2 years in order to provide the intern with additional training and developmental activities. The request should be submitted no later than 60 days prior to the end of the initial 2-year period.

§ 362.203 Conversion to competitive service.

(a) In accordance with 5 CFR 315.708, employees who are United States citizens and have successfully completed Presidential Management Internships may be converted noncompetitively to career or career-conditional appointments in positions for which they are qualified.

(b) Conversions will be effective on the date the 2-year service requirement is met, unless the internship is extended by the agency, with approval of OPM, for up to one additional year.

(c) Agencies must inform the OPM PMI Program office when an individual will not be converted.

§ 362.204 Resignation, termination, and reduction in force.

(a) Resignation. An employee who resigns during the internship does not

have reinstatement eligibility for competitive service positions and cannot be re-interned to the PMI Program.

(b) Termination. The appointment of a Presidential Management Intern expires at the end of the 2-year internship period. At that time, the employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with 5 CFR 315.708, or extend the internship in accordance with § 362.202(b). If neither action is taken, the PMI appointment terminates.

(c) Reduction in Force. Presidential Management Interns are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter.

§ 362.205 Movement of interns between departments or agencies.

To move from one agency to another during the internship, the intern must separate from the current agency and be reappointed under PMI appointment by the new employing agency without a break in service. The intern does not begin a new 2-year internship period; the time previously served under the PMI Program counts toward the completion of the 2-year period. The new employing agency must notify the OPM PMI Program office of the action.

§ 362.206 Career development.

(a) OPM responsibilities. OPM will:

(1) Provide orientation and graduation programs for each intern class; and

(2) Serve as a clearinghouse of available training opportunities.

(b) Agency responsibilities. Each agency will:

(1) Work with the intern to develop a written outline of core competencies and technical skills (called an individual development plan) the intern must gain before conversion to a target position;

(2) Provide at least 80 hours of formal training a year, including training in core competencies targeted to a functional area into which the intern will most likely be converted; and

(3) Provide at least one rotational assignment to another functional area, made at the discretion of the agency.

[FR Doc. 97–1419 Filed 1–21–97; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 532

RIN 3206–AH59

Prevailing Rate Systems; Abolishment of San Joaquin, CA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the San Joaquin, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine its sole county (San Joaquin County) as an area of application to the Sacramento, CA, NAF wage area for pay-setting purposes.

EFFECTIVE DATE: February 21, 1997. Employees currently paid rates from the San Joaquin, CA, NAF wage schedule will continue to be paid from that schedule until their conversion to the Sacramento, CA, NAF wage schedule on April 18, 1997, 1 day before the effective date of the next Sacramento, CA, wage schedule.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On September 17, 1996, OPM published an interim rule to abolish the San Joaquin, CA, NAF wage area and redefine its sole remaining county (San Joaquin County) as an area of application to the Sacramento, CA, NAF wage area. This change was necessary because the Stockton Naval Communication Station, host installation for the wage area, closed on September 30, 1996. The remaining installation in the area, the Defense Distribution Region West, has approximately 18 FWS employees and no longer meets the minimum FWS employment criterion (26 employees) required to be a survey area. The interim rule provided a 30-day comment period. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on September 17, 1996 (61 FR 48817), is adopted as final without any changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–1417 Filed 1–21–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN 0560–AF11

Disaster Reserve Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) is announcing the availability of assistance under the Disaster Reserve Assistance Program to relieve the distress of livestock producers whose production of livestock feed has been adversely affected by natural disasters.

DATES: Interim rule effective January 10, 1997. Comments on this rule must be received on or before February 21, 1997. Comments on the information collection must be received on or before March 24, 1997.

ADDRESSES: Comments may be mailed to the Director, Emergency and Noninsured Assistance Program Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0527, P.O. Box 2415, Washington, DC. 20013–2415.

FOR FURTHER INFORMATION CONTACT: Leona Dittus, Director, Emergency and Noninsured Assistance Program Division, Farm Service Agency, United States Department of Agriculture, STOP 0526, P.O. Box 2415, Washington, DC 20013–2415, 202–720–3168.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC 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.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12778

The interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive to January 10, 1997. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require 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).

Unfunded Mandates

The provisions of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the CCC 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.

Small Business Regulatory Enforcement Fairness Act of 1996

Due to the extreme weather conditions and the need for immediate action, CCC has determined that, pursuant to section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, it is impracticable, unnecessary and contrary to the public interest to require this rule to conform to the requirements of section 801 of that Act. Accordingly, this rule is effective January 10, 1997.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, CCC will submit an emergency information collection request (ICR) to OMB for the approval of the Disaster Reserve Assistance Program reports as necessary for the proper functioning of the program.

Title: Emergency Livestock Feed Assistance and Disaster Reserve Assistance Program.

OMB Control Number: 0560–0029.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0029, as identified above, is needed to enable the CCC to effectively administer the Disaster Reserve Assistance Program.

The CCC requires some of the information it collects to be reported in a standard manner. Although other institutions, public and private, generally require and collect information similar to that requested by CCC, there is a wide diversity in reporting practices.

Respondents generally consist of livestock owners applying for emergency livestock feed assistance. Compliance with local, State, and Federal laws is required, and evidence of compliance with these laws may be required.

The information collection required by this rule will be used by the CCC to approve or determine the eligibility and amount of assistance in accordance with this rule. The CCC considers the information collected to be essential to prudent eligibility and assistance determinations. Failure to make sound decisions in providing emergency livestock feed assistance would result in large losses to both the livestock owners and the Government, and weaken the overall agricultural economy.

Estimate of Burden: Public reporting burden for this information collections estimated to average .21 hours per response.

Respondents: Livestock owners.

Estimated Number of Respondents: 60,000.

Estimated Number of Responses per Respondents: 6.35.

Estimated Total Annual Burden on Respondents: 381,000 hours.

Topics for comments include: (a) whether the collection of information is necessary for the proper performance of the functions of the CCC, including whether the information will have practical utility; (b) the accuracy of the CCC's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Leona Dittus, Director, Emergency and Noninsured Assistance Program Division, FSA, USDA, STOP 0527, P.O. Box 2415, Washington, D.C. 20013–2415, (202) 720–3168. Copies of the information collection may be obtained from Leona Dittus at the above address.

OMB is required to make a decision concerning the collection(s) of information contained in these interim regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department of Agriculture on any substantive DRAP regulations that may be the subject of other notices.

All responses will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Executive Order 12612

It has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.452.

Background

Pursuant to the authority set forth in section 813(c) of the Agricultural Act of 1970, as amended, it has been determined that:

1. Severe and prolonged natural disasters adversely affecting livestock producers across the country warrant implementing a Disaster Reserve Assistance Program to alleviate the distress caused by natural disaster conditions.

2. A notice published on October 29, 1996 (61 FR 55783) explained how provisions of 7 CFR part 1439 will apply to the Disaster Reserve Assistance Program. Contrary to the October 29, 1996, notice, sections 1439.401 through 403 will be applicable with the following revision.

3. This rule will amend part 1439 to provide assistance for feed losses in crop year 1996, for losses occurring

because of snow and freezing conditions. For Disaster Reserve Assistance Program applications made after January 10, 1997, assistance may be made available with respect to livestock feed losses occurring because of snow and freezing conditions. Such assistance shall be made without regard to the livestock being commingled, stranded, or the identity of ownership of the livestock and may be either donated CCC-inventory, donated hay, or a direct payment. Accordingly, 7 CFR 1439.402(a) is amended by adding the following: ''For applications made in 1997, assistance for feed loss or inaccessibility may be made without respect to the livestock being commingled, stranded, and unidentified as to the livestock owner. Such losses must occur during the 1996 crop year because of snow or freezing conditions where an emergency declaration has been made by the President and while emergency snow conditions exist as determined by DAFP''.

4. Based on the determinations made in the Federal Register notice of October 29, 1996, the Disaster Reserve Assistance Program is authorized for 1996 crop year livestock feed losses or inaccessibility for livestock owners who are determined eligible. Program payments will be contingent on the availability of CCC funds.

Accordingly, 7 CFR part 1439 is amended as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 714b and 714c, 7 U.S.C. 1427 and 1471j.

2. Section 1439.402(a) is revised to read as follows:

§ 1439.402 Assistance.

(a) Assistance is for eligible livestock that are commingled, stranded, and unidentified as to the livestock owner. For applications made in 1997, assistance for feed loss or inaccessibility may be made without respect to the livestock being commingled, stranded, and unidentified as to the livestock owner. Such losses must occur during the 1996 crop year because of snow or freezing conditions where a emergency declaration has been made by the President and while emergency snow conditions exist as determined by DAFP.

* * * * *

Signed at Washington, DC, on January 16, 1997.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–1523 Filed 1–16–97; 3:15 pm]

BILLING CODE 3410–05–P

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7 CFR Part 1464

RIN 0560–AD93

Tobacco—Tobacco Loan Program, Importer Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On April 20, 1995, the Commodity Credit Corporation (CCC) published an interim rule in the Federal Register (60 FR 19665) which, in accord with contemporaneous legislation, conditionally provided for certain revisions of the budget deficit marketing assessment (BDMA) for imported tobacco in the event that the President should issue a proclamation establishing a tariff-rate-quota (TRQ) for imported tobacco. This final rule adopts the interim rule with modifications to reflect that the proclamation has now been issued. Also, modifications have been made to other sections to eliminate references to tobaccos for which price support is not available, to modify the penalty provisions of the rules to reflect the quota proclamation made by the President, and to make other technical changes.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: David W. Anderson, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0514, P. O. Box 2415, Washington, DC 20013–2415, telephone 202–690–2518.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 USC 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies is: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

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 2915 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempt state laws to the extent that such laws are inconsistent with the provisions of this final rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 1464, the administrative appeal provisions set forth at 7 CFR part 780 and 7 CFR part 711, as applicable, must be exhausted.

Paperwork Reduction Act

The information collection requirements contained in these regulations (7 CFR part 1464) have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0560–0148.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background and Discussion

Since 1990 there has been a budget deficit marketing assessment (BDMA) collected on all price supported tobaccos. As reflected in an interim rule of April 20, 1995, 60 FR 19665, Congress, in legislation in 1993 extended the BDMA to all imports of tobacco. However, by legislation in 1994, the Congress imposed new limits on the BDMA and on the amount of the

BDMA, as it applied to imported tobacco, to take effect in the event that the President should issue a TRQ quota for tobacco. The interim rule, by amendment to 7 CFR part 1464, provided for these conditional modifications to take effect on the fulfillment of the condition. The proclamation was issued on September 13, 1995.

No comments were received in response to the interim rule and it is adopted in this notice as a final rule with modifications to reflect the issuance of the proclamation. In addition, this final rule makes technical changes to other sections of 7 CFR part 1446. Among these, the rule removes a reference to tobacco grown in Puerto Rico. The reference is not needed since that tobacco is no longer price supported. Also, the reference repeats, essentially, a condition which applies elsewhere under the rules applicable to all tobacco. In addition, this final rule: (1) conforms the penalty rate provisions of part 1464, as they apply to failures to remit the BDMA on imported tobacco, to the 1994 legislation (by tieing the rate to that which would apply to the corresponding domestic tobacco); (2) provides a postmark rule for determining the remittance date of mailed payments; and (3) extends from 15 days to 30 days the time in which a request for reconsideration can be made in the event of a dispute. The latter amendment, regarding rehearing, conforms the rule to other appeal regulations for commodity matters. As these amendments are required by law and are matters of agency procedure or are merely technical in nature, it has been determined that further rule-making is not needed.

List of Subjects in 7 CFR Part 1464

Assessments, Agriculture, Loan program, Price support program, Tobacco, Warehouses.

For the reasons set forth, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1, and 1445–2; 15 U.S.C. 714b, 714c.

§ 1464.2 [Amended]

2. Section 1464.2(a) is amended by removing the following kinds of tobacco from the list of tobaccos for which price support is available.

''Maryland tobacco, type 32.''
''Cigar filler tobacco, type 41.''
''Puerto Rican tobacco, type 46.''
''Cigar binder tobacco, types 51 and 52.''

3. Section 1464.8 is amended by removing paragraph (h) and redesignating paragraph (i) as paragraph (h).

§ 1464.11 [Amended]

4. Section 1464.11 is amended by removing ''1995'' each time it appears in the section and adding ''1998'' in its place and by removing paragraph (f).

5. Section 1464.102 is revised to read as follows:

§ 1464.102 Budget deficit marketing assessment.

(a) *General.* Subject to the limits set out below, a budget deficit marketing assessment (BDMA) shall be remitted by all importers of tobacco for tobacco entered into the commerce of the United States.

(b) *Period of coverage.* Except as provided for in (h), this section shall only apply to tobacco imported after September 13, 1995, and through the 1998 calendar year.

(c) *Tobacco covered.* Except as provided in (g) and (h), this section shall only apply to unmanufactured tobacco entered for consumption into the commerce of the United States that is, as determined by the Director, the same kind or a like kind of tobacco for which a domestic price support program is in effect; provided further that, except as provided in (g) and (h), this section shall not apply to cigar kinds of tobacco.

(d) *Rate.* Except as provided in (h) and subject to provisions in this section dealing with mixed lots, the BDMA rate shall be the rate for the corresponding domestic tobacco for the marketing year for the domestic tobacco which is in progress when the imported tobacco becomes subject to the assessment. The BDMA rate shall be applied on a per kilogram basis to all quantities of such tobacco imported for consumption, except for *de minimis* special entries approved by the Director.

(e) *Mixed entries.* For entries of mixed kinds of tobacco, the importer shall certify the composition of the mixed lot and remit the amount of assessment due for the respective quantity of each applicable kind of tobacco in the mixture. If the importer is unable or unwilling to determine and certify the composition of the mixed lot, the entire lot shall be subject to the BDMA rate for the kind of tobacco with the highest rate.

(f) *Remittance of BDMA.* The BDMA amount due shall be remitted in accordance with § 1464.104 of this part. Failure to remit or timely remit BDMAs shall subject the importer to a marketing penalty on the quantity for which such failure occurred. The penalty will be assessed in accordance with § 1464.106 of this part.

(g) *Records and disputes.* It shall be the responsibility of all importers of tobacco to establish that their tobacco is not subject to any BDMA or is not subject to a higher BDMA than that claimed to be due by such importer. All importers of tobacco must, accordingly, maintain sufficient records to demonstrate that they are not liable for a higher BDMA amount. Disputes involving the application of the BDMA shall be resolved by the Director.

(h) *Tobacco entered prior to September 13, 1995.* Notwithstanding other provisions of this section, all imported tobacco which was entered for consumption into the United States from January 1, 1994, through September 13, 1995, shall be subject to a BDMA to the extent provided for under those rules which were in effect under this part during that period. BDMA's payable for that period shall be paid by the importer and shall be at the rate specified in those rules and subject to the terms of those rules.

6. Section 1464.104 is amended by revising paragraph (b) to read as follows:

§ 1464.104 Remittance of importer assessments.

* * * * *

(b) *When to remit.* Importer assessments shall be remitted within 10 business days after the date on which the imported tobacco is entered. For remittances that are mailed, the date of the remittance will be considered the date on which the official U.S. Postal Service postmark was affixed.

* * * * *

7. Section 1464.106 is amended by revising subparagraph (a)(1) to read as follows:

§ 1464.106 Marketing penalties.

(a) * * *

(1) *Budget deficit marketing assessment.* With respect to the assessment referred to in § 1464.102, if an importer fails to pay or to timely remit the BDMA, such importer shall be subject to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective like kind domestic tobacco being imported for the domestic marketing year which immediately preceded the domestic marketing year in which the imported tobacco became subject to the BDMA. Such marketing penalty rate shall apply to the quantity of tobacco on which the failure occurred. Amounts due for the penalty shall be in addition to any other amount as may be due, including, but not limited to, the

amount due for the BDMA itself, or any applicable late fees, charges, or interest.

* * * * *

8. In § 1464.108, the second sentence is amended by removing ''15'' and adding ''30'' in its place.

Signed at Washington, D.C. on January 9, 1997.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–1463 Filed 1–21–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 97–03]

RIN 1557–AB57

Rules of Practice and Procedure

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Gutierrez, Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, or Carolyn Amundson, Senior Attorney, Enforcement and Compliance Division, (202) 874–4800; Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Inflation Adjustment Act (28 U.S.C. 2461 note) requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP provided by law within its jurisdiction to account for inflation. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires the initial adjustments set out in this regulation, and requires subsequent adjustments at least once every four years hereafter.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act also provides rules for rounding off increases,[1] and provides that any increase in a CMP applies only to violations that occur after the date of the adjustment. Additionally, section (s)(2) of the Debt Collection Improvement Act limits the initial adjustment of a CMP pursuant to the Inflation Adjustment Act to 10 percent of the amount set by statute.[2]

This final rule adjusts each CMP amount within the jurisdiction of the OCC in accordance with these statutory requirements. It does so by adding a new subpart O to part 19, entitled ''Civil Money Penalty Inflation Adjustments.'' Section 19.240 of new subpart O contains a table that identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision. Section 19.241 states that the adjustments made in § 19.240 apply only to violations that occur after January 22, 1997.

The OCC intends to readjust these amounts in the year 2000 and every four years thereafter, assuming no further changes to the mandate imposed by the Inflation Adjustment Act.

Public Notice and Comment and Delayed Effective Date Not Required

The OCC has determined for good cause that public notice and comment is unnecessary and impracticable pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)(B)). The Debt Collection Improvement Act leaves the OCC with no discretion in calculating the adjustment, and requires the OCC to publish regulations within 180 days of its enactment. For these same reasons, the OCC for good cause is adopting an immediate effective date consistent with the Administrative Procedure Act (see 5 U.S.C. 553(d)).

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) (see 5 U.S.C. 601(2)). Because the OCC has determined for good cause that public notice and comment on this final rule is unnecessary and impracticable pursuant to 5 U.S.C. 553(b)(B), the OCC is not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Executive Order 12866

The Office of Management and Budget has concurred with the OCC's determination that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78 (h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. A new subpart O is added to read as follows:

[1] The statute's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; $25,000 in the case of penalties greater than $200,000.

[2] There is an ambiguity as to whether to apply the rounding rules before or after applying the 10 percent limitation. The OCC, in order to remain consistent with the other Federal banking agencies, has elected to apply the rounding rules before (and not after) applying the 10 percent limitation.

Subpart O—Civil Money Penalty Inflation Adjustments

§ 19.240 Inflation adjustments.

The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

U.S. code citation	Description	Adjusted maximum penalty
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F)	Tier 1	5,500
	Tier 2	27,500
	Tier 3	1,100,000
12 U.S.C. 164 and 3110(c)	Tier 1	2,000
	Tier 2	22,000
	Tier 3	1,100,000
12 U.S.C. 1832(c) and 3909(d)(1)		1,100
12 U.S.C. 1884		110
12 U.S.C. 3110(a)		27,500
15 U.S.C. 78u–2(b)	Tier 1 (natural person)	5,500
	Tier 1 (other person)	55,000
	Tier 2 (natural person)	55,000
	Tier 2 (other person)	275,000
	Tier 3 (natural person)	110,000
	Tier 3 (other person)	550,000
42 U.S.C. 4012a(f)(5)	Per violation	350
	Per year	105,000

§ 19.241 Applicability.

The adjustments in § 19.240 apply to violations that occur after January 22, 1997.

Dated: January 13, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–1507 Filed 1–21–97; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–46–AD; Amendment 39–9884; AD 97–01–13]

Airworthiness Directives; Cessna Aircraft Company 100, 200, 300, and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna Aircraft Company (Cessna) 100, 200, 300, and 400 series airplanes. This action requires checking the airplane maintenance records for any fuel, oil, or hydraulic hose, Cessna part number (P/N) S51–10, replaced between March 1995 and February 3, 1997 (the effective date of this AD); immediately checking any of these hoses for a diagonal or spiral external reinforcement wrap; and immediately replacing any of these hoses that have a diagonal or spiral external reinforcement wrap with one that has a criss-cross external reinforcement wrap. This action was prompted by reports of operators experiencing a loss of engine power because of low fuel feed, in addition to Cessna discovering that the rubber hose installed at the factory on certain Cessna Models 208 and 208B airplanes was defective. The Cessna P/N S51–10 rubber hose is utilized on fuel, oil, and hydraulic hoses on the affected airplanes. The actions specified by this AD are intended to prevent fuel, oil, or hydraulic systems failure caused by a collapsed hose.

DATES: Effective February 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277, telephone (316) 941–7550; facsimile (316) 942–9006. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John C. Pearson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4134, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has recently received several incident reports of fuel flow blockage to the engines of certain Cessna 208 series airplanes. Examination of the Cessna part number (P/N) S51–10 rubber hoses installed on these airplanes revealed a deterioration to the point of delamination of the inner tube from the external wrap. This rubber hose is utilized on fuel, oil, and hydraulic hoses on Cessna 100, 200, 300, and 400 series airplanes. This kind of deterioration eventually causes the rubber hose to collapse, which could result in failure of the fuel, oil, or hydraulic systems.

Further investigation revealed this particular rubber hose was manufactured by Buckeye Rubber Products Company in January 1995, and Cessna purchased 300 feet of this hose for factory installation on certain Cessna Models 208 and 208B airplanes between March 1995 and June 1995. The

remaining portion of hose was distributed in March 1995 as replacement hose. With this in mind, the Cessna P/N S51–10 hose could be installed by field approval on any Cessna 100, 200, 300, and 400 series airplanes, as well as at manufacture on certain Cessna Models 208 and 208B airplanes.

Relative Service Information

Cessna has issued the service bulletins presented below, which include ACCOMPLISHMENT INSTRUCTIONS for (1) Checking for the installation of fuel, oil, and hydraulic hoses, Cessna P/N S51–10, with a diagonal or spiral external reinforcement wrap, and (2) replacing any of these hoses that have a diagonal or spiral external reinforcement wrap with one that has a criss-cross external reinforcement wrap:

—REIMS/CESSNA Service Bulletin (SB) CAB96–21, dated October 18, 1996; Model Affected: F406

—Cessna Aircraft Company SB CQB96–3, dated October 18, 1996; Model Affected: 425

—Cessna Aircraft Company SB SEB96–15, dated October 18, 1996; Models Affected: 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M, 152, A152, F152, FA152, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, FP172, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, 175, 175A, 175B, 175C, P172D, R172E(T41), R172F(T41), R172G(T41), R172H(T41), R172J, R172K, 172RG, 177, 177A, 177B, 177RG, F177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182,182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, R182, T182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188A, A188B, T188C, 206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, P206A, P206B, P206C, P206D, P206E, TP206, TP206A, TP206B, TP206C, TP206D, TP206E, 207, 207A, T207, T207A, 210, 210–5 (205), 210–5A, (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, P210N, P210R, and T210F.

—Cessna Aircraft Company SB CAB96–15, Revision 1, October 18, 1996; Models Affected: 208 and 208B.

—Cessna Aircraft Company SB MEB96–10, dated October 18, 1996; Models Affected: T303, 310P, 310Q, 310R, T310P, 310Q, 310R, 335, 336, 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP, FT337HP, FTB337 T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H–SP, M337B, P337H, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent fuel, oil, or hydraulic systems failure caused by a collapsed hose.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna 100, 200, 300, and 400 series airplanes of the same type design, the FAA is issuing an AD. This AD requires checking the airplane maintenance records for any fuel, oil, or hydraulic hose, Cessna part number (P/N) S51–10, replaced between March 1995 and February 3, 1997 (the effective date of this AD); immediately checking any of these hoses for a diagonal or spiral external reinforcement wrap; and immediately replacing any of these hoses that have a diagonal or spiral external reinforcement wrap with one that has a criss-cross external reinforcement wrap. Accomplishment of the hose check and replacement is required in accordance with the service bulletins referenced previously.

Determination of the Effective Date of the AD

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

Compliance Time of This AD

The compliance time of this AD is presented in calendar time and hours time-in-service (TIS). Delamination of the rubber hose inner tubing and separation of the inner tube from the external wrap is caused by an error in manufacturing. This condition can develop regardless of whether the airplane is in flight. The breakdown of the hose may not be noticed initially, but as the hose continues to erode, collapse is inevitable, which could result in fuel, oil, or hydraulic systems failure. For these reasons, the FAA is requiring a compliance time of specific hours TIS and calendar time (the prevalent one being that which occurs first).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–46–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures

(44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–01–13 Cessna Aircraft Company: Amendment 39–9884; Docket No. 96–CE–46–AD.

Applicability: All serial numbers of Models 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M, 152, A152, F152, FA152, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172RG, FP172, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, P172D, R172E(T41), R172F(T41), R172G(T41), R172H(T41), R172J, R172K, 175, 175A, 175B, 175C, 177, 177A, 177B, 177RG, F177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, T182, R182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188A, A188B, T188C, 206, P206A, P206B, P206C, P206D, P206E, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, TP206, TP206A, TP206B, TP206C, TP206D, TP206E, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, 207, 207A, T207, T207A, 208, 208B, 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, T210F, P210N, P210R, 210–5 (205), 210–5A (205A), T303, 310P, 310Q, 310R, T310P, 310Q, 310R, 335, 336, 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP FT337HP, FTB337, T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H–SP, M337B, P337H, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 404, F406, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, and 425 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent fuel, oil, or hydraulic systems failure caused by a collapsed hose, accomplish the following:

(a) Within the next 60 hours time-in-service or within the next 60 calendar days, whichever occurs first, check the airplane maintenance records for any fuel, oil, or hydraulic hose, Cessna part number (P/N) S51–10, replaced between March 1995 and February 3, 1997 (the effective date of this AD).

(b) Prior to further flight after the check required by paragraph (a) of this AD, physically check any fuel, oil, or hydraulic hose, Cessna P/N S51–10, that has been replaced between March 1995 and February 3, 1997 (the effective date of this AD) for a diagonal or spiral external reinforcement wrap in accordance with the ACCOMPLISHMENT INSTRUCTIONS of the applicable service bulletin presented below:

(1) REIMS/CESSNA Service Bulletin (SB) CAB96–21, dated October 18, 1996; Model Affected: F406

(2) Cessna Aircraft Company SB CQB96–3, dated October 18, 1996; Model Affected: 425

(3) Cessna Aircraft Company SB SEB96–15, dated October 18, 1996; Models Affected: 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M, 152, A152, F152, FA152, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, FP172, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, 175, 175A, 175B, 175C, P172D, R172E(T41), R172F(T41), R172G(T41), R172H(T41), R172J, R172K, 172RG, 177, 177A, 177B, 177RG, F177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, R182, T182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188A, A188B, T188C, 206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, P206A, P206B, P206C, P206D, P206E, TP206, TP206A, TP206B, TP206C, TP206D, TP206E, 207, 207A, T207, T207A, 210, 210–5 (205), 210–5A, (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, P210N, P210R, and T210F.

(4) Cessna Aircraft Company SB CAB96–15, Revision 1, October 18, 1996; Models Affected: 208 and 208B.

(5) Cessna Aircraft Company SB MEB96–10, dated October 18, 1996; Models Affected: T303, 310P, 310Q, 310R, T310P, 310Q, 310R, 335, 336, 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP, FT337HP, FTB337 T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H-SP, M337B, P337H, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C.

Note 2: Figure 1 of this AD is included to show the diagonal or spiral external reinforcement wrap on the hose that is referenced in the check required by paragraph (b) of this AD.

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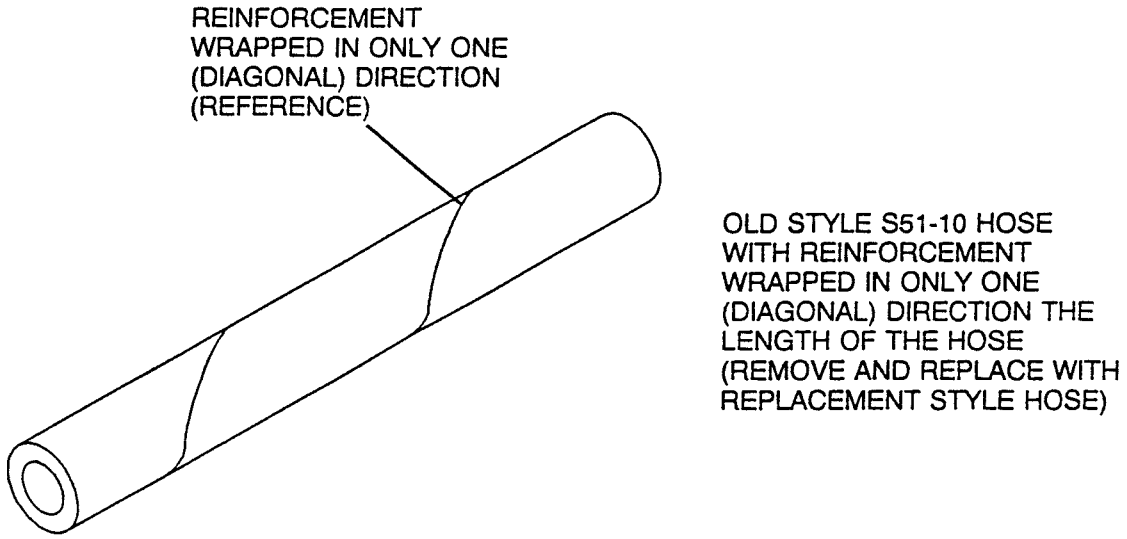
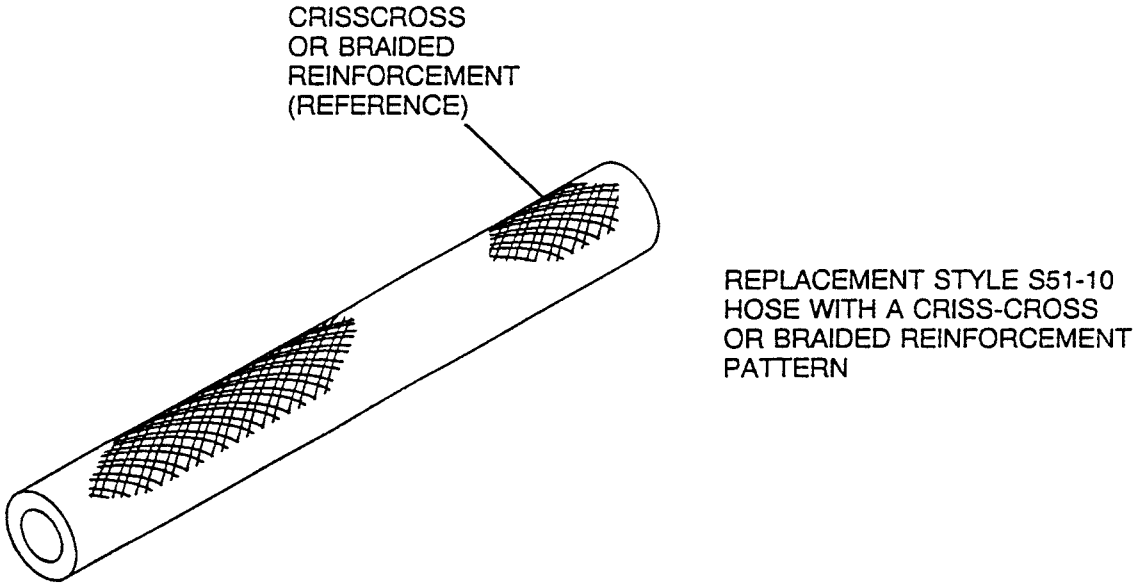
Figure 1





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(c) Prior to further flight after the check required by paragraph (b) of this AD, replace any Cessna P/N S51–10 that has a diagonal or spiral pattern external reinforcement wrap with a Cessna P/N S51–10 hose that has a criss-cross pattern external wrap. Accomplish this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS of the applicable service bulletin in paragraph (b) of this AD.

Note 3: Cessna Model 208 airplanes (serial number 20800241 through 20800258) and Model 208B (serial number 208B0416 through 208B0560) had Cessna P/N S51–10 hoses with a diagonal or spiral external reinforcement wrap installed at manufacture. All other airplanes may have had the hose installed by field approval. Cessna determined that these hoses were available for distribution between March 28, 1995 and June 28, 1996.

(d) As of the effective date of this AD, no person shall install a fuel, oil, or hydraulic hose having Cessna P/N S51–10 with a diagonal or spiral external reinforcement wrap.

(e) The checks required by paragraphs (a) and (b) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(h) The hose check and replacement required by this AD shall be done in accordance with the following applicable service bulletins:

—REIMS/CESSNA Service Bulletin (SB) CAB96–21, dated October 18, 1996; Model Affected: F406

—Cessna Aircraft Company SB CQB96–3, dated October 18, 1996; Model Affected: 425

—Cessna Aircraft Company SB SEB96–15, dated October 18, 1996; Models Affected: 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M, 152, A152, F152, FA152, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, FP172, F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, 175, 175A, 175B, 175C, P172D, R172E(T41), R172F(T41), R172G(T41), R172H(T41), R172J, R172K, 172RG, 177, 177A, 177B, 177RG, F177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, F182P, F182Q, FR182, R182, T182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188A, A188B, T188C, 206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, P206A, P206B, P206C, P206D, P206E, TP206, TP206A, TP206B, TP206C, TP206D, TP206E, 207, 207A, T207, T207A, 210, 210–5 (205), 210–5A, (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, P210N, P210R, and T210F.

—Cessna Aircraft Company SB CAB96–15, Revision 1, October 18, 1996; Models Affected: 208 and 208B.

—Cessna Aircraft Company SB MEB96–10, dated October 18, 1996; Models Affected: T303, 310P, 310Q, 310R, T310P, 310Q, 310R, 335, 336, 337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, F337E, F337F, F337G, F337H, FT337E, FT337F, FT337GP, FT337HP, FTB337, T337B, T337C, T337D, T337E, T337F, T337G, T337H, T337H–SP, M337B, P337H, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment (39–9884) becomes effective on February 3, 1997.

Issued in Kansas City, Missouri, on January 7, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–815 Filed 1–21–97; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–227–AD; Amendment 39–9888; AD 97–02–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, A310, and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A300–600, A310, and A320 series airplanes, that currently requires an inspection of the landing gear brakes for wear, and replacement if the specified wear limits are not met. That AD also requires incorporation of the specified wear limits into the FAA-approved maintenance inspection program. This amendment requires that certain wear limits that are dependent on brake stack weight be used in conjunction with specified brake stack weights, and that maximum allowable brake wear limits for additional brake units be incorporated into the FAA-approved maintenance program. This amendment is prompted by a report that some brakes that are subject to the requirements of the existing AD have not been removed from service and by the determination of the maximum allowable brake wear limits for additional brake unit part numbers. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy rejected takeoff.

EFFECTIVE DATE: February 26, 1997.

ADDRESSES: The service information that pertains to this rulemaking action may be obtained from Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164; Allied Signal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington 98055–4056; telephone (206) 227–2011; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–26–05, amendment 39–9101 (59 FR 65927, December 22, 1994), which is applicable to certain Airbus Model A300, A300–600, A310, and A320 series airplanes, was published in the Federal Register on June 13, 1996 (61 FR 29996). The action proposed to continue to require inspection of certain landing gear brakes for wear, replacement of the brakes if certain wear limits are not met, and incorporation of the specified wear limits into the FAA-approved maintenance inspection program. Additionally, the action proposed to:

1. Revise certain brake part numbers and maximum brake wear information specified in the existing AD;
2. Require that certain wear limits that are dependent on brake stack weight be used in conjunction with appropriate brake stack weights specified in various service documents; and
3. Require that maximum allowable brake wear limits for additional brake units be incorporated into the FAA-approved maintenance program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Several commenters support the proposed rule.

Request for Clarification of Information in TABLE 3

One commenter states that certain information in TABLE 3 of the proposal needs clarification to add the following information:

1. Messier-Bugatti C20060–100 series brakes can also be installed on Airbus Model A300B4–200 series airplanes; however, TABLE 3 indicates only the Model A300–600 as having these brakes installed.
2. Messier Bugatti C20175100 series brakes should be included as brakes that can be installed on Model A300–600 series airplanes.
3. Messier-Bugatti C20210500 series brakes should be included as brakes that can be installed on Model A300 B4–600R series airplanes.

The commenter points out that these brake models (and their applicable brake wear limits) are included in the referenced manufacturer's Component Maintenance Manual (CMM), but TABLE 3 did not make it clear which airplane models are equipped with them.

The FAA concurs with the commenters observations and has made the appropriate revisions to both TABLE 3 and TABLE 4 accordingly.

Request to Increase Wear Pin Length for Modified Brakes

One commenter requests that the proposal be revised to increase the allowable wear pin length for Messier Bugatti C20210200 series brakes from 1.97 inches to 2.559 inches by installation of a shim at the thrust plate. The commenter states that this provision is contained in Messier Service Bulletin 470–32–675, Revision 1, dated September 26, 1994 (which is cited in TABLE 4 under the brake wear limit references for Model A300 B4–600R series airplanes).

The FAA does not concur. The FAA contacted the manufacturer, who clarified this provision: When the shim is added, the total wear of the heat pack is increased. However, the wear pin limit of 1.97 inches does not change. In light of this, the FAA finds that the wear limit of 1.97 inches, as indicated in the notice, is correct.

Request for Addition of Wear Limits for Brakes with Carbon /D3/ Heat Packs

One commenter requests that the proposal be revised to specify what the wear limits are for brakes equipped with the latest version of Messier carbon /D3/ heat packs.

The FAA does not concur that a revision is necessary. The manufacturer has advised the FAA that, contrary to what was previously assumed, some /D3/ heat packs are still in service. However, the manufacturer confirmed that the allowable wear limits specified in the notice are independent of whether or not a /D3/ heat pack is used. The wear limits, as stated in the notice, are correct.

Request to Clarify Requirement to Incorporate TABLE 3 Information

One commenter expresses confusion concerning the requirements of proposed paragraph (b)(1), which appears to indicate that the entirety of TABLE 3 must be incorporated into the FAA-approved maintenance program, regardless of the type of airplane an operator may operate or the type of brakes used. The commenter requests that this be clarified.

The FAA concurs that clarification may be necessary. In presenting the information in the form of a table, the FAA assumed that operators would incorporate into their programs only the specific information pertaining to the airplanes that they actually operate, rather than all of the information contained in TABLE 3. The table format was selected as a more convenient method of displaying this information, rather than designating individual paragraphs applicable to each individual airplane model and/or brake models. Regardless of the format in which this information is introduced, operators are required to comply only with those items that directly affect the equipment that they operate. The FAA has revised the wording of paragraph (b)(1) of the final rule to make this more precise.

Request to Clarify Provisions Regarding Brake Stack Weights

One commenter requests that proposed paragraph (b)(3) be clarified with regard to its specific requirements. That paragraph states first that the brake wear is to be measured in accordance with certain documents; it then states that listed brake wear limits that are identified in referenced service documents as being dependent on brake stack weights ''shall be used in conjunction with the brake stack weights specified in that service information.'' The commenter considers this to be ''impossible to understand.''

The FAA concurs that clarification may be appropriate. The purpose of paragraph (b)(3) is to direct operators to service information that provides specific procedures for measuring the brake wear of each type of brake addressed in this AD. As indicated in that paragraph, these procedural instructions are contained in the following sources:

1. Chapter 32–42–27 of the Airplane Maintenance Manual;
2. Chapter 32–32–( ) of the brake manufacturers Component Maintenance Manual; and/or
3. Service bulletins listed in TABLE 4 of this AD.

The second sentence of paragraph (b)(3) addresses particular brakes that, because of their lower (brake stack) weight, have proven to be unable to withstand maximum rejected takeoff (RTO) energy when they are fully worn to the limit that is specified in the previously issued AD. If any of the service bulletins listed in TABLE 4 indicates that the brake wear limit for a specific brake is dependent on the brake stack weight of that brake, then the operator must verify that the brake wear limit specified in TABLE 3 is being used with the correct brake stack weight. The FAA points to an incident that occurred previously in which the brake wear limit specified in the previously issued AD was used with an incorrect brake

stack weight. This situation presented an unsafe condition because the brake wear limit being used was beyond what the particular brake actually should have been limited to in order to maintain braking effectiveness during a high energy RTO. The wording of paragraph (b)(3) is an attempt to prevent that error from occurring again.

The FAA has revised the wording of paragraph (b)(3) in this final rule to clarify the intent of that paragraph.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 165 Model A300, A300–600, A310, and A320 series airplanes of U.S. registry that will be affected by this proposed AD.

Incorporation of the revision of the FAA-approved maintenance inspection program, which is currently required by AD 94–26–05, takes approximately 20 work hours per operator (for 4 U.S. operators) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators to accomplish this currently required action is estimated to be $4,800, or $1,200 per operator.

The inspection currently required by AD 94–26–05 takes approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) will be approximately $2,236 per airplane. The FAA estimates that 46 of the 165 affected airplanes of U.S. registry will be required to accomplish the inspection. Based on these figures, the cost impact on U.S. operators to accomplish the currently required inspection is estimated to be $144,256, or $3,136 per airplane.

The new actions that are required in this AD action will affect 1 U.S. operator of 8 airplanes. The FAA estimates that the new actions will take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,236 per airplane. Based on these figures, the cost impact on the affected U.S. operator of the requirements of this AD is estimated to be $3,136 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9101 (59 FR 65927, December 22, 1994), and by adding a new airworthiness directive (AD), amendment 39–9888, to read as follows:

97–02–04 Airbus Industrie: Amendment 39–9888. Docket 95–NM–227–AD. Supersedes AD 94–26–05, Amendment 39–9101.

Applicability: Model A300, A300–600, A310, and A320 series airplanes equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) brakes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

Restatement of Requirements of AD 94–26–05

(a) Within 180 days after January 23, 1995 (the effective date of AD 94–26–05, amendment 39–9101), accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect main landing gear brakes having the brake part numbers listed in TABLE 1, below, for wear. Any brake worn more than the maximum wear limit specified in TABLE 1, below, must be replaced, prior to further flight, with a brake within that limit.

TABLE 1

[Airbus Industrie Model A300, A300–600, A310, and A320 Series Airplanes Equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) Brakes]

Airplane model/series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm)
A300 B2–100	Messier-Bugatti	286349–115	0.98″(25.0 mm).

TABLE 1—Continued

[Airbus Industrie Model A300, A300–600, A310, and A320 Series Airplanes Equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) Brakes]

Airplane model/series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm)
A300 B2–100	Messier-Bugatti	286349–115	0.98″(25.0 mm).
A300 B2–100	BFGoodrich	2–1449	1.4″(35.6 mm).
A300 B2–100	BFGoodrich	2–1449	1.1″(27.9 mm) S.C.*
A300 B2–100	Messier-Bugatti	A21329–41–7	1.1″(28.0 mm).
A300 B4–100	Messier-Bugatti	A21329–41–17	1.1″(28.0 mm).
A300 B4–100	ALS (Bendix)	2606802–3/–4/–5	0.9″(22.9 mm).
A300 B4–100	ALS (Bendix)	2606802–3/–4/–5	1.48″(37.6 mm) S.C.*
A300 B4–100	BFGoodrich	2–1449	1.4″(35.6 mm).
A300 B4–100	BFGoodrich	2–1449	1.1″(27.9 mm) S.C.*
A300 B4–200	Messier-Bugatti	C20060–100	1.1″(28.0 mm).
A300–600	Messier-Bugatti	C20060–100	1.1″(28.0 mm).
A300–600	ALS (Bendix)	2607932–1	0.9″(22.9 mm).
A300–600	ALS (Bendix)	2607932–1	1.48″(37.6 mm) S.C.*
A300 B4–600R	Messier-Bugatti	C20210000	1.97″(50.0 mm).
A300 B4–600R	Messier-Bugatti	C20210200	1.97″(50.0 mm).
A310–200	Messier-Bugatti	C20089000	1.1″(28.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.26″(32.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.5″(38.2 mm) S.C.*
A310–300	Messier-Bugatti	C20194000	1.97″(50.0 mm).
A310–300	Messier-Bugatti	C20194200	1.97″(50.0 mm).
A310–300	ABS	5010995	1.97″(50.0 mm).
A320	Messier-Bugatti	C20225000	1.97″(50.0 mm).
A320	Messier-Bugatti	C20225200	1.97″(50.0 mm).
A320	BFGoodrich	2–1526–2	1.97″(50.0 mm).
A320	BFGoodrich	2–1526–3/–4	2.68″(68.0 mm).

*S.C. represents ''Service Configured'' brakes, which are marked according to the instructions provided in the brake manufacturer's Component Maintenance Manual (CMM).

Note 2: Measuring instructions that must be revised to accommodate the new brake wear limits specified in TABLE 1, above, can be found in Chapter 32–42–27 of the Airplane Maintenance Manual (AMM), in Chapter 32–32–( ) or 32–44–( ) of the brake manufacturer's CMM, or in certain service bulletins (SB), as listed in TABLE 2, below:

TABLE 2

Brake manufacturer	Part No.	Document/Chapter	Date/Revision (or later revisions)
For Model A300 B2–100 Series Airplanes:			
Messier-Bugatti	286349–115	CMM 32–42–27	April 1991.
Messier-Bugatti	286349–116	CMM 32–42–27	April 1991.
BF Goodrich	2–1449 and S.C.*	CMM 32–44–37	January 1993.
		SB 567, (2–1449–32–4)	January 30, 1993.
For Model A300 B4–100 Series Airplanes:			
ALS (Bendix)	2606802–3	CMM 32–42–02	September 1993.
	2606802–4, 2606802–5, and S.C.*	SB 2606802– 32–003	March 31, 1993.
BF Goodrich	2–1449 and S.C.*	CMM 32–44–37	January 1993.
		SB 567 (2–1449–32–4)	January 30, 1993.
For Model A300 B4–200 and A300–600 Series Airplanes:			
ALS (Bendix)	2607932–1 and S.C.*	CMM 32–42–27	September 1993.
		SB 2607932–32–002	March 31,1993, and Revision [1] October 1, 1993.
For Model A300 B4–600R Series Airplanes:			
Messier-Bugatti	C20210000 and C20210200	Airbus SB 470–32–675	April 6, 1990.
For Model A310–200 Series Airplanes:			
ALS (Bendix)	2606822–1 and S.C.*	CMM 32–42–03	September 1993.
		SB 2606822–32-002	March 31, 1993.
For Model A310–300 Series Airplanes:			
Messier-Bugatti	C20225000 and C20225200	Airbus SB 470–32–675	April 6, 1990.

*S.C. represents ''Service Configured'' brakes, which are marked according to the instructions provided in the brake manufacturer's CMM.

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

Note 3: Once an operator has complied with the requirements of paragraphs (a)(1) and (a)(2) of this AD, those paragraphs do not require that operators subsequently record accomplishment of those requirements each time a brake is inspected or overhauled in accordance with that operator's FAA-approved maintenance inspection program.

New Requirements of This AD

(b) Within 90 days after the effective date of this AD, revise the FAA-approved maintenance program to include the requirements of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD. Accomplishment of these requirements terminates the requirements of paragraph (a) of this AD.

(1) Incorporate into the FAA-approved maintenance program the maximum brake wear limits specified in paragraph TABLE 3 of this AD for the applicable airplane model.

(2) Comply with those measurements thereafter.

(3) Measure the brake wear in accordance with Chapter 32–42–27 of the AMM; or Chapter 32–32–( ) of the brake manufacturer's CMM; or the service bulletins (SB) listed in TABLE 4, below. Note that the brake wear limits specified in TABLE 3 may be dependent on brake stack weight. In those cases, refer to the service information specified in TABLE 4 to verify that the correct brake stack weight is being used.

(4) If any brake has measured wear beyond the maximum wear limits specified in TABLE 3 of this AD, prior to further flight, replace it with a brake that is within the wear limits specified in TABLE 3.

TABLE 3

[Airbus Industrie Model A300, A300–600, A310, and A320 Series Airplanes Equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) Brakes]

Airplane model/Series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm)
A300 B2–100	Messier-Bugatti	286349–115	0.98″ (25.0 mm).
A300 B2–100	Messier-Bugatti	286349–116	0.98″ (25.0 mm).
A300 B2–100	BFGoodrich	2–1449	1.4″ (35.6 mm).
A300 B2–100 S.C.*	BFGoodrich	2–1449	1.1″ (27.9 mm).
A300 B4–100	Messier-Bugatti	A21329–41–7	1.1″ (28.0 mm).
A300 B4–100	Messier-Bugatti	A21329–41–17	1.1″ (28.0 mm).
A300 B4–100/-200	ALS (Bendix)	2606802–3/-4/-5	0.9″ (22.9 mm).
A300 B4–100/-200	ALS (Bendix)	2606802–3/-4/-5	1.48″ (37.6 mm) S.C.*
A300–B4–100	BFGoodrich	2–1449	1.4″ (35.6 mm).
A300–B4–100	BFGoodrich	2–1449	1.1″ (27.9 mm) S.C.*
A300–B4–200	Messier-Bugatti	C20060–100 Series	1.1″ (28.0 mm).
A300–600	Messier-Bugatti	C20060–100 Series	1.1″ (28.0 mm).
A300–600	Messier-Bugatti	C20175100	1.1″ (50.0 mm).
A300–600	ALS (Bendix)	2607932–1	0.9″ (22.9 mm).
A300–600	ALS (Bendix)	2607932–1	1.48″ (37.6 mm) S.C.*
A300 B4–600R	Messier-Bugatti	C20210000 Series	1.97″ (50.0 mm).
A300 B4–600R	Messier-Bugatti	C20210200 Series	1.97″ (50.0 mm).
A300 B4–600R	Messier-Bugatti	C20210500 Series	1.97″ (50.0 mm).
A310–200	Messier-Bugatti	C20089000 Series	1.1″ (28.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.26″ (32.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.5″ (38.2 mm) S.C.*
A310–300	Messier-Bugatti	C20194000 Series	1.97″ (50.0 mm).
A310–300	Messier-Bugatti	C20194200 Series	1.97″ (50.0 mm).
A310–300	ABS	5010995	2.22″ (56.39 mm).
A320	Messier-Bugatti	C20225000 Series	1.97″ (50.0 mm).
A320	Messier-Bugatti	C20225200 Series	1.97″ (50.0 mm).
A320	BFGoodrich	2–1526	1.97″ (50.0 mm).
A320	BFGoodrich	2–1526–2	1.97″ (50.0 mm).
A320	BFGoodrich	2–1526–5	1.97″ (50.0 mm).
A320	BFGoodrich	2–1526–3/-4	2.68″ (68.0 mm).
A320	BFGoodrich	2–1572	2.68″ (68.0 mm).
A320	ABS	5011075	2.14″ (54.36 mm).

* S.C. represents ''Service Configured'' brakes, which are marked according to the instructions provided in the brake manufacturer's CMM.

TABLE 4

[Service information sources containing measuring instructions that must be revised to accommodate the new brake wear limits specified in TABLE 3. (Refer to paragraph (b)(3) of this AD.)]

Brake manufacturer	Part No.	Document/Chapter	Date/Revision (or later revisions)
For Model A300 B2–100 Series Airplanes:			
Messier-Bugatti	286349–115	CMM 32–42–27	April 30, 1991.
Messier-Bugatti	286349–116	CMM 32–42–27	April 30, 1991.
BFGoodrich	2–1449	CMM 32–44–37	January 30, 1993.
	and S.C.*	SB 567 (2–1449–32–4)	January 30, 1993.
For Model A300 B4–100 Series Airplanes:			

TABLE 4—Continued

[Service information sources containing measuring instructions that must be revised to accommodate the new brake wear limits specified in TABLE 3. (Refer to paragraph (b)(3) of this AD.)]

Brake manufacturer	Part No.	Document/Chapter	Date/Revision (or later revisions)
Messier-Bugatti	A21329–41–17	CMM 32–44–37	January 30, 1993.
ALS (Bendix)	2606802–3	CMM 32–42–02	Revision 7/April 30, 1995.
	2606802–4	SB 2606802–32–003	March 31, 1993, and Revision 1/October 1, 1993.
	2606802–5 and S.C.*		
BFGoodrich	2–1449	CMM 32–44–37	January 30, 1993.
	and S.C.*	SB 567 (2–1449–32–4)	January 30, 1993.
For Model A300 B4–200 Series Airplanes:			
Messier-Bugatti	C20060–100 Series	CMM 32–44–24	December 31, 1991.
ALS (Bendix)	2606802–3	CMM 32–42–02;	Revision 7/April 30, 1995.
	2606802–4, 2606802–5 and S.C.*	SB 2606802–32–003	March 31, 1993, and Revision 1/October 1, 1993.
For Model A300–600 Series Airplanes:			
Messier-Bugatti	C20060–100 Series	CMM 32–44–24	December 31, 1991.
Messier-Bugatti	C20175100	CMM 32–44–50	November 30, 1991.
ALS (Bendix)	2607932–1 and S.C.*	CMM 32–42–05;	Revision 4/February 15,1992.
		SB 2607932–32–002;	March 31,1993, and Revision 1/October 1, 1993.
		SB 2607932–32–003	May 31, 1995.
For Model A300 B4–600R Series Airplanes:			
Messier-Bugatti	C20210000	CMM 32–44–51	August 31, 1994.
	and C20210200 Series	SB 470–32–675	Revision 1/September 26, 1994.
Messier-Bugatti	C20210500 Series	CMM 32–44–68	November 30, 1995.
For Model A310–200 Series Airplanes:			
Messier-Bugatti	C20089000 Series	CMM 32–46–23	January 31, 1992.
ALS (Bendix)	2606822–1 and S.C.	CMM 32–42–03	Revision 5/January 31, 1991.
		SB 2606822–32–002	March 31, 1993.
For Model A310–300 Series Airplanes:			
Messier-Bugatti	C20194000	CMM 32–46–37	August 31, 1994.
	and C20194200 Series	SB 470–32–675	Revision 1/September 26, 1994.
ABS	5010995	CMM 32–43–97	February 28, 1991.
For Model A320 Series Airplanes:			
Messier-Bugatti	C20225000	CMM 32–47–20	January 31, 1995.
	and C20225200 Series	SB 580–32–3042	Revision 1/June 30, 1995.
BFGoodrich	2–1526/–2/–5	CMM 32–44–38	March 15, 1993.
	2–1526–3/–4	CMM 32–44–38	March 15, 1993.
	2–1572	CMM 32–41–63	April 29, 1994.
ABS	5011075	CMM 32–41–18	February 28, 1991.

*S.C. represents ''Service Configured'' brakes, which are marked according to the instructions provided in the brake manufacturer's CMM.

Note 4: Once an operator has complied with the requirement of paragraph (b) of this AD, that paragraph does not require that the operator subsequently record accomplishment of those requirements each time a brake is inspected or overhauled in accordance with that operator's FAA-approved maintenance inspection program.

(c) Prior to installation of any brake having a part number other than those specified in TABLE 3 of this AD, revise the FAA-approved maintenance program to include the provisions specified in paragraph (b) of this AD for that part number brake, that have been approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on February 26, 1997.

Issued in Renton, Washington, on January 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–810 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–201–AD; Amendment 39–9891; AD 96–25–06 R1]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that currently requires inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. This action corrects information concerning the terminating action for the requirements of the AD. This action is necessary to ensure that operators are not required to perform additional actions unnecessarily after modifying their airplanes.

DATES: Effective January 27, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of January 27, 1997 (61 FR 66885, December 19, 1996).

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: On December 2, 1996, the FAA issued AD96–25–06, amendment 39–9848 (61 FR 66885, December 19, 1996). That AD requires repetitive inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. That AD action was prompted by a report of jamming of a flap due to incorrect tolerances of the flap-hinge installation, which caused high bearing stress on the bushings in the flap fittings. The actions required by that AD are intended to prevent such high bearing stress, which could result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs; these conditions could result in jamming of the flaps and consequent reduced controllability of the airplane.

Explanation of Necessary Correction of AD

Recently, the FAA has become aware of the fact that, as AD 96–25–06 is currently worded, certain of the terminating action provisions in it are not clear.

Specifically, paragraph (a) of the AD requires repetitive visual inspections to detect cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38. Paragraph (a)(2) of the AD states that, if any cracking is found during one of these visual inspections, operators must immediately replace the flap fittings with new improved flap fittings and install improved bushings. This installation is specified as Modification 2628—Part 3 in the Accomplishment Instructions of Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995. Paragraph (a)(2) of the AD then states, ''After this modification is accomplished, no further action is required by this paragraph.''

While it is correct that the operators who accomplished that modification would not have to continue to perform the visual inspections required by paragraph (a), they also would not have to accomplish any other portion of the AD. In other words, that modification constitutes terminating action for the requirements of the AD, not merely the requirements of paragraph (a).

While AD 96–25–06 may have been unclear on this point, it was the FAA's intent that the modification be considered terminating action for the requirements of the AD. Additionally, the referenced Saab service bulletin (340–57–027), as well as the parallel Swedish airworthiness directive (SAD No. 1–072), indicate that no further work is required of operators who accomplish Modification 2628—Part 3.

Corrective Action Taken

The FAA has determined that it is appropriate to take action to correct paragraph (a)(2) of AD 96–25–06 to state: ''After this modification is accomplished, no further action is required *by this AD*.'' The FAA finds this correction is necessary in order to prevent operators from having to perform additional and unnecessary work on these airplanes.

Action is taken herein to correct the error and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date of the AD remains January 27, 1997.

The AD is being reprinted in its entirety, below, for the convenience of affected operators.

No Need for Additional Notice and Public Comment

Since this action only clarifies the intent of a provision of an AD, and relieves affected operators from having to perform what could be additional and unnecessary work, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9848 (61 FR 66885, December 19, 1996), and by adding a new airworthiness directive (AD), amendment 39–9891, to read as follows:

96–25–06 R1 SAAB Aircraft AB: Amendment 39–9891. Docket 95–NM–201–AD. Revises AD 96–25–06, amendment 39–9848.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 379 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high bearing stress on the bushings in the flap fittings, which could result in jamming of the flaps and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 800 hours time-in-service after the effective date of this AD: Perform a visual inspection to detect damage or cracking of the forward and aft attachment lugs of the

flap fittings at wing station (WS) 123.38, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If no cracking or damage is found, and the flap fittings have not been modified or replaced, repeat the visual inspection thereafter at intervals not to exceed 800 hours time-in-service.

(2) If any cracking is found, prior to further flight, replace the flap fittings with new improved flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 3) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(b) Within 4,500 hours time-in-service after the effective date of this AD, perform an inspection to determine the size of the inboard and outboard holes (swaged bushings) of the flap fittings, and to detect loose swaged bushings, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If the sizes of the holes are within the limits specified in the service bulletin, and if no loose swaged bushings are found, prior to further flight, install improved bushings in accordance with the Accomplishment Instructions (Modification 2628—Part 1) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(2) If the size of any hole is outside the limits specified in the service bulletin, or if any loose swaged bushing is found, prior to further flight, install oversize bushings in the flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 2) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections, replacement, and installations shall be done in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995. This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 27, 1997 (61 FR 66885, December 19, 1996). Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment is effective January 27, 1997.

Issued in Renton, Washington, on January 14, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1439 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 150; PR4–2, FRL–5675–1]

Approval and Promulgation of Implementation Plans; Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the approval of revisions to the Puerto Rico ''Regulations for the Control of Atmospheric Pollution,'' submitted to EPA by the Puerto Rico Environmental Quality Board (EQB) on September 29, 1995. This action approves revisions to Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, 121, 201, 203, 204, 205, 206, 209, 301, 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, 417, and 501. At the request of EQB, EPA will be taking final action on Rules 112 and 211 at a later date. EPA is not incorporating new Rule 422 into the federally approved Puerto Rico State Implementation Plan (SIP). EPA is also withdrawing Rules 411, 418, 419, 420 and 421 from the Puerto Rico SIP at the request of the EQB. However, although requested by the EQB, EPA is not withdrawing Rule 404 from the SIP. In addition, EPA is adding a new section to the Code of Federal Regulations which clearly identifies those Puerto Rico regulations which are a part of the SIP.

EFFECTIVE DATE: This rule is effective February 21, 1997.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

Environmental Protection Agency, Region II Caribbean Field Office Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, Santurce, Puerto Rico 00909

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Environmental Engineer, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: On June 21, 1996 (61 FR 31886), EPA published, in the Federal Register, a proposed rulemaking concerning revisions to the Puerto Rico ''Regulations for the Control of Atmospheric Pollution'' (the Regulations). On September 29, 1995, the Puerto Rico Environmental Quality Board (EQB) submitted to EPA a request for approval of revisions to the Puerto Rico Regulations. Included in that request were revisions to the general Regulations, regulations needed to support the Title V of the Clean Air Act (Act) Operating Permits Program, revisions to the Puerto Rico PM_{10} SIP for the Municipality of Guaynabo, and, a request that certain rules of the Regulations which are currently included as part of Puerto Rico's approved SIP be withdrawn from the SIP. However, these regulations will remain enforceable by Puerto Rico. Also included, was a regulation concerning Hazardous Air Pollutants (HAPs) to be approved by EPA under section 112(l) of the Act. Under the context of the Act, the Commonwealth of Puerto Rico is regarded as a state.

The revisions and rationale for EPA's approval and rulemaking actions were explained in the June 21, 1996 proposal and will not be restated here. The reader is referred to the proposal for a detailed explanation of Puerto Rico's SIP revision.

In response to EPA's proposed approval of Puerto Rico's SIP revision, comments were received from eight interested parties. The commenters are as follows: American Petroleum Institute [A], Puerto Rico Sun Oil Company [B], Schering-Plough Corporation [C], Puerto Rico Manufacturers Association [D], Pharmaceutical Research and Manufacturers of America [E], Ford Motor Company [F], National Environmental Development Association [G], Texaco Inc. [H]. All of the comments received were of a similar

nature. The comments and EPA's responses are listed below.

Comment

Among the changes to the Puerto Rico SIP proposed to be adopted by EPA is an amendment to Rule 112, ''Compliance Determination/Certification,'' of the Puerto Rico Regulations which provides that ''any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of the Puerto Rico SIP and that certain information will constitute presumptively credible evidence of whether a violation has occurred.''

The use of other ''credible evidence'' has been recognized under the Act, but specifically limited to penalty calculations as evidence of the duration of a violation proven through the use of approved reference test methods. Consequently, the commenters assert that the proposed revision in question affecting Rule 112 is not consistent with, nor required or supported by the Act and its legislative history. Absent a legal foundation to support the inclusion of the ''credible evidence'' provision of Rule 112, the commenter objected to its proposed incorporation into the SIP. EPA should withhold taking any final action regarding Rule 112. [A,B,C,D,E,F,G,& H]

Response

Puerto Rico's Rule 112 was adopted in response to EPA's SIP requirement notification that was issued in conjunction with the release of EPA's Enhanced Monitoring (EM) rule which was proposed on October 22, 1993 (58 FR 54648). However, adverse comments were received with respect to EPA's EM proposed rule. EPA has developed a Compliance Assurance Monitoring (CAM) rule to replace the EM rule. EPA announced the availability of the draft in September 1995 and a revised version on August 13, 1996 (61 FR 41991). EPA anticipates proposing the CAM rule by December 1996 and promulgating it by July 1997. The August 13, 1996 Federal Register notice states that the rulemaking on the credible evidence provisions as proposed originally in October 22, 1993 is expected to be finalized ahead of the CAM rule, in December 1996. EQB formally requested, in an October 4, 1996 letter, that EPA delay approval of Rule 112 until EPA promulgates the credible evidence rule and/or the CAM rule. This would allow EPA and EQB to further evaluate Rule 112 to determine if it meets EPA's final requirements. Therefore, EPA concurs with EQB's request that EPA withhold taking final action on Puerto Rico's revision to Rule 112 until EQB submits a future request.

Comment

Upon the adoption and promulgation of Rule 211, ''Synthetic Minor Source Emissions'' by EQB, EQB issued Resolution R–96–13–4 on March 26, 1996 clarifying the underlying intended purpose of the rule. EPA should incorporate the clarifications made by EQB regarding this rule, as drafted in EQB's Resolution R–96–13–4, in order that the synthetic minor source provisions of the Puerto Rico SIP be interpreted consistent with its underlying intended scope and extent. [D]

Response

EQB informed EPA in an October 4, 1996 letter of its intent to change the definition of ''Minor Source (for the purpose of Rule 211)'' in Rule 102, ''Definitions'' of the Regulations, to delete the exclusion which provides that sources subject to a New Source Performance Standards or National Emission Standard for Hazardous Air Pollutants cannot be considered minor sources for the purpose of limiting potential emissions of criteria pollutants. Because EQB has informed EPA of this plan to revise the Regulation pursuant to the Resolution R–96–13–4, EQB and EPA have agreed to withhold taking final action on Rule 211 until it is further revised by EQB and submitted to EPA as a SIP revision. Similarly, EPA is withholding action on Rule 211 to the extent that it would be a method to provide sources with a mechanism to limit potential HAP emissions under 112(l) of the Act. EPA will address this when EQB submits the revised regulation defining minor source for purposes of Rule 211 for EPA approval. Therefore, EPA concurs with EQB's request that EPA withhold taking final action on Puerto Rico's revision to Rule 211 until EQB submits a future request.

Conclusion

EPA is approving revisions to Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, 121, 201, 203, 204, 205, 206, 209, 301, 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, 417, and 501 of the Puerto Rico Regulations. As requested by the EQB, final action on Rules 112 and 211 will be delayed until issues associated with these rules are resolved by EQB and EPA. In addition, EPA is not incorporating new Rule 422 into the federally approved Puerto Rico SIP. EPA is also withdrawing Rules 411, 418, 419, 420 and 421 from the Puerto Rico SIP at the request of the EQB. Although requested by the EQB, EPA is not withdrawing Rule 404 from the SIP.

Additionally, a new § 52.2723 of the Code of Federal Regulations, ''EPA—approved Puerto Rico regulations,'' is being promulgated in the regulatory section at the end of this action. This new section identifies all Puerto Rico regulations approved by EPA as part of the Puerto Rico SIP, the dates when the regulations were made effective by the Commonwealth, and the dates (and Federal Register citation) when they were last approved by EPA for incorporation into the Puerto Rico SIP.

New § 52.2723 also includes regulations which were previously approved by EPA. Puerto Rico's September 28, 1995 SIP submittal consisted of the compiled air regulations which included regulations that had not been changed, however, these rules have been given a new Commonwealth effective date. Therefore, EPA is listing them in § 52.2723 under a new Commonwealth effective date and new EPA approval date.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not

create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 13, 1996.

William J. Muszynski,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Section 52.2720 is amended by adding paragraph (c)(36) to read as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

(36) Revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution (the Regulations) submitted on September 29, 1995 by the Puerto Rico Environmental Quality Board (EQB).

(i) Incorporation by reference.

(A) Regulations:

(*1*) Amendments to Part I, ''General Provisions'', Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, and 121, effective September 28, 1995.

(*2*) Amendments to Part II, ''Approval and Permit'', Rules 201, 203, 204, 205, 206, and 209, effective September 28, 1995.

(*3*) Amendments to Part III, ''Variance'', Rule 301, effective September 28, 1995.

(*4*) Amendments to Part IV, ''Prohibitions'', Rules 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, and 417, effective September 28, 1995.

(*5*) Amendments to Part V, ''Fees'', Rule 501, effective September 28, 1995.

(ii) Additional information.

(A) Request by EQB to remove Rules 411, 418, 419, 420 and 421 of Part IV, ''Prohibitions'' of the Regulations from the federally approved SIP dated September 29, 1995.

(B) An October 4, 1996 letter from EQB to EPA requesting that EPA delay approval of Rules 112 and 211.

3. A new § 52.2723 is added to Subpart BBB to read as follows:

§ 52.2723 EPA—approved Puerto Rico regulations.

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
PART I, GENERAL PROVISIONS			
Rule 101—Title	9/28/95	[Insert date of publication and FR page citation.]	
Rule 102—Definitions	9/28/95	.....do.	
Rule 103—Source Monitoring, Recordkeeping, Reporting, Sampling and Testing Methods.	9/28/95	.....do.	
Rule 104—Emission Data Available to Public Participation.	9/28/95	.....do.	
Rule 105—Malfunction	9/28/95	.....do.	
Rule 106—Test Methods	9/28/95	.....do.	

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION—Continued

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
Rule 107—Air Pollution Emergencies	9/28/95	.....do.	
Rule 108—Air Pollution Control Equipment	9/28/95	.....do.	
Rule 109—Notice of Violation	9/28/95	.....do.	
Rule 110—Revision of Applicable Rules and Regulations.	9/28/95	.....do.	
Rule 111—Applications, Hearings, Public Notice	9/28/95	.....do.	
Rule 113—Closure of a Source	9/28/95	.....do.	
Rule 114—Compulsory and Optional Hearing	9/28/95	.....do.	
Rule 115—Punishment	9/28/95	.....do.	
Rule 116—Public Nuisance	9/28/95	.....do.	
Rule 117—Overlapping or Contradictory Provisions	9/28/95	.....do.	
Rule 118—Segregation and Combination of Emissions	9/28/95	.....do.	
Rule 119—Derogation	9/28/95	.....do.	
Rule 120—Separability Clause	9/28/95	.....do.	
Rule 121—Effectiveness	9/28/95	.....do.	
PART II, APPROVAL AND PERMIT			
Rule 201—Location Approval	9/28/95	.....do.	
Rule 202—Air Quality Impact Analysis	9/28/95	.....do.	
Rule 203—Permit to Construct a Source	9/28/95	.....do.	
Rule 204—Permit to Operate a Source	9/28/95	.....do.	
Rule 205—Compliance Plan for Existing Emission Sources.	9/28/95	.....do.	
Rule 206—Exemptions	9/28/95	.....do.	
Rule 207—Continuing Responsibility for Compliance	9/28/95	.....do.	
Rule 208—Agricultural Burning Authorized	9/28/95	.....do.	
Rule 209—Modification of the Allowed Sulfur-in-Fuel Percentage.	9/28/95	.....do.	
Rule 210—(Reserved) Part III, ''Variance''.			
PART III, VARIANCE			
Rule 301—Variances Authorized	9/28/95	.....do.	
Rule 302—Emergency Variances	9/28/95	.....do.	
PART IV, PROHIBITIONS			
Rule 401—Generic Prohibitions	9/28/95	.....do.	
Rule 402—Open Burning	9/28/95	.....do.	
Rule 403—Visible Emissions	9/28/95	.....do.	
Rule 404—Fugitive Emissions	9/28/95	.....do.	
Rule 405—Incineration	9/28/95	.....do.	
Rule 406—Fuel Burning Equipment	9/28/95	.....do.	
Rule 407—Process Sources	9/28/95	.....do.	
Rule 408—Asphaltic Concrete Batching Plants	9/28/95	.....do.	
Rule 409—Non-Process Sources	9/28/95	.....do.	
Rule 410—Maximum Sulfur Content in Fuels	9/28/95	.....do.	
Rule 412—Sulfur Dioxide Emissions: General	9/28/95	.....do.	
Rule 413—Sulfuric Acid Plants	9/28/95	.....do.	
Rule 414—Sulfur Recovery Plants	9/28/95	.....do.	
Rule 415—Non-Ferrous Smelters	9/28/95	.....do.	
Rule 416—Sulfite Pulp Mills	9/28/95	.....do.	
Rule 417—Storage of Volatile Organic Compounds	9/28/95	.....do.	
Rule 423—Limitations for the Guaynabo PM_{10} Nonattainment Area.	4/2/94	5/31/95; 60 FR 28333.	
PART V, FEES			
Rule 501—Permit Fees	9/28/95	.....do.	
Rule 502—Excess Emission Fees	9/28/95	.....do.	
Rule 503—Test Fees	9/28/95	.....do.	
Rule 504—Modification	9/28/95	.....do.	

[FR Doc. 97–1420 Filed 1–21–97; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[CA 157–0022a; FRL–5669–1]

Clean Air Act Approval and Promulgation of Emission Reduction Credit Banking Provisions; Implementation Plan for California State Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Mojave Desert Air Quality Management District (MDAQMD or the District). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to control air pollution in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) with regard to new source review (NSR) in areas of MDAQMD that are not in attainment of the national ambient air quality standards (NAAQS). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on March 24, 1997 unless adverse or critical comments are received by February 21, 1997. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permitting Office (A–5–1), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Mojave Desert AQMD, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

FOR FURTHER INFORMATION CONTACT: Steve Ringer, Permitting Office (A–5–1), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1260.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: rule 1400, General; rule 1401, Definitions; rule 1402, Emission Reduction Credit Registry; and rule 1404, Emission Reduction Credit Calculation. These rules were adopted on June 28, 1995, and were submitted by the State of California to EPA on August 10, 1995 (rules 1400, 1401, 1402, and 1404 will hereafter be referred to as the ''submitted rules'').

This document promulgates EPA's direct-final action for the submitted rules. These submitted rules were found to be complete on October 4, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [1] and are being finalized for approval into the SIP. The submitted rules establish a system by which the District will calculate and bank reductions in emissions prior to use as offsets for future increases in emissions.

Background

The air quality planning requirements for nonattainment areas are set out in 40 CFR 51.165. The general requirements for the use of emission reductions are set out in EPA's Emissions Trading Policy Statement (ETPS), at 51 FR 43814, December 4, 1986.

Section 173 of the Clean Air Act requires that major new sources and major modifications in nonattainment areas obtain offsetting emission reductions as a part of the preconstruction permitting process. The submitted rules create a system to provide for the banking and transfer of such reductions. As detailed in 40 CFR 51.165 and EPA's ETPS, offsets must reflect reductions in actual emissions, and they must be enforceable, permanent, quantifiable, and surplus of other regulatory requirements. For a description of how the submitted rules ensure that emission reductions meet these requirements, please refer to EPA's Technical Support Document (TSD) for this action.

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA Evaluation and Action

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD rules 1400, 1401, 1402, and 1404 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 24, 1997, unless, by February 21, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 24, 1997.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over a population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the

Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 8, 1996.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(224)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(224) * * *

(i) * * *

(C) Mojave Desert Air Quality Management District.

(*1*) Rules 1400, 1401, 1402, 1404. Adopted on June 28, 1995.

* * * * *

[FR Doc. 97–1421 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN70–1a; FRL–5675–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 13, 1996, and June 27, 1996, the State of Indiana submitted, as a requested revision to the State Implementation Plan (SIP) for ozone, 326 IAC 8–12, a rule controlling volatile organic compound (VOC) emissions from shipbuilding and ship repair coating operations in Clark, Floyd, Lake, and Porter Counties. This rule is part of the State's 15% Rate-of-Progress (ROP) plan for reducing VOC emissions in Clark and Floyd Counties. VOCs are air pollutants which combine with oxides of nitrogen to form ground-level ozone, a pollutant which can damage lung tissue and cause serious respiratory illness. ROP plans are intended to help areas with ozone problems attain the public health based Federal ozone air quality standard. Indiana expects that the control measures required by this requested SIP revision will reduce VOC emissions by 1,164 pounds per day in Clark and Floyd Counties. In this action, EPA is approving the requested SIP revision through a ''direct final'' rulemaking; the rationale for this approval is set forth in the **SUPPLEMENTARY INFORMATION** section of this rulemaking. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 24, 1997 unless adverse comments are received by February 21, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Air Programs Branch (AR–18J), (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act, as amended in 1990, requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as ''severe'' nonattainment for ozone, while Clark and Floyd Counties are classified as ''moderate'' nonattainment. As such, these counties are subject to the 15%

ROP requirement. The Act specifies under section 182(b)(1)(C) that the 15% emission reduction claimed under the ROP plan must be achieved through revisions to the SIP, the promulgation of federal rules, or through permits under Title V of the Act, by November 15, 1996.

On September 6, 1995, the Indiana Air Pollution Control Board (IAPCB) adopted a shipbuilding and ship repair rule for purposes of meeting the State's 15% ROP plan requirements. Public hearings on the rule were held on June 7, 1995, and September 6, 1995, in Indianapolis, Indiana. The rule was signed by the Secretary of State on April 1, 1996, and became effective on May 1, 1996; it was published in the Indiana State Register on May 1, 1996. The Indiana Department of Environmental Management (IDEM) formally submitted the rule to EPA on February 13, 1996, as a revision to the Indiana ozone SIP; supplemental documentation to this revision was submitted on June 27, 1996. EPA made a finding of completeness in a letter dated July 5, 1996.

II. Summary of Rule

The February 13, 1996, and June 27, 1996, submittals include the following rule:

326 Indiana Administrative Code (IAC) 8–12 Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties

(1) Applicability.
(2) Exemptions.
(3) Definitions.
(4) Volatile organic compound emissions limiting requirements.
(5) Compliance requirements.
(6) Test methods and procedures.
(7) Record keeping, notification, and reporting requirements.

A summary of the rule follows. For the complete requirements of this SIP revision, interested parties should see the 326 IAC 8–12 rule.

326 IAC 8–12–1 Applicability

This section establishes which shipbuilding or ship repair operations are subject to the rule. Beginning November 1, 1995, shipbuilding or ship repair facilities which are (a) located in Clark or Floyd County which have the potential to emit 100 tons per year (TPY) of VOCs, or (b) located in Lake and Porter Counties which have the potential to emit 25 TPY of VOCs, are subject to the requirements of the rule.[1]

''Shipbuilding and ship repair facility,'' as defined under section 3(21) of the rule, means any facility that builds, repairs, repaints, converts, or alters ships. Section 3(20) defines ''ship'' to mean any marine or freshwater vessel made of steel and used for military or commercial operations, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys), and includes, but is not limited to, all of the following: (A) military and United States Coast Guard vessels, (B) commercial cargo and passenger (cruise) ships, (C) ferries, (D) barges, (E) tankers, (F) container ships, (G) patrol and pilot boats, and (H) dredges. For purposes of the rule, offshore oil and gas drilling platforms are not considered ships.

326 IAC 8–12–2 Exemptions

This section exempts the following marine coatings from the rule's VOC content limitations in section 4: (1) any marine coating used in volumes of less than 20 gallons in any one calendar year, provided, however, the total of all exempt coatings shall not exceed 400 gallons in any 1 calendar year; (2) any marine coating applied using a hand-held aerosol can; and (3) any marine coating used in a touch-up operation. However, these coatings are nonetheless subject to all other provisions contained in the rule, including record keeping requirements under section 7.

326 IAC 8–12–3 Definitions

This section contains definitions which describe the terms used in the Indiana rule for compliance purposes, particularly in regard to the various coatings which are subject to limits under the rule.

326 IAC 8–12–4 Volatile organic compound emissions limiting requirements

Section 4(a) requires that, on and after May 1, 1996, the owner or operator of a subject facility must meet certain VOC content limits when applying specialty coatings. Section 2(22) defines ''specialty coatings'' to include the following coatings: air flask coating, antenna coating, antifoulant coating, heat resistant coating, high-gloss coating, high-temperature coating, inorganic zinc (high-build) coating, military exterior coating, mist coating, navigational aids coating, nonskid coating, nuclear coating, organic zinc coating, pretreatment wash primer coating, repair and maintenance of thermoplastic coating of commercial vessels, rubber camouflage coating, sealant coating for thermal spray aluminum, special marking coating, specialty interior coating, tack coating, undersea weapons systems coating, water based weld-through (shop) preconstruction primer, and weld-through (shop) preconstruction primer.

Section 4(a) also requires that, beginning May 1, 1996, subject sources must meet certain VOC content limitations when applying general use coatings from May 1 through September 30. The limitations for specialty coatings apply year-round.

The VOC content limits for specialty and general use coatings are as follows:[2]

Coating	Lbs/gallon
Special Marking Coatings	4.08
Heat Resistant	3.50
High Gloss	3.50
High Temperature	4.17
Weld-through (shop) preconstruction.	See below
All other specialty coatings	2.83
General use coating	2.83

No thinner shall be added to any general use coating when the general use coating limit is in effect. Weld-through (shop) preconstruction primers are required throughout the year to be water based and meet a VOC content limit of 0.00 when applied. No cleaning material shall be used in the primer application facility, and no thinner shall be added to the primer. Additionally, if the owner or operator determines that a water based weld-through (shop) preconstruction primer can no longer be used due to an operational, performance, or availability constraint, the rule provides that, as an alternative to meeting the primer requirement, the owner or operator can request IDEM for permission to comply by means of a control system with an overall VOC reduction efficiency of 95 percent, subject to certain provisions.

Section 4(b) requires that on and after May 1, 1996, subject sources must use gasket-sealed containers to store used cleaning accessories, new and spent coating, and solvent. Cleaning materials for spray equipment, including spray lines, must be collected using equipment which collect the cleaning materials when used and minimize the materials evaporation into the atmosphere. All containers, tanks, vats, drums, and piping systems must be free

[1] The applicability thresholds of 100 TPY potential to emit for the Clark and Floyd Counties' moderate ozone nonattainment area, and 25 TPY potential to emit for the Lake and Porter Counties' severe ozone nonattainment area, are identical to the thresholds used to define '' major sources'' under the Act (*See* section 302(j), section 182(b)(2), and section 182(d) of the Act).

[2] ''VOC content'' is defined in section 2(25) of the Indiana rule as the weight of VOC, per unit volume of any general use or specialty coating or cleaning material, less water and less exempt compounds.

of cracks, holes, or other defects, and must be closed unless materials are being added or removed from them, and handling of the VOC-containing materials shall be conducted in a manner that minimizes drips and spills, and any spills shall be cleaned up promptly.

Section 4(c) requires that the owner or operator of a subject source must meet certain training program requirements. On or before January 1, 1996, the owner or operator must develop a written worker training program. This program shall contain written procedures, and hands-on demonstration, as appropriate, in order to instruct all workers, including contractors, that engage in activities regulated under the rule in how to comply with the rule when performing those activities. All affected personnel shall be certified by the trainer to have satisfactorily completed necessary training on or before May 1, 1996, with refresher training prior to May 1, annually. Untrained employees can perform an activity covered under the training program for no longer than 180 days. Records shall be kept by the owner or operator of the training completed by each worker.

8–12–5 Compliance requirements

Section 5 provides that the VOC content emission limits for coatings and cleaning materials contained in section 4 shall be achieved each day on an as-applied basis for each operating day (as defined by 326 IAC 8–12–3(18)), and that compliance with the work practice standards of section 4 shall be achieved each operating day. Compliance with VOC content limits shall be demonstrated using EPA Method 24, contained in 40 CFR part 60, Appendix A, or, if certain specified procedures are followed, a certificate from the coating manufacturer indicating compliance. Under section 3(7), this certification needs to attest to the VOC content as determined through analysis by EPA Method 24, or through use of the forms and procedures outlined in EPA publication EPA 450/3–84–019, revised June 1986. If any discrepancy exists between the manufacturer's certification and EPA Method 24, EPA Method 24 shall govern. (It should be noted that the owner or operator retains liability should subsequent testing reveal a violation).

326 IAC 8–12–6 Test methods and procedures

This section specifies that 326 IAC 8–1–4, EPA Method 24 (40 CFR part 60, Appendix A), and section 5 of the rule shall be used to determine compliance with the rule. 326 IAC 8–1–4, the State's VOC rule testing procedures for coating and control system requirements, was approved by EPA and incorporated in the Indiana SIP on March 6, 1992 (57 FR at 8082). 40 CFR Part 60 Appendix A is Method 24, EPA's established test method for determining VOC content in surface coatings.

326 IAC 8–12–7 Record keeping, notification, and reporting requirements

Section 7(a) requires certain records be kept at a subject source for a minimum of 3 years. Subsection (a)(1) requires certification of annual employee training under the source's training program be kept. Subsection (a)(2) requires certain information regarding each coating used each working day of surface coating operation be recorded. Such information includes: the coating identification (trade name, manufacturer, coating category consistent with rule definitions, and applicable VOC content requirement); the VOC content of the coating, as supplied; certification of the VOC content of the supplied coating from the coating manufacturer, Material Safety Data Sheets (MSDS), or product data sheet for each coating used; the volume of the coating used; the thinner added to the coating, including thinner description, VOC content, and volume added. It should be noted that this record keeping requirement is applicable to coatings otherwise exempted from VOC content limitations in section 2.

Subsection (a)(2) also requires that for each solvent used each working day, subject sources must keep records of the solvent description; solvent use (thinning or cleanup); VOC content; volume used for thinning; and volume used for cleanup.

Subsection (a) (3) and (4) requires copies of the compliance plan and quarterly compliance report required under subsection (b). Subsection (b) requires that on or before January 1, 1996, each subject source shall submit to IDEM for review a compliance plan which addresses the source's required compliance procedures, training program, record keeping procedures, and procedures to comply with the rule's work practice standards. A source may revise its compliance plan upon notifying IDEM in writing that a major change in the source's operations has occurred. Beginning May 1, 1996, and within 60 days after the end of each quarter, each subject source shall submit a quarterly compliance report indicating the compliance status with the rule's work practice standards, training program, emission standards, compliance procedures, and provision of the compliance plan. Also required to be included in the report is each instance of noncompliance, the corrective action taken, and the reason for the noncompliance. Reporting frequency may be changed to semiannually after May 1, 1997, if a source requests such a change in writing, and IDEM approves it.

III. Evaluation of Rule

As previously discussed, Indiana intends that this shipbuilding and ship repair SIP revision submittal will be one of the control measures which will satisfy 15% ROP plan requirements under the Act for Clark and Floyd Counties. A review of the emission reduction credit claimed for this rule for purposes of the Indiana 15% ROP plan will be addressed when EPA takes rulemaking action on the Clark and Floyd 15% ROP plan SIP. (EPA will take rulemaking on the overall 15% ROP plan in a subsequent rulemaking action.)

On August 27, 1996, a Control Techniques Guidelines (CTG) document was published which recommends Reasonably Available Control Technology (RACT) control measures for shipbuilding and ship repair coating operations (61 FR 44050).[3] In turn, states with moderate and above ozone nonattainment areas are required under section 182(b)(2) to submit a SIP revision providing regulations consistent with RACT for VOC source categories that are covered by a CTG issued after enactment of the Act's amendments of 1990, but prior to the time of attainment. This Act requirement, however, is separate from the requirement under section 182(b)(1) that states adopt and implement control measures to achieve 15% VOC reduction; such control measures need not constitute RACT to be creditable under the 15% ROP plan. Since the Indiana shipbuilding and ship repair rule was submitted primarily for purposes of the 15% ROP plan, was adopted and submitted before the CTG was published, and tightens the stringency of the SIP, EPA is approving the control measures contained in the Indiana rule at this time without

[3] A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. CTGs are documents intended to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the EPA considers the ''presumptive norm'' for RACT.

determining whether they satisfy RACT requirements under section 182(b)(2).

As for the remainder of the Indiana rule, EPA has reviewed the rule's definitions, exemptions, compliance methods, testing, and record keeping and recording requirement to determine whether the rule is enforceable. The definitions provided under section 3 of the rule are based upon definitions used in the promulgated national emissions standards for hazardous air pollutants (NESHAP) for this industry (60 FR 64330, December 15, 1995). The rule's definitions adequately describe the terms used in the rule for purposes of compliance, and are, therefore, approvable.

As for the coating exemption provision under section 2, EPA has requested that Indiana clarify what types of coating are covered under section 2(3): ''Any marine coating used in a touch-up operation.'' IDEM has stated in a September 3, 1996, letter that this exemption is intended only to apply to coatings which are used to repair minor surface damage and imperfections, and that this exemption does not apply to primary coatings (primers, general use, and specialty coatings) except when they are used in touch-up operations. The exemption provisions under section 2 are approvable.

The provisions in section 5 which allow a source to demonstrate compliance through a certificate issued by the manufacturer certifying the VOC content of each batch of coating used are based upon similar compliance procedures promulgated in the shipbuilding and ship repair NESHAP. As was discussed before, this certification must, as provided under section 3(7), attest to the VOC content as determined through analysis by EPA Method 24, or through use of the forms and procedures outlined in EPA publication EPA 450/3–84–019, revised June 1986. If any discrepancy exists between the manufacturer's certification and EPA Method 24, EPA Method 24 shall govern. Also section 5(5) provides that IDEM or EPA may test or have tested any coating for VOC content using EPA Method 24, and if any discrepancies exist between the manufacturer's certification and EPA Method 24 test results, the Method 24 test results shall take precedence. These compliance procedures are approvable.

The rule's daily record keeping and quarterly reporting requirements under section 7 will assure that VOC content limits are met as applied and that any thinning of coating will not result in non-compliance, and that the work practice standards and training requirements of the rule will be properly met. The rule's record keeping and reporting requirements are approvable.

IV. Final Action

Indiana's rule covering ship building or ship repair operations, 326 IAC 8–12, as submitted on February 13, 1996, and June 27, 1996, contain enforceable VOC control measures which tighten the stringency of the Indiana ozone SIP for Clark, Floyd, Lake, and Porter Counties. On this basis, the rule is approvable. EPA, however, is not rulemaking at this time as to whether this rule satisfies RACT requirements pursuant to section 182(b)(2) of the Act.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 24, 1997 unless, by February 21, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 24, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is

not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: December 24, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(113) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(113) On February 13, 1996, and June 27, 1996, Indiana submitted rules for the control of volatile organic compound emissions from shipbuilding and ship repair operations in Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan.

(i) Incorporation by reference. 326 Indiana Administrative Code 8–12: Shipbuilding or Ship Repair operations in Clark, Floyd, Lake, and Porter Counties, Section 1: Applicability, Section 2: Exemptions, Section 3: Definitions, Section 4: Volatile organic compound emissions limiting requirements, Section 5: Compliance requirements, Section 6: Test methods and procedures, and Section 7: Record keeping, notification, and reporting requirements. Adopted by the Indiana Air Pollution Control Board September 6, 1995. Filed with the Secretary of State April 1, 1996. Published at Indiana Register, Volume 19, Number 8, May 1, 1996. Effective May 1, 1996.

[FR Doc. 97–1425 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 105–0012a; FRL–5673–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; San Diego County Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), the San Diego County Air Pollution Control District (SDCAPCD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate five rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_x) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control NO_x emissions from boilers, steam generators, process heaters, electric utility boilers, internal combustion engines, and stationary gas turbines. The EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonttainment areas.

DATES: This action is effective on March 24, 1997 unless adverse or critical comments are received by February 21, 1997. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301.

San Diego County Air Pollution Control District, Rule Development Section, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

Written comments should be submitted to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 95105.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: KCAPCD's Rule 425.2, Boilers, Steam Generators, and Process Heaters (Oxides of Nitrogen); Rule 427, Stationary Piston Engines (Oxides of Nitrogen); SDCAPCD's Rule 69.4, Stationary Reciprocating Internal Combustion Engines; VCAPCD's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions; and Rule 74.23, Stationary Gas Turbines. These rules were submitted by the California Air Resources Board (CARB) to EPA on February 11, 1994 (Rule 59), October 19, 1994 (Rule 69.4), May 25, 1995 (Rule 425.2), and March 26, 1996 (Rules 74.23 and 427).

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of $NO\chi$ emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides

Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_x Supplement) which describes the requirements of section 182(f). The NO_x Supplement should be referred to for further information on the NOx requirements and is incorporated into this document by reference. Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Kern County is classified as a serious nonattainment area.[1] San Diego County is classified as a serious nonattainment area, and Ventura County area is classified as severe for ozone.[2] All areas are subject to the RACT requirements of section 182(b)(2), cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x category since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions are expected to require final installation of the actual NO_x controls by May 31, 1995 for those sources where installation by that date is practicable.

This document addresses EPA's direct-final action for the KCAPCD's Rule 425.2, Boilers, Steam Generators, and Process Heaters (Oxides of Nitrogen); Rule 427, Stationary Piston Engines (Oxides of Nitrogen); SDCAPCD's Rule 69.4, Stationary Reciprocating Internal Combustion Engines; and for the VCAPCD's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions; and Rule 74.23, Stationary Gas Turbines. The KCAPCD adopted Rule 425.2 on April 6, 1995 and Rule 427 on January 1, 1996. The SDCAPCD adopted Rule 69.4 on September 27, 1994 and the VCAPCD adopted Rule 59 on October 12, 1993 and Rule 74.23 on October 10, 1995. The submitted KCAPCD's Rule 425.2 was found to be complete on July 24, 1995 and Rule 427 on May 15, 1996. SDCAPCD's Rule 69.4 was found to be complete on October 21, 1994. VCAPCD's Rule 59 was found to be complete on April 11, 1994; and Rule 74.23 on May 15, 1996 pursuant to EPA's completeness criteria set forth in 40 CFR Part 51 Appendix V[3] and are being finalized for approval into the SIP.

NO_x emissions contribute to the production of ground level ozone and smog. The five rules control emissions of NO_x from electric utilities and various industries used in a wide variety of applications. The rules were adopted as part of the KCAPCD's, SDCAPCD's, and VCAPCD's efforts to achieve and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. All five rules are required to satisfy the mandates of the Clean Air Act requirements, and were submitted pursuant to the CAA requirements cited above.

EPA Evaluation

In determining the approvability of a NO_x rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretations of these requirements, which form the basis for this action, appear in the NO_x Supplement and various other EPA policy guidance documents.[4] Among these provisions is the requirement that a NO_x rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_x emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT should be determined for major stationary sources of NO_X emissions. The document sets RACT emission levels specifically for electric utility boilers. For all other source categories, EPA expects States/Districts to establish RACT levels comparable to those levels for utility boilers taking into account cost, cost-effectiveness, and emission reductions.

While most of the guidance issued by EPA (previous to the NO_X Supplement) on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control techniques documents (ACTs), that identify alternative controls for most categories of stationary sources of NO_X. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. While providing guidance and information for States to use in making RACT determinations, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been issued by EPA to ensure that submitted NO_X RACT rules are fully enforceable and strengthen or maintain the SIP.

KCAPCD Rule 425.2 sets NO_X emission limits for units with annual heat input of 9 billion Btu or more at 70 parts per million (ppm) by volume for gas-fired units and 115 ppm for liquid-fired units. Emission limits are corrected to 3% oxygen. Rule 425.2 meets EPA's RACT guidance and May 31, 1995 implementation requirements by requiring that RACT be fully implemented by November 1997 and that interim measures including submission of a compliance plan and an application for authority to construct be met to ensure progress toward final compliance.

EPA established RACT levels for electric utility boilers and recommended for other source categories that States/Districts make RACT determinations comparable to those EPA established for electric utility boilers. This comparability should be based on several factors including cost, cost-effectiveness, and emission reductions.

The California Air Resources Board RACT/BARCT Guidance[5] document for institutional, commercial, and industrial

[1] Kern County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[2] The San Diego and Ventura County Areas retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). The San Diego Area was reclassified from severe to serious on February 21, 1995. See 60 FR 3771 (January 19, 1995).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); and ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

[5] Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (RACT/BARCT guidance for ICI boilers), California Air Resources Board, July 18, 1991.

(ICI) boilers suggests a RACT limit of 70 ppm corrected to 3% O_2 for units fired with gaseous fuel and 115 ppm for units fired with fuels other than gas. EPA has used CARB's Guidance document in evaluating Rule 425.2 for consistency with the CAA's RACT requirements. Rule 425.2's RACT emission limits (70/115 ppm) are generally comparable to the emission limits of CARB's Guidance document and meet federal RACT requirements.

Kern Rule 427 contains different requirements depending upon the size of the engines. Engines rated greater than 50 bhp are required to conduct regular maintenance procedures. Engines rated greater than 250 bhp are required to meet the emissions limits by June 1997. The rule establishes RACT emission limits for engines rated 250 bhp or greater at 50 parts per million (ppm), 125 ppm, and 600 ppm for rich burn engines, lean burn engines, and diesel engines, respectively. In lieu of meeting the emissions limits, sources may install control equipment that reduces NO_x emissions by 90%, 80%, and 30% for rich-burn, lean-burn, and diesel engines, respectively. Although final compliance with the emissions limits is not required until 1999, the rule does require interim measures be met by 1995. Emission control plans and maintenance procedures are required in the interim to ensure progress toward final compliance with the emission limits in 1999.

San Diego Rule 69.4 describes emission limits and reduction requirements in two tables. One table establishes RACT concentration limits and the other table sets percent reduction limits. Rule 69.4 establishes RACT at 50 ppm for rich burn engines, 125 ppm for lean burn engines, and 700 ppm for diesel engines. The concentration limits are referenced to 15% oxygen on a dry basis. The alternative control device efficiencies are set at 90%, 80%, and 25% for rich, lean, and diesel engines, respectively. The rule requires the RACT limits be met by May 31, 1995 for existing engines and upon start-up for new engines.

The current SIP approved version of VCAPCD Rule 59 limits NO_x emission from boilers rated greater than or equal to 2,150 million British Thermal Units (MMBtu) to 0.10 pounds per megawatt-hour (lb/MW-hr) produced, and limits NO_x emissions from boilers rated less than 2,150 MMBtu to 0.20 lb/MW-hr produced. Final compliance with these limits is required by June 4, 1994 and June 4, 1996 respectively. The significant changes in the October 12, 1993 version of Rule 59 are: (1) boilers under 2,150 million Btu per hour are now limited to 0.10 pound per megawatt-hour (lb/MW-hr) produced at loads at or above 43 megawatts (MW); and (2) the start-up duration of this exemption for auxiliary boilers has been changed from one hour to four hours. The additional reduction of NO_x emissions derived from this rule is part of VCAPCD's effort towards achieving the state and federal ozone standards.

VCAPCD's Rule 74.23 sets NO_x limits at 42 ppm (gas-fired) and 65 ppm (oil-fired) for units rated at or above 0.3 MW but less than 2.9 MW and for units rated 4 MW and greater, but operating at less than 877 hours per year. For all other units, the rule sets the following emission limits: (i) 25 ppm (gas-fired), corrected for turbine efficiency and 65 ppm (oil-fired) for units rated at or above 2.9 MW but less than 10 MW; (ii) 9 ppm (gas-fired) and 25 ppm (oil-fired) for units rated greater than 10 MW with selective catalytic reduction (SCR); and (iii) 15 ppm (gas-fired) and 42 ppm (oil-fired) for units rated greater than 10 MW with no SCR. Rule 74.23 meets EPA's RACT guidance and May 31, 1995 implementation requirements by requiring that BARCT limits be fully implemented by April 2001, and that interim measures including submitting a compliance plan and implementing interim emission limits be met to ensure progress toward the final emission limit of the rule.

The California Air Resources Board RACT/BARCT Guidance[6] document for stationary gas turbines suggest RACT limits of 42 ppm for gas-fired units and 65 ppm for oil fired units. BARCT limits for units with SCR are 9 ppm and 25 ppm for gas-fired units and oil-fired units respectively. For units without SCR, the BARCT limits are 15 ppm (gas-fired units) and 42 ppm (oil-fired units). Rule 74.23 emission limits meet the values of CARB's RACT/BARCT limits, thereby meeting the CAA requirements for RACT.

EPA agrees that the RACT emissions limits established in the Kern Rules 425.2 and 427, the San Diego Rule 69.4, and the Ventura Rules 59 and 74.23 are consistent with the Agency's guidance and policy for making RACT determinations, and believes the rules satisfy the NO_X RACT requirement of the CAA for ICI boilers in Kern County, the I/C engines in Kern and San Diego Counties, the electric utility boilers and the stationary gas turbines in Ventura County.

EPA is incorporating these rules into the SIP because they strengthen the SIP through the addition of enforceable measures such as NO_x emission limits, recordkeeping, test methods, definitions, and compliance tests. EPA believes all five rules for these source categories in each district satisfy the RACT requirements of the CAA. A more detailed discussion of the sources controlled, the controls required, and the analysis of how these controls meet RACT can be found in the Technical Support Document (TSD) for each rule available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. All five rules meet RACT requirements for their particular category, and contain implementation dates consistent with the CAA and EPA's policy. Therefore, all five are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110 and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 24, 1997, unless, by February 21, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 24, 1997.

[6] Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines (RACT/BARCT guidance for gas turbines), California Air Resources Board, May 18, 1992.

Regulatory Process

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rules in today's Federal Register. These rules are not major rules as defined by section 804(2) of the APA as amended.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 23, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(195)(i)(B)(*2*), (C)(202)(i)(C)(*5*), (C)(221)(i)(A)(*3*), (C)(230)(i)(A)(*2*) and (C)(230)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(195)* * *

(i) * * *

(B) * * *

(*2*) Rule 59, adopted on October 12, 1993.

* * * * *

(202) * * *

(i) * * *

(C) * * *

(*5*) Rule 69.4, adopted on September 27, 1994.

* * * * *

(221) * * *

(i) * * *

(A) * * *

(*3*) Rule 425.2, adopted on April 6, 1995.

* * * * *

(230) * * *

(i) * * *

(A) * * *

(*2*) Rule 74.23, adopted on October 10, 1995.

* * * * *

(C) Kern County Air Pollution Control District.

(*1*) Rule 427, adopted on January 25, 1996.

[FR Doc. 97–1078 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7204]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska	Kenai Peninsula Borough.	October 17, 1996, October 24, 1996, *Peninsula Clarion.*	The Honorable Don Gilman, Mayor, Kenai Peninsula Borough, 144 North Binkley, Soldotna, Alaska 99669–7599.	September 24, 1996	020012
Arkansas: Benton	Unincorporated Areas	October 31, 1996, November 7, 1996, *Benton County Daily Record.*	The Honorable Bruce Rutherford, Benton County Judge, 215 East Central, Suite #9, Bentonville, Arkansas 72712.	October 15, 1996	050419
Arkansas: Lonoke	City of Cabot	December 4, 1996, December 11, 1996, *Cabot Star Herald.*	The Honorable Joe L. Allman, Mayor, City of Cabot, P.O. Box 1113, Cabot, Arkansas 72023.	November 12, 1996	050309
Arkansas: Lonoke	Unincorporated Areas	December 4, 1996, December 11, 1996, *Cabot Star Herald.*	The Honorable Don R. Bevis, County Judge, Lonoke County, 301 North Center, Suite 201, Lonoke, Arkansas 72086.	November 12, 1996	050448

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Coconino	City of Flagstaff	October 25, 1996, November 1, 1996, *The Arizona Daily Sun*.	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	October 8, 1996	040020
Arizona: Maricopa	City of Glendale	November 22, 1996, November 29, 1996, *Arizona Republic*.	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	October 24, 1996	040045
Arizona: Maricopa	Unincorporated Areas	November 22, 1996, November 29, 1996, *Arizona Republic*.	The Honorable Tom Rawles, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, Phoenix, Arizona 85003.	October 24, 1996	040037
Arizona: Santa Cruz	City of Nogales	October 18, 1996, October 25, 1996, *Nogales International*.	The Honorable Louie Valdez, Mayor, City of Nogales, 777 North Grand Avenue, Nogales, Arizona 85621.	September 11, 1996 ...	040091
Arizona: Maricopa	City of Peoria	November 22, 1996, November 29, 1996, *Arizona Republic*.	The Honorable Ken C. Forgia, Mayor, City of Peoria, 8401 West Monroe, Phoenix, Arizona 85345.	October 24, 1996	040050
California: Riverside	City of Moreno Valley	November 7, 1996, November 14, 1996, *The Valley Times*.	The Honorable Denise Lanning, Mayor, City of Moreno Valley, P.O. Box 88005, Moreno Valley, California 92552–0805.	October 18, 1996	065074
Kansas: Johnson	City of Shawnee	October 14, 1996, October 21, 1996, *The Olathe Daily News*.	The Honorable Jim Allen, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, Kansas 66203–2799.	September 27, 1996 ...	200177
Missouri: St. Louis	Unincorporated Areas	November 1, 1996, November 8, 1996, *St. Louis-Post Dispatch*.	The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central, Clayton, Missouri 63105.	October 11, 1996	290327
Nevada: Clark	Unincorporated Areas	October 24, 1996, October 31, 1996, *Las Vegas Review-Journal*.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Commissioners, 225 Bridger Avenue, Sixth Floor, Las Vegas, Nevada 89155.	September 27, 1996 ...	320003
Nevada: Clark	Unincorporated Areas	November 15, 1996, November 25, 1996, *Las Vegas Review-Journal*.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Commissioners, 225 Bridger Avenue, Sixth Floor, Las Vegas, Nevada 89155.	October 31, 1996	320003
Nevada: Clark	City of Mesquite	October 24, 1996, October 31, 1996, *Las Vegas Review-Journal*.	The Honorable Kenneth Carter, Mayor, City of Mesquite, P.O. Box 69, Mesquite, Nevada 89024.	September 27, 1996 ...	320035

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Mexico: Bernalillo	City of Albuquerque	October 10, 1996, October 17, 1996, *Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	September 23, 1996 ...	350002
Oklahoma: Payne	City of Stillwater	October 17, 1996, October 24, 1996, *Stillwater Newspress*.	The Honorable Terry Miller, Mayor, City of Stillwater, P.O. Box 1449, Stillwater, Oklahoma 74076.	September 27, 1996 ...	405380
Texas: Tarrant	City of Arlington	October 25, 1996, November 1, 1996, *Fort Worth Star Telegram*.	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	October 8, 1996	485454
Texas: Tarrant	City of Arlington	November 15, 1996, November 22, 1996, *Fort Worth Star Telegram*.	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	October 30, 1996	485454
Texas: Tarrant	City of Fort Worth	November 15, 1996, November 22, 1996, *Fort Worth Star Telegram*.	The Honorable Kenneth Barr, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	October 30, 1996	480596
Texas: Harris	City of Houston	November 18, 1996, November 25, 1996, *Houston Chronicle*.	The Honorable Robert Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251.	November 7, 1996	480296
Texas: Gregg and Harrison.	City of Longview	November 27, 1996, December 4, 1996, *Longview News Journal*.	The Honorable I.J. Patterson, Jr., Mayor, City of Longview, P.O. Box 1952, Longview, Texas 75606.	November 13, 1996	480264
Texas: Dallas	City of Mesquite	November 14, 1996, November 21, 1996, *The Mesquite News*.	The Honorable Cathye Ray, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.	November 1, 1996	485490
Texas: Midland	City of Midland	November 15, 1996, November 22, 1996, *Midland Reporter-Telegram*.	The Honorable Robert E. Burns, Mayor, City of Midland, P.O. Box 1152, Midland, Texas 79702–1152.	October 30, 1996	480477

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 14, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1505 Filed 1–21–97; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation

determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No. 7200).	Unincorporated Areas.	August 22, 1996, August 29, 1996, Arizona Republic.	The Honorable Ed King, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, Tenth Floor, Phoenix, Arizona 85003.	August 7, 1996.	040037
Arizona: Maricopa (FEMA Docket No. 7200).	Town of Paradise Valley.	August 22, 1996, August 29, 1996, Arizona Republic.	The Honorable Marvin Davis, Mayor, Town of Paradise Valley, 6401 East Lincoln Drive, Paradise Valley, Arizona 85253.	August 7, 1996.	040049
Arizona: Maricopa (FEMA Docket No. 7200).	City of Phoenix	August 22, 1996, August 29, 1996, Arizona Business Gazette.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003.	August 7, 1996.	040051
California: Orange (FEMA Docket No. 7196).	City of Irvine	August 14, 1996, August 21, 1996, Orange County Register.	The Honorable Michael Ward, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92713–9575.	July 10, 1996	060222
Colorado: Arapahoe (FEMA Docket No. 7200).	City of Aurora	August 22, 1996, August 29, 1996, Villager.	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Suite 808, Aurora, Colorado 80012.	July 15, 1996	080002
Colorado: Arapahoe (FEMA Docket No. 7200).	Unincorporated Areas.	August 22, 1996, August 29, 1996, Villager.	The Honorable Polly Page, Chairman, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0001.	July 15, 1996	080011
Colorado: Jefferson (FEMA Docket No. 7200).	City of Lakewood	August 22, 1996, August 29, 1996, Jefferson Sentinel.	The Honorable Linda Morton, Mayor, City of Lakewood, 445 South Allison Parkway, Lakewood, Colorado 80226–3105.	August 8, 1996.	085075
Hawaii: Maui (FEMA Docket No. 7200).	Unincorporated Areas.	August 16, 1996, August 23, 1996, Maui News.	The Honorable Linda Crockett-Lingle, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.	July 23, 1996	150003

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Kansas: Johnson (FEMA Docket No. 7200).	City of Leawood	August 20, 1996, August 27, 1996, Legal Record.	The Honorable Marcia Rinehart, Mayor, City of Leawood, 4800 Town Center Drive, Leawood, Kansas 66211.	July 24, 1996	200167
Kansas: Johnson (FEMA Docket No. 7200).	City of Overland Park.	August 16, 1996, August 23, 1996, Overland Park Sun.	The Honorable Ed Eilert, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	July 24, 1996	200174
Nevada: Elko (FEMA Docket No. 7196)	City of Elko	August 9, 1996, August 16, 1996, Elko Daily Free Press.	The Honorable Mike Franzoia, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	July 23, 1996	320010
Nevada: Elko (FEMA Docket No. 7196).	Unincorporated Areas.	August 9, 1996, August 16, 1996, Elko Daily Free Press.	The Honorable Royce Hackworth, Chairperson, Elko County, Board of Commissioners, 569 Court Street, Elko, Nevada 89801.	July 23, 1996	320027
Texas: Tarrant (FEMA Docket No. 7196).	City of Arlington	August 2, 1996, August 9, 1996, Dallas Morning News.	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	July 15, 1996	485454
Texas: Tarrant (FEMA Docket No. 7196).	City of Fort Worth ...	July 17, 1996, July 24, 1996, Fort Worth Star-Telegram.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	June 26, 1996.	480596
Texas: Tarrant (FEMA Docket No. 7196).	City of Fort Worth ...	August 2, 1996, August 9, 1996, Dallas Morning News.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	July 15, 1996	480596
Texas: Tarrant (FEMA Docket No. 7200).	City of Fort Worth ...	August 16, 1996, August 23, 1996, Fort Worth Star-Telegram.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	August 6, 1996.	480596
Texas: Tarrant (FEMA Docket No. 7200).	City of Fort Worth ...	August 23, 1996, August 30, 1996, Fort Worth Star-Telegram.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	August 5, 1996.	480596
Texas: Tarrant (FEMA Docket No. 7196).	City of Haslet	July 17, 1996, July 24, 1996, Fort Worth Star-Telegram.	The Honorable I.J. Frazier, Mayor, City of Haslet, P.O. Box 183, Haslet, Texas 76052.	June 26, 1996.	480600
Texas: Tarrant (FEMA Docket No. 7200).	City of Haslet	August 16, 1996, August 23, 1996, Fort Worth Star-Telegram.	The Honorable I.J. Frazier, Mayor, City of Haslet, P.O. Box 183, Haslet, Texas 76052.	August 6, 1996.	480600
Texas: Midland (FEMA Docket No. 7189).	City of Midland	June 14, 1996, June 21, 1996, Midland Reporter-Telegram.	The Honorable Robert E. Burns, Mayor, City of Midland, P.O. Box 1152, Midland, Texas 79702–1152.	May 21, 1996, September 30, 1996.	480477
Texas: Collin (FEMA Docket No. 7196).	City of Plano	August 14, 1996, August 21, 1996, Plano Star Courier.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	July 30, 1996	480140
Texas: Bexar (FEMA Docket No. 7196).	City of San Antonio	July 31, 1996, August 7, 1996, San Antonio Express-News.	The Honorable William E. Thornton, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	July 17, 1996	480045

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 14, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1503 Filed 1–21–97; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT:

Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
ARIZONA	
Navajo County (Unincorporated Areas) (FEMA Docket No. 7194)	
Buckskin Wash:	
Approximately 0.59 mile downstream of Green Valley Road	*6,481
Approximately 0.54 mile upstream of South Meadow Road	*6,551
Maps are available for inspection at the Navajo County Public Works Department, County Courthouse, South Highway 77, Holbrook, Arizona.	
CALIFORNIA	
Angels (City), Calaveras County (FEMA Docket No. 7194)	
Angels Creek:	
Approximately 2,900 feet downstream of State Highway 49	*1,314
At Kurt Lane	*1,403
China Gulch:	
Approximately 1,650 feet downstream of Purdy Way	*1,384
Approximately 1,650 feet upstream of Purdy Way	*1,475
Maps are available for inspection at City Hall, 585 South Main Street, Angels Camp, California.	
Blue Lake (City), Humboldt County (FEMA Docket No. 7194)	
Mad River:	
Approximately 1,300 feet downstream of confluence with Dave Power's Creek (westernmost corporate limit)	*68
Just downstream of Hatchery Road	*85
Dave Power's Creek:	
At confluence with Mad River	*70
Approximately 2,100 feet upstream of confluence with Mad River	*75
Maps are available for inspection at the City of Blue Lake Public Works Department, City Hall, Blue Lake, California.	
Glenn County (Unincorporated Areas) (FEMA Docket No. 7194)	
Sacramento River (West Overbank at Hamilton):	
At dirt road located 3,000 feet north of St. John Road	*139
Approximately 1.9 miles upstream of State Highway 132	*153
Maps are available for inspection at the Glenn County Public Works Department, 777 North Colusa Street, Willows, California.	
Lompoc (City), Santa Barbara County (FEMA Docket No. 7194)	
Santa Ynez River:	
Just upstream of Floradale Avenue	*70
Approximately 1,530 feet downstream of State Highway 1	*80
Maps are available for inspection at the City of Lompoc Engineering Division, 100 Civic Center Plaza, Lompoc, California.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Marin County (Unincorporated Areas) (FEMA Docket No. 7194)	
Miller Creek:	
Just upstream of the Southern Pacific Railroad	*12
Approximately 3,000 feet upstream of the Southern Pacific Railroad	*20
At U.S. Highway 101	*31
Miller Creek—Left Overbank Channel:	
At confluence with Miller Creek, approximately 1,150 feet upstream of the Southern Pacific Railroad	*14
Approximately 3,500 feet upstream of the Southern Pacific Railroad	*23
Miller Creek—Right Overbank Channel:	
Just upstream of the Southern Pacific Railroad	*10
Approximately 2,900 feet upstream of the Southern Pacific Railroad	*23
Maps are available for inspection at the Marin County Department of Public Works, 3501 Civic Center Drive, Room 304, San Rafael, California.	
Mono County (Unincorporated Areas) (FEMA Docket No. 7194)	
Big Slough:	
At Larson Lane	*5,208
At divergence from West Walker River	*5,374
West Walker River:	
At Larson Lane	*5,192
At Eastside Lane	*5,446
Maps are available for inspection at the Mono County Planning Department, Courthouse Annex, Bridgeport, California.	
Santa Barbara County (Unincorporated Areas) (FEMA Docket No. 7194)	
Santa Ynez River:	
Just upstream of Floradale Avenue	*70
Approximately 1,530 feet downstream of State Highway 1	*80
Romero Creek:	
Approximately 590 feet upstream of Sheffield Drive	*92
Approximately 2,350 feet upstream of Sheffield Drive	*134
Buena Vista Creek (East Branch):	
Approximately 360 feet downstream of Sheffield Drive	*110
Approximately 1,030 feet upstream of Sheffield Drive Bridge	*144
Maps are available for inspection at the Santa Barbara County Flood Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, California.	
Sonoma (City), Sonoma County (FEMA Docket No. 7194)	
Fryer Creek:	
Just upstream of Leveroni Road	*56
Approximately 1,200 feet upstream of Andrieux Street	*74
Maps are available for inspection at the City of Sonoma City Hall, Community Development Department, #1 The Plaza, Sonoma, California.	
LOUISIANA	
Caddo Parish (Unincorporated Areas) (FEMA Docket No. 7194)	
Cross Bayou:	
Approximately 500 feet downstream of confluence of Twelve Mile Bayou	*167
Approximately 1,100 feet upstream of confluence of Twelve Mile Bayou	*167
Twelve Mile Bayou:	
At confluence with Cross Bayou	*167
Approximately 3,000 feet upstream of confluence with Cross Bayou	*167
McCain Creek:	
Approximately 15,000 feet upstream of confluence with Twelve Mile Bayou	*170
Just downstream of Pine Hill Road	*178
Bickham Bayou:	
Just upstream of Jefferson Paige Road	*188
Approximately 2,500 feet upstream of Jefferson Paige Road	*194
Galaxy Lateral:	
Approximately 2,200 feet upstream of confluence with Cross Lake	*177
Just upstream of Jefferson Paige Road	*197
Brush Bayou:	
At confluence with Boggy Bayou	*159
Approximately 12,500 feet upstream of confluence with Boggy Bayou	*163
Ranchmoor Lateral:	
Approximately 700 feet downstream of Lynwood Avenue	*168
At Lynwood Avenue	*168
Summer Grove Ditch:	
Just downstream of Williamson Way	*170
Approximately 1,000 feet upstream of Williamson Way	*170
Boggy Bayou:	
Just upstream of Mansfield Road	*168
Approximately 2,400 feet downstream of State Route 525	*174
Gilmer Bayou:	
Approximately 1,500 feet upstream of confluence with Boggy Bayou	*169
Just upstream of Bert Kouns Industrial Loop	*177
Approximately 1,000 feet downstream of Buncomb Road	*207
Industrial Park Lateral:	
At confluence with Gilmer Bayou	*171
Approximately 10,000 feet downstream of Bert Kouns Industrial Loop	*203
Approximately 2,300 feet upstream of Bert Kouns Industrial Loop	*218
Lincoln Memorial Lateral:	
At confluence with Industrial Park Lateral	*186
Just upstream of Flournoy Lucas Road	*214
Approximately 7,100 feet upstream of Flournoy Lucas Road	*230
Southwood High Lateral:	
At confluence with Gilmer Bayou	*177
Approximately 1,600 feet upstream of Dean Road Extension	*196
Bayou Pierre:	
At State Highway 175	*144
Just downstream of Leonard Road	*154
Approximately 4,200 feet upstream of Flournoy Lucas Road	*160
Sand Beach Bayou:	
At confluence with Bayou Pierre	*156
At confluence of South Broadmoor Lateral	*159
South Broadmoor Lateral:	
Approximately 1,950 feet upstream of Pomeroy Street	*159
Old River:	
Approximately 1,800 feet downstream of Kings Highway	*160
Just upstream of Kings Highway	*160
Page Bayou:	
At confluence with Cross Lake	*177

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Approximately 500 feet upstream of confluence with Cross Lake	*177
Maps are available for inspection at 525 Marshall, Suite 200, Shreveport, Louisiana.	
Shreveport (City), Caddo and Bossier Parishes (FEMA Docket No. 7192)	
Bayou Pierre:	
Approximately 1,050 feet downstream of Flournoy-Lucas Road	*158
At Texas and Pacific Railroad	*161
At Gregg Street	*167
Sand Beach Bayou:	
At confluence with Broadmoor Lateral	*159
Approximately 600 feet upstream of Youree Drive	*162
South Broadmoor Lateral:	
At confluence with Sand Beach Bayou	*159
Approximately 1,950 feet upstream of Pomeroy Street	*159
Old River:	
At confluence with Sand Beach Bayou	*160
Approximately 3,500 feet upstream of East 70th Street	*162
Pierremont Ditch:	
At confluence with Bayou Pierre	*165
At Creswell Avenue	*165
Maps are available for inspection at the City of Shreveport City Hall, 1234 Texas Avenue, Shreveport, Louisiana.	
NEBRASKA	
Scribner (City), Dodge County (FEMA Docket No. 7194)	
Elkhorn River:	
Approximately 9,360 feet downstream of Bridge Street	*1,247
Approximately 9,140 feet upstream of Bridge Street	*1,260
Maps are available for inspection at the City Clerk's Office, 415 Third Street, Scribner, Nebraska.	
Dodge County (Unincorporated Areas) (FEMA Docket No. 7194)	
Elkhorn River:	
Just downstream of Bridge Street	*1,254
Pebble Creek:	
At confluence with Elkhorn River	*1,246
Approximately 4,350 feet upstream of confluence of Silver Creek	*1,262
Maps are available for inspection at the Dodge County Courthouse, 435 North Park, Fremont, Nebraska.	
NEVADA	
Douglas County (Unincorporated Areas) (FEMA Docket No. 7194)	
East Fork Carson River:	
At State Highway 88	*4,710
Just downstream of Cottonwood Diversion Dam	*4,792
Just downstream of Washoe Bridge	*4,920
Cottonwood Slough:	
At State Highway 88	*4,710
Approximately 4,000 feet upstream of Waterloo Lane	*4,782
Henningson Slough:	
At State Highway 88	*4,720
At Centerville Lane	#2
Rocky Slough:	
At State Highway 88	*4,723
Near Waterloo Lane	*4,730
At Centerville Lane	*4,768
Maps are available for inspection at the Douglas County Community Development Department, 1594 Esmeralda Avenue, Room 201, Minden, Nevada.	
OKLAHOMA	
Blackwell (City) and Kay County (Unincorporated Areas) (FEMA Docket No. 7194)	
Chikaskia River:	
Approximately 3.9 miles downstream of Blackwell Avenue	*996
Approximately 1.2 miles downstream of Blackwell Avenue	*999
Approximately 2,100 feet upstream of U.S. Highway 177	*1,009
Tributary 1:	
At confluence with Chikaskia River	*999
Approximately 150 feet downstream of South Main Street	*1,001
Maps are available for inspection at the City of Blackwell City Hall, 221 West Blackwell, Blackwell, Oklahoma.	
Maps are available for inspection at the Kay County Courthouse, Main Street, Newkirk, Oklahoma.	
OREGON	
Aurora (City), Marion County (FEMA Docket No. 7194)	
Pudding River:	
Approximately 600 feet downstream of Southern Pacific Railroad	*99
Approximately 10,000 feet upstream of Southern Pacific Railroad	*104
Maps are available for inspection at the City of Aurora, 21420 Main Street, Aurora, Oregon.	
TEXAS	
Orange (City), Orange County (FEMA Docket No. 7194)	
Sabine River:	
Approximately 23,000 feet downstream of Interstate 10	*8
Approximately 69,400 feet above mouth	*8
Little Cypress:	
Approximately 1,600 feet downstream of Southern Pacific Railroad	*10
Just upstream of State Highway 87	*10
Maps are available for inspection at 1413 20th Street, Orange, Texas.	
Orange County (Unincorporated Areas) (FEMA Docket No. 7194)	
Sabine River:	
Approximately 30,000 feet downstream of Interstate 10	*8
Approximately 5,000 feet upstream of Southern Pacific Railroad	*11
Approximately 150,820 feet above mouth	*16
Little Cypress Bayou:	
At confluence with Sabine River	*8
Approximately 4,500 feet downstream of Little Cypress Road	*10
Approximately 3,000 feet upstream of Little Cypress Road	*14
Maps are available for inspection at the Precinct 1 Community Center, North Highway 87, Orange, Texas.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Rowlett (City), Dallas and Rockwall Counties and Dallas (City), Dallas, Denton, Collin, Rockwall, and Kaufman Counties (FEMA Docket No. 7194)	
Rowlett Creek:	
Just upstream of Rowlett Road	*437
Just upstream of State Highway 66	*455
Approximately 3,800 feet upstream of State Highway 66	*457
Maps are available for inspection at the City of Rowlett, 3901 Main Street, Rowlett, Texas.	
Maps are available for inspection at the City of Dallas, 320 Jefferson, Room 321, Dallas, Texas.	
Austin (City) and Travis County (Unincorporated Areas) (FEMA Docket No. 7194)	
Boggy Creek South:	
At confluence of Onion Creek	*560
Approximately 150 feet upstream of Cameron Loop	*780
Maps are available for inspection at Travis County Transportation and Natural Resources, 411 West 13th Street, Austin, Texas.	
Maps are available for inspection at the City of Austin City Hall, Stormwater Management Division, 505 Barton Springs Road, Suite 908, Austin, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 14, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1502 Filed 1–21–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–62; FCC 96–487]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *First Memorandum Opinion and Order* (''MO&O'') amends the Commission's Rules to extend the transition period for applicants and station licensees to determine compliance with our new requirements for evaluating the environmental effects of radiofrequency (RF) electromagnetic fields from transmitters regulated by the Federal Communications Commission (FCC). For most radio services, the transition period is extended by eight months to September 1, 1997. For the Amateur Radio Service the transition period is extended to January 1, 1998. The extensions are necessary to allow applicants and licensees adequate time to understand and implement requirements for ensuring compliance with RF exposure guidelines adopted by the FCC in August of 1996.

EFFECTIVE DATES: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland or Richard Engelman, Office of Engineering and Technology, Federal Communications Commission, (202) 418–2464.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Memorandum Opinion and Order (First MO&O)* in ET Docket 93–62, FCC 96–487, adopted December 23, 1996, and released December 24, 1996. The complete text of the *First MO&O* is available for inspection and copying during business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. The text of the *First MO&O* can also be viewed and downloaded from the World Wide Web site of the FCC's Office of Engineering and Technology. The address is: www.fcc.gov/Bureaus/Engineering—Technology/Orders/fcc96487.txt.

Summary of the First Memorandum Opinion and Order

1. On August 1, 1996, the FCC adopted a *Report and Order,* 61 FR 41006, August 7, 1996, in this proceeding which amended the FCC's rules for evaluating the environmental effects of radiofrequency (RF) electromagnetic fields produced by FCC-regulated transmitters.[1] Human exposure to RF electromagnetic fields is one of several environmental factors considered by the FCC in determining whether its actions may adversely affect the quality of the human environment as required by the National Environmental Policy Act (NEPA).[2] The FCC's *Report and Order* adopted new guidelines and methods for evaluating human exposure to RF fields based on updated recommendations from the National Council on Radiation Protection and Measurements (NCRP) and the American National Standards Institute (ANSI).

2. The *Report and Order* also provided a transition period for applicants and stations to come into compliance with the new guidelines. After considering the comments filed in this proceeding and the impact of the new requirements, the FCC concluded that the new requirements would apply to station applications filed after January 1, 1997, as described in the amended 47 CFR 1.1307(b)(4). Also, recognizing that this relatively short transition period might cause some difficulties for certain applicants, we gave our Bureaus delegated authority for one year to address, through the granting of waivers or similar actions, the specific needs of individual parties that make a good-cause showing that they require additional time to comply with the new guidelines.

3. Seventeen petitions for reconsideration and/or clarification, as well as a motion for extension of the effective date, were filed in response to the *Report and Order.* The petitioners ask that we extend the transition period beyond January 1, 1997, arguing that the existing transition period does not allow adequate time for affected parties to achieve compliance with the new requirements. This request is supported by comments filed by others in response to these petitions. In addition, the Amateur Radio Relay League, Inc., (ARRL) requests that we provide a reasonable transition period for compliance with the requirements adopted in the *Report and Order* regarding amateur radio license examinations and question pools.

4. Opposition to the proposals to extend the transition period was filed by several groups. These latter parties generally argue that an extension could result in adverse public health risks and would allow the continued proliferation of facilities that do not comply with the new requirements.

5. The Commission has decided to grant the petitioners' request to extend the transition period. We are extending the transition period so that the new RF guidelines will apply to station applications filed after September 1,

[1] *See Report and Order,* ET Docket 93–62, 11 FCC Rcd 15123 (1996).

[2] National Environmental Policy Act of 1969, 42 U.S.C. Section 4321, *et seq.*

1997, as described in Section 1.1307(b)(4) of the rules. When we adopted the *Report and Order,* we anticipated that it might cause difficulties for certain applicants to have to determine compliance with the new RF guidelines by January 1, 1997. Accordingly, we gave delegated authority to our Bureaus to extend this transition period on a case-by-case basis. Based on the petitions and comments we have now received, it is clear that most station applicants will need additional time to determine that they comply with the new requirements. An extension of the transition period would eliminate the need for the filing and granting of individual waiver requests, and would allow time for our applicants and licensees to review the results of the decisions we will be taking in the near future to address the other issues raised in the petitions. It would also allow applicants to review the revised Bulletin 65 and to make the necessary measurements or calculations to determine that they are in compliance.

6. While we concur with petitioners who request that we extend the transition period, we believe that it would be unnecessary, in most circumstances, to extend the transition period for a full year or more. At the same time, we do not concur with petitioners who suggest that granting any extension of the transition period will have significant adverse effects on public health. Accordingly, we are extending the transition period for station applications until September 1, 1997.

7. We are also extending the transition period to January 1, 1998, for amateur operators to come into compliance with the new requirements. We see merit in the arguments expressed by the ARRL that, due to the uniqueness of the Amateur Radio Service, additional time is needed to ensure compliance. In particular, we note that amateur stations can use a wide variety of equipment and antennas, and this can make it very difficult to determine whether excessive RF electromagnetic fields may be produced by individual stations. Furthermore, all amateur radio stations in the past had been categorically exempt from these regulations, and many amateur operators may not be familiar with the new requirements and may need additional time to determine how to perform correctly a routine environmental evaluation.

8. With respect to amateur operator license examination requirements, we agree with the arguments raised by the ARRL. The volunteers recently released revised versions of two of the pools which contain the required questions. Teachers and publishers are currently incorporating the new material into training manuals and courses for use by those preparing to take the examinations starting July 1, 1997. Work is also underway to similarly revise the third and final question pool for use starting July 1, 1998. We are, therefore, staying the enforcement of the new examination provisions adopted in the *Report and Order* in the amended 47 CFR § 97.503(b) to July 1, 1997, with respect to Element 2 and 3(A) examinations and to July 1, 1998, with respect to Element 3(B) examinations. Recognizing that a relatively short transition period might cause some difficulties for certain applicants, we are delegating authority, as we did in the *Report and Order,* to our Bureaus until July 1, 1998, to address the specific needs of individual parties that make a good cause showing that they require additional time to meet the new guidelines. Such relief could come through waivers of our rules or through other similar actions.

9. The rules we are adopting temporarily relieve existing restrictions. Pursuant to 5 U.S.C. §§ 553(d)(1) and 553(d)(3), we find that good cause exists to make these rules effective immediately rather than to follow the normal practice of making them effective 30 days after publication in the Federal Register. This will permit all parties filing applications during the next 30 days to take advantage of the extension of the transition periods. Accordingly, pursuant to the authority contained in Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), 303(r) and 332(c)(7), it is ordered that, effective upon adoption, Part 1 of the Commission's Rules and Regulations, 47 CFR Part 1, is amended as specified in rule changes.

10. It is further ordered that, to the extent discussed above and as reflected in the new rules, certain aspects of the various petitions and motions filed in this proceeding are granted. It is also ordered that motions filed by the Ad-hoc Association of Parties Concerned about the Federal Communications Commission's Radiofrequency Health and Safety Rules (''Ad-hoc Association'') to accept a late-filed petition for reconsideration, by the Ad-hoc Association to accept a late filed reply to an opposition to a petition for reconsideration, and by the Cellular Phone Taskforce to accept a late-filed opposition to petition for reconsideration and clarification are granted. Because the decisions we are taking in this proceeding relate specifically to important public health issues, we believe that it is in the public interest to consider these late-filed documents along with all of the other timely petitions and comments in this proceeding. It is also ordered that enforcement of the amendments to 47 CFR §§ 97.503(b)(1) and 97.503(b)(2) adopted in the *Report and Order* are stayed until July 1, 1997, and enforcement of the amendments to 47 CFR § 97.503(b)(3) is stayed until July 1, 1998.

Final Regulatory Flexibility Analysis

11. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (Notice),* 58 FR 19393, March 14, 1993.[3] The Commission sought written public comments on the proposals in the *Notice,* including on the IRFA. In the *Report and Order* in this proceeding, the Commission adopted a Final Regulatory Flexibility Analysis (FRFA).[4] Petitions for reconsideration were filed in response to the *Report and Order* by seventeen parties. Several technical and legal issues have been raised in the petitions and subsequent comments. In addition, several petitions have raised questions about the original FRFA. This *First Memorandum Opinion and Order* addresses those petitions and comments requesting extension of the transition period specified in the *Report and Order.* We intend to address the other issues raised in the petitions in a separate action in the very near future. This FRFA addresses the impact of the extension of the transition period as well as the comments that were made on the original FRFA contained in the *Report and Order.* The FRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996).[5]

12. Need for and Purpose of This Action

The National Environmental Policy Act (NEPA) of 1969 requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted revised

[3] *See Notice of Proposed Rule Making,* ET Docket No. 93–62, 8 FCC Rcd 2849 (1993).

[4] *See* Appendix A to *Report and Order,* ET Docket 93–62, 11 FCC Rcd 15123 (1996), 61 FR 41006 (August 7, 1996).

[5] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. § 601 et seq.

radiofrequency (RF) exposure guidelines for purposes of evaluating potential environmental effects of RF electromagnetic fields produced by FCC-regulated facilities. The new guidelines reflect more recent scientific studies of the biological effects of RF electromagnetic fields. Based on the petitions and comments received in response to the *Report and Order,* it is clear that most station applicants need additional time to understand the new requirements and determine that they comply with them. This *First Memorandum Opinion and Order* addresses those needs.

13. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were filed in direct response to the IRFA. In general comments on the *Notice,* however, some commenters raised issues that might affect small entities. These issues were discussed in the FRFA contained in the *Report and Order* in this proceeding.

14. Summary of Issues Raised Regarding the Final Regulatory Flexibility Analysis (FRFA) by the Petitions, Motions, and Comments in Response to the Report and Order

The American Radio Relay League, Inc. (ARRL), points out that we did not consider in the original FRFA the impact that new amateur operator license examination requirements would have on the ARRL and other Volunteer Examiner Coordinators (VEC), which the ARRL alleges should be treated as small business entities.[6] The ARRL expresses particular concern that the new rules, which were effective immediately, required that additional questions be added to the amateur operator license examinations. The ARRL indicates that the examinations now in circulation do not contain the requisite number of questions, and it would be impossible for the thousands of volunteer examiners (VEs) to comply with the new requirements unless they are given time to implement them. The ARRL requests that the implementation dates for the new examination requirements be extended to July 1, 1997, for certain examinations and to July 1, 1998, for other examinations. The ARRL maintains that such an extension would permit the VECs to make the required changes as they are routinely revising the existing examinations.

15. Paging Network, Inc. (PageNet) and the Personal Communications Industry Association (PCIA) maintain that the original FRFA underestimates the number of transmitters that will require a determination of compliance with the new rules and the associated burden on communications carriers.[7] PCIA notes that the original FRFA indicates that we receive only 10,000 paging applications a year, and calculates that only 1176 will be subject to routine environmental evaluation. According to PCIA, however, many paging facilities can be constructed without prior Commission authorization and, therefore, significant numbers of facilities are built annually that are not included in the 10,000 total. Further, PCIA continues, some of those 10,000 applications are renewal applications that may cover hundreds of sites, and the assumption that only 11% will require evaluation does not appear to be accurate. PCIA notes that initial feedback from carriers indicates that a substantially higher number of applications will require routine evaluation. PCIA also calls our estimate of one burden hour per routine evaluation ''unrealistic.'' Instead, PCIA maintains, the process of evaluation may possibly involve a site visit and field measurements, which can take 24 hours.

16. These comments have been considered during the preparation of this revised FRFA, as indicated in Section IV below. In addition, as discussed in Section V, we have taken certain steps to address the concerns raised regarding the amount of burden imposed by these rules.

17. Description and Estimate of the Small Entities Subject to the Rules.

The rules being adopted in this *First Memorandum Opinion and Order* apply to the following eleven industry categories and services. The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. § 632. Based on that statutory provision, we will consider a small business concern one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The RFA SBREFA provisions also apply to nonprofit organizations and to governmental organizations. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small business within each of these services or the number of small business that would be affected by this action. We have, however, made estimates based on our knowledge about applications that have been submitted in the past. To the extent that a government entity may be a licensee or an applicant, the impact on those entities is included in the estimates for small businesses below.

18. Under the new rules adopted in the *Report and Order,* many radio services are categorically excluded from having to determine compliance with the new RF exposure limits. This exclusion is based on a determination that there is little potential for these services causing exposures in excess of the limits. Within the following services that are not categorically excluded in their entirety, many transmitting facilities are categorically excluded based on antenna location and power. These categorical exclusions significantly reduce the burden associated with these rules, and may reduce the impact of these rules on small businesses. Furthermore, the extension of the transition periods contained in this *First Memorandum Opinion and Order* will reduce the impact on applicants, particularly small businesses, by allowing them adequate time to understand the new requirements and ensure that their facilities are in compliance with them in a orderly and reasonable manner.

A. Cellular Radio Telephone Service

19. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[8] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to make a precise estimate of the number of cellular firms which are small businesses.

20. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone

[6] *See* ARRL ''Motion for Extension of Effective Date of Rules,'' filed on November 7, 1996, at 1–6.

[7] PageNet Petition at 2–3, PCIA Petition at 11.

[8] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

companies with 500 or more employees.[9] We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[10] Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in the Final Regulatory Flexibility Analysis, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

21. We assume that all of the current rural cellular licensees are small businesses. Two small business associations filed comments in our proceeding on ''Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems'' of relevance. The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) states that 2/3 of its 440 members provide cellular service.[11] The Rural Cellular Association (RCA) states that its members serve 80 cellular service areas.[12] We recognize that these numbers represent only part of the current rural cellular licensees because there might be other rural companies not represented by either association.

22. The Commission processes roughly 700 applications for cellular transmitters facilities, involving 7,000 site locations, per year. Because we do not require licensees to provide us with site information, we cannot predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 2,800 transmitting facilities will exceed the categorical exclusion criteria and will require a determination of compliance with the new RF exposure limits, based on calculations or measurements.

B. Personal Communications Service (PCS)

23. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR § 24.720(b), the Commission has defined ''small entity'' for Blocks C and F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.[13]

24. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are approximately 90 non-defaulting winning bidders that qualify as small entities in the Block C auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the rule adopted in this *Report and Order* includes the 90 non-defaulting winning bidders that qualify as small entities in the Block C broadband PCS auction.

25. At present, no licenses have been awarded for Blocks D, E, and F for spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which have started. Eligibility for the 493 F Block licensees is limited to ''entrepreneurs'' with the average gross revenues of less than $125 million in the last two years. However, we cannot estimate how many small businesses under the Commission's definition will win F Block licenses, or D and E Block licenses. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

26. After all PCS licenses have been issued, the Commission expects to receive approximately 1,000 applications per year involving 10,000 sites. Because we do not require licensees to provide us with site information, we cannot predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 3000 sites will not meet the categorical exclusion criteria and will involve a determination of compliance with the RF exposure guidelines.

C. Private Land Mobile Radio Services, Specialized Mobile Radio (SMR)

27. Pursuant to 47 CFR § 90.814(b)(1), the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[14]

28. The rule adopted in the *Report and Order* applied only to certain ''covered'' SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have average gross revenues of less than $15 million. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over $15 million in average gross revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that the remaining existing extended implementation authorizations may be held by small entities, as that term is defined by the SBA.

29. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60

[9] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[10] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[11] OPASTCO Comments at 1–2, CC Docket No. 94–102, filed January 9, 1995.

[12] RCA Comments at 2, CC Docket No. 94–102, filed January 9, 1995.

[13] *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[14] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693–702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995).

winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in the *Report and Order* includes these 60 small entities.

30. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

31. The Commission receives about 3,000 applications for covered SMR transmitters facilities per year. We do not have adequate information to predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 1,000 transmitters will exceed categorical exclusion criteria and will require a determination of compliance.

D. Satellite Communications Services

32. The Commission has not developed a definition of small entities applicable to satellite communications licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[15]

33. Because the Regulatory Flexibility Act amendments were not in effect until the comment period for this proceeding was closed, the Commission was unable to request information regarding the number of licensees in the international services discussed below that meet this definition of a small business. Thus, we are providing an estimate of licensees that constitute a small business.

34. *Fixed Satellite Earth Stations.* Fixed satellite earth stations include international and domestic earth stations operating in the 4/6 GHz AND 11/12/14 GHz bands. There are approximately 4200 earth station authorizations, a portion of which are Fixed Satellite Earth Stations. Although we were unable to request the revenue information, we estimate that some of the licensees of these earth stations would constitute a small business under the SBA definition.

35. *Fixed Satellite Small Earth Stations.* Small transmit/receive earth stations operate in the 4/6 GHz frequency bands with antennas that are two meters or less in diameter. There are 4200 earth station authorizations, a portion of which are Fixed Satellite Small Earth Stations. Although we were unable to request the revenue information, we estimate that some of the fixed satellite small earth stations would constitute a small business under the SBA definition.

36. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* VSAT systems operate in the 12/14 GHz frequency bands. Although various size small earth stations may be used, all stations of a particular size must be technically identical. Because these stations operate on a primary basis, frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications for fixed satellite VSAT systems. At this time, we are unable to make a precise estimate of the number of small businesses that are VSAT system licensees and could be impacted by this action.

37. *Mobile Satellite Earth Stations.* Mobile satellite earth stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub station or stations. The network may provide a variety of land, maritime and aeronautical voice and data services. There are 2 mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees and could be impacted by this action.

38. *Radio Determination Satellite Earth Stations.* A radio determination satellite earth station is used in conjunction with a radio determination satellite service (rdss) system for the purpose of providing position location information. These stations operate as part of a network that includes a fixed hub station or stations and operate in the frequency bands (1610–1626.5 MHz and 2483.5–2500 MHz) allocated to rdss. There are 4 licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are radio determination satellite earth station licensees and could be impacted by the forfeiture guidelines.

39. It should be noted that in most of the satellite areas discussed above, the Commission issues one license to an entity but generally issues blanket license authority for thousands or even hundreds of thousands of earth stations or hand held transceivers. Overall, the Commission receives about 600 applications for satellite facilities per year. All applicants for satellite earth stations (except for receive-only stations) must make a determination of compliance with the limits, based on calculations or measurements.

E. Radio Broadcast Service

40. The extension of the transition period contained in this *First Memorandum Opinion and Order* will apply to television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[16] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[17] Included in this industry are commercial, religious, educational, and other television stations.[18] Also included are establishments primarily engaged in television broadcasting and which produce taped television program

[15] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4899.

[16] 13 CFR § 121.201, Standard Industrial Code (SIC) 4833 (1996).

[17] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 ''CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE,'' Series UC92–S–1, Appendix A–9 (1995).

[18] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes ''Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

materials.[19] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[20] There were 1,509 television stations operating in the nation in 1992.[21] That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.[22] For 1992 [23] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[24]

41. Additionally, the Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[25] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[26] Included in this industry are commercial religious, educational, and other radio stations.[27] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[28] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[29] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[30] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[31] As of August, 1996, official Commission records indicate that 12,088 radio stations were operating.[32]

42. Thus, the proposed rules will affect approximately 1,550 television stations; approximately 1,194 of those stations are considered small businesses.[33] Additionally, the proposed rules will affect 12,088 radio stations, approximately 11,605 of which are small businesses.[34] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States.[35] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States.[36] We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act.

43. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the rules adopted in this action. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

44. The Commission receives about 1,800 applications for broadcast facilities per year. All applicants must make a determination of compliance with the limits, either by calculation or measurement.

F. Stations in the Maritime Services

45. The *Report and Order* required licensees and applicants for ship satellite earth terminals to make a determination of compliance with the new RF exposure requirements. The Commission has not developed a definition of small entities applicable to ship satellite earth station licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.

46. Ship mobile satellite service (MSS) stations are similar to mobile satellite earth stations, as discussed above, except that earth stations are aboard maritime vessels rather than traditional earth stations in the MSS. In the area of ship MSS, the Commission has two pending licensees for operation of the satellite service, one of which can be considered small business.

47. The Commission receives about 272 applications for ship earth stations per year. All applicants must make a determination of compliance with the new RF exposure limits.

G. Experimental, Auxiliary, and Special Broadcast and Other Program Distribution Services

48. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). It also includes

[19] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 ''CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE,'' Series UC92–S–1, Appendix A–9 (1995).

[20] *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[21] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra.* note 78, Appendix A–9.

[22] FCC News Release No. 64958, Sept. 6, 1996.

[23] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra.* note 78, III.

[24] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[25] 13 CFR § 121.201, SIC 4832.

[26] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra.* note 78, Appendix A–9.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[31] FCC News Release No. 31327, Jan. 13, 1993.

[32] FCC News Release No. 64958, Sept. 6, 1996.

[33] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

[34] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[35] ''Minority Commercial Broadcast Ownership in the United States'', U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (''MTDP'') (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[36] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, ''Women-Owned Business,'' WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. ''Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities,'' *Notice of Proposed Rulemaking,* 10 FCC Rcd 2788, 2797 (1995).

Instructional Television Fixed Service stations, which are used to relay programming to the home or office, similar to that provided by cable television systems. The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.

49. Our computer databases show that there are 532 FM translator and booster stations, 4,152 low power TV, TV translators and TV booster stations, and 142 Instructional Television Fixed Service (ITFS) stations which are not categorically excluded from complying with the new RF exposure requirements adopted in the *Report and Order*.[37] All of these stations would be impacted by the extension of the transition period being adopted in this action. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities, including Low Power TV stations, could be classified as small businesses by themselves. We also recognize that many translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). As we indicated earlier, 96% of radio stations and 77% of TV stations are designated as small.

50. The approximate number of annual applications processed by the Commission for this service is 1,032. We do not have adequate information to predict precisely how many of these applications will exceed our categorical exclusion criteria. However, based on our existing database records, we would expect that 42% of these applications would be required to have a determination made regarding compliance with the new RF exposure limits.

H. Multipoint Distribution Service (MDS)

51. This service involves a variety of transmitters, which are most commonly used to deliver programming to subscribers of wireless cable systems, similar to that provided by cable television systems. The Commission has refined the definition of ''small entity'' for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[38] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[39]

52. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is a service heavily encumbered with approximately 1,573 previously authorized and proposed MDS facilities and information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We conclude that for purposes of this FRFA, there are approximately 1,634 small MDS providers as defined by the SBA and the Commission's auction rules.

53. The approximate number of annual applications processed by the Commission for MDS is 900. We do not have adequate information to predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 113 will not meet the categorical exclusion criteria and have to make a determination of compliance with the RF exposure limits.

I. Paging and Radiotelephone Service, and Private Land Mobile Radio Services, Paging Operations

54. Since the Commission has not yet approved a small entities definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons.

55. The Commission anticipates that a total of 16,754 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,754 MTA licenses and 14,000 EA licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of prospective paging licensees can be made, we assume, for purposes of this FRFA, that all the 16,754 geographic area paging licenses will be awarded to small entities, as that term is defined by the Small Business Administration (SBA).

56. We estimate that the approximately 600 current paging carriers could take the opportunity to partition and/or disaggregate a license to obtain an additional license through partitioning or disaggregation. We estimate that up to 52,062 licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning or disaggregation. This number is based on the total estimate of paging carriers (approximately 600) and non-nationwide geographic area licenses to be awarded (16,754) and our estimate that each license will probably not be partitioned and/or disaggregated to no more than three parties. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of future paging licensees can be made, we assume for purposes of this FRFA that all of the licensees will be awarded to small businesses. We believe that it is possible that a significant number of up to approximately 52,062 licensees or potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning

[37] Low power TV, TV translators and boosters, and FM translators and boosters are categorically excluded if their power is less than or equal to 100 watts. ITFS stations are categorically excluded if their power is less than 1640 watts EIRP or if the center of their antenna is more than 10 meters above ground and the antenna is not located on a rooftop. *See* 47 CFR § 1.1307(b)(1). Our database records do not indicate how many of the 142 ITFS stations that are authorized more than 1640 watts operate with non-rooftop antennas. According to the FCC news release, ''Broadcast Station Totals as of June 30, 1996'', released July 10, 1996, there are a total of 2,637 FM translator and booster stations, 4,910 TV translator and booster stations, and 1,903 low power TV stations. There are also 2,032 ITFS licensees.

[38] 47 CFR § 21.961(b)(1).

[39] See ''Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,'' MM Docket No. 94–31 and PP Docket No. 93–253, *Report and Order*, 10 FCC Rcd 9589 (1995).

and/or disaggregation will be a small business.

57. In our original FRFA, we indicated that we receive about 10,000 applications for paging facilities per year; 1,176 transmitters were expected to exceed the categorical exclusion. PageNet and PCIA have commented that these numbers underestimate the impact on paging carriers. PCIA notes that many paging facilities can be constructed without prior Commission authorization, and therefore significant numbers of paging facilities are built annually that are not included in the 10,000 count. PCIA questions our initial estimate that 11% of the applications would require routine evaluations, and believes most of these routine evaluations would involve field measurements that could take around 24 hours to complete. Although both PageNet and PCIA question our original analysis, neither party has submitted detailed information on how many paging facilities they believe would be covered under the new rules.

58. We have categorically excluded from routine environmental evaluation all paging stations that operate with an ERP of 1000 watts or less. We have also categorically excluded paging stations that use antennas that are not located on a rooftop and are at least 10 meters above ground. Paging is authorized under both Part 22 and Part 90 of our rules. For Part 22 paging, we estimate that we receive 10,000 applications for paging stations per year, 2939 of these involve power more than 1000 watts ERP. We believe that 40% of these would be located on a rooftop. For Part 90 paging, we estimate that we receive 2,000 applications per year, 200 of which would be above 1000 watts. We believe that 75% of these would be located on a rooftop. Virtually all of the non-rooftop installations in both Parts 22 and 90 would use antennas more that 10 meters above ground and, therefore, would be categorically excluded.

59. As of January 1995, we have allowed paging licensees to increase the ERP of their stations to 3500 watts without notifying us as long as the service contour does not change. In addition, we do require licensees to file information with respect to transmitters used for contour fill-in. Therefore, it is impossible to determine precisely the actual number of paging transmitters for which a routine environmental evaluation will be required. However, if we presume that: (1) for every application there are actually 2 transmitting facilities (in some cases there will be more and in many cases there will only be one facility); (2) only 10% of the ''fill in'' facilities will use more than 1000 watts (because they are filling in the service, these transmitters likely do not need as much power) but 75% of these will be located on a rooftop; and (3) only 10% of those stations that were initially 1000 watts or below ultimately increase their power (they could have originally asked for more power if they needed it); then a total of 2,643 paging stations per year would be subject to routine environmental evaluation requirements.

60. We believe that many of the routine environmental evaluations can be done rather quickly, by reviewing OET Bulletin 65, considering the station and site configuration, and determining whether anyone would have access to an area near enough to the antenna that the RF exposure limits might be exceeded. These studies would take on the order of 1–3 hours to complete per transmitter site. In some cases, field measurements or more detailed calculations would be necessary, especially if more than one transmitter is located in the same area. The more detailed studies could take 24 hours, as suggested by PCIA.

J. Experimental Radio Service

61. The Commission has not developed a definition of small entities applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[40] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small experimental radio businesses and is unable at this time to make a precise estimate of the number of Experimental Radio Services which are small businesses.

62. The majority of experimental licenses are issued to companies such as Motorola and Department of Defense contractors such as Northrop, Lockheed and Martin Marietta. Businesses such as these may have as many as 200 licenses at one time. The majority of these applications, 70 percent, are from entities such as these. Given this fact, the remaining 30 percent of applications, we assume, for purposes of our evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

[40] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

63. The Commission processes approximately 1,000 applications a year for experimental radio operations. About half or 500 of these are renewals and the other half are for new licenses. We do not have adequate information to predict precisely how many of these applications will exceed our categorical exclusion criteria. However, we estimate that approximately 500 of these applications will be required to make an initial determination of compliance with our new RF guidelines.

K. Amateur Radio Service Volunteer Examiner Coordinator (VECs)

64. In our original FRFA, we did not analyze the possible impact and burden on Amateur Radio Service (ARS) VECs. The ARRL has commented that our original FRFA is flawed because it fails to address the impact of the rules on small business entities such as itself and one other VEC.[41] The Commission has not developed a definition for a small business or small organization that is applicable for VECs. The RFA defines the term ''small organization'' as meaning ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field . . .''[42] Our rules do not specify the nature of the entity that may act as a VEC.[43] However, all of the sixteen VEC organizations would appear to meet the RFA definition for small organization. Consequently, we have now analyzed the burden associated with this action on VECs.

65. The VECs coordinate the activities of the VEs who prepare and administer the Commission's amateur operator license examination system. The administering VEs prepare written examinations using questions drawn

[41] The ARRL/VEC and the W5YI–VEC are components of organizations that publish materials marketed to persons for the purpose of preparing for passing the examinations required for the grant of an amateur operator license. This publishing activity, however, is separate from their VEC activity.

[42] 5 U.S.C. § 601(4).

[43] Our rules, however, require that a VEC be an organization that has entered into a written agreement with the FCC to coordinate the examinations for amateur operator licenses. The examinations are prepared and administered by tens of thousands of amateur operators who serve as VEs. The VEC organization must exist for the purpose of furthering the amateur service, be capable of serving as a VEC in at least one of the thirteen VEC regions, agree to coordinate the examinations, agree to assure that every examinee is registered without regard to race, sex, religion, national origin or membership in any amateur service organization, and cooperate in maintaining the question pools for the VEs. *See* 47 CFR §§ 97.521 and 97.523, which outline the qualifications for VECs and question pools.

from common question pools.[44] The VEs also prepare the questions for the question pools which are maintained by the VECs. The questions in the pools are updated and revised periodically. In the *Report and Order*, we required that new examination questions on RF safety be added to the examinations. That requirement was made effective immediately. In response to the *Report and Order*, the ARRL filed a petition requesting that we allow the examinations to be modified according to the VECs' normal revision schedule. We are adopting such an implementation plan into this *First Memorandum Opinion and Order*. As a result, the VECs can proceed with their normal schedule for soliciting questions from the VEs and revising the question pools. The VECs, therefore, will have a minimum burden in meeting the new requirements.

66. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

This *First Memorandum Opinion and Order* extends the transition period associated with the new RF exposure rules that were adopted in the *Report and Order*. There are no reporting, recordkeeping or other compliance requirements associated with the extension of the transition period and this action.

67. Steps Taken to Minimize the Economic Impact on Small Entities

We have made every effort to devise ways to minimize the impact of the new RF exposure requirements on small entities, while protecting the health and safety of the public. We have incorporated substantial flexibility in the procedures to make compliance as minimally burdensome as possible. In particular, we took the following steps in the *Report and Order* to ease the impact on small businesses:

68. We created categorical exclusions that require only those transmitters that appear to have the highest potential to create a significant environmental effect to perform an environmental evaluation.

69. We indicated that we would revise OST Bulletin No. 65 in the near future to provide guidance for determining compliance with FCC-specified RF limits. This should be of particular assistance to small businesses since it will provide straightforward information that should allow a quick understanding of the requirements and a quick assessment of the potential for compliance problems without the need for an expensive consultant or measurement.

70. We allowed various methods for ensuring compliance with RF limits such as fencing, warning signs, labels, and markings, locked doors in roof-top areas, and the use of personal monitors and RF protective clothing in an occupational environment.

71. We rejected our initial proposal to adopt induced and contact currents limits due to the lack of reliable equipment available.

72. We specified a variety of acceptable testing methods and procedures that may be used to determine compliance. This will allow each small business to choose a procedure that best meets its needs in the manner that is least burdensome to it.

73. We have always allowed multiple transmitter sites, i.e., antenna farms, to pool their resources and have only one study done for the entire site. This is very common at sites that have multiple entities such as TV, FM, paging, cellular, etc. In most circumstances, rather than each licensee hiring a separate consultant and submitting a study showing their compliance with the guidelines, one consulting radio technician or radio engineer can be hired by the group of licensees. The consultant surveys the entire site for compliance and gives his recommendations and findings to each of the licensees at the site. The licensees can then use the findings to show their compliance with the guidelines. In this way the cost of compliance is minimized as no one licensee has to pay the entire consulting fee, rather just a portion of it.

74. In this *First Memorandum Opinion and Order*, we have also taken the following additional steps to reduce the burden on small businesses and organizations:

75. We extended the transition period for station applicants to come into compliance with the new requirements. This will give licensees, and applicants for new stations many of which may be small businesses, more time to learn the nature of the new requirements, make studies to determine whether they comply, and take steps to come into compliance if necessary.

76. We decided to permit the required changes in the ARS examinations to be made as the examinations are being routinely revised. This ensures that a minimal burden is put on the small organizations acting as VECs.

77. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 1, is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303 and 309(j) unless otherwise noted.

2. Section 1.1307 is amended by revising the introductory text of paragraph (b)(4) to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(4) *Transition Provisions.* For applications filed with the Commission prior to September 1, 1997 (January 1, 1998 for the Amateur Radio Service only), Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations, or modifications in existing facilities require the preparation of an Environmental Assessment if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation that are in excess of the requirements contained in paragraphs (b) (4)(i) through (4)(iii) of this section. These transition provisions do not apply to applications for equipment authorization or use of mobile, portable, and unlicensed devices specified in paragraph (b)(2) of this section.

* * * * *

[FR Doc. 97–1350 Filed 1–21–97; 8:45 am]

BILLING CODE 6712–01–P

[44] *See* 47 CFR § 97.507, which outlines the requirements for preparing examinations for an amateur operator license.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC33

Endangered and Threatened Wildlife and Plants; Notice of Availability of Regulatory Flexibility Analysis for the Designation of Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability of a Regulatory Flexibility Analysis examining the effects on small entities of the designation of critical habitat for the marbled murrelet. This is the Regulatory Flexibility Analysis for the final rule published on May 24, 1996 (61 FR 26251).

ADDRESSES: Requests for copies of the Regulatory Flexibility Analysis should be directed to the State Supervisor, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Oregon State Supervisor, at the above address, telephone (503) 231–6179.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1994, the Service published a proposed rule for the designation of critical habitat for the marbled murrelet (59 FR 3811). The Service significantly amended its proposed critical habitat designation and published a supplemental proposed rule on August 10, 1995 (60 FR 40892). Based on the Service's interpretation of Public Law 104–6 as prohibiting the expenditure of funds for making a final determination of critical habitat, the record was closed and the comments archived at the end of the public comment period. On February 29, 1996, a Federal Judge ordered the Service to complete the final designation by May 15, 1996. The final rule was published on May 24, 1996 (61 FR 26251).

Section 3(5) of the Endangered Species Act defines critical habitat as those specific areas which contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1532(5)). Designations of critical habitat are made upon the basis of the ''best scientific data available'' after taking into account the economic and other relevant impacts of specifying any area as critical habitat (16 U.S.C. 1533(b)(2)). The final critical habitat for the marbled murrelet identified 32 critical habitat units encompassing approximately 1,582,600 hectares (3,907,660 acres) of Federal and non-Federal lands.

When the final rule was published, the Department of the Interior found that timely compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) was impracticable in light of the emergency situation resulting from the court order. Completion of a Regulatory Flexibility Analysis was deferred. The analysis has now been completed, and it concludes that the designation of critical habitat for the marbled murrelet will not have a significant impact on a substantial number of small entities. There is a limited effect on small entities from critical habitat designation on Federal lands or the issuance of Federal permits, and there is only a minor effect on regional timber supply from the application of Washington State Forest Practices tied to Federal critical habitat designation.

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Dated: November 20, 1996.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–1506 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 62, No. 14
Wednesday, January 22, 1997

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0959]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation E, (Electronic Fund Transfers). The proposed revisions implement an amendment to the Electronic Fund Transfer Act (EFTA), contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that exempts certain electronic benefit transfer (EBT) programs from the EFTA. Generally, EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The Board's proposal exempts from Regulation E needs-tested EBT programs established or administered by state or local government agencies. Federally administered EBT programs and state and local employment-related EBT programs (such as state pension programs) would continue to be subject to modified requirements that recognize the special characteristics of EBT programs.

DATES: Comments must be received on or before February 19, 1997.

ADDRESSES: Comments should refer to Docket No. R–0959, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

EFT Act and Regulation E

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any consumer electronic fund transfer initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home-banking program; and provide rules that govern these and other electronic transfers. The regulation sets rules for issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of electronic fund transfers by means of terminal receipts and account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized transfers.

The EFTA is not limited to traditional financial institutions holding consumers' accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Electronic Benefit Transfer Programs

Electronic benefit transfer (EBT) programs are designed to deliver government benefits such as Aid to Families with Dependent Children (AFDC), food stamps, Supplemental Security Income (SSI) and social security. These systems function much like commercial systems for EFT. Eligible recipients receive plastic magnetic-stripe cards and personal identification numbers (PINs) and they access benefits through electronic terminals. In the case of cash benefits such as AFDC or SSI, the terminals may include ATMs that are part of existing commercial networks; for food stamp benefits, POS terminals in grocery stores are typically used.

EBT offers numerous advantages over paper-based delivery systems, both for recipients and for program agencies. For recipients, these advantages include faster access to benefits, greater convenience in terms of times and locations for obtaining benefits, improved security because funds may be accessed as needed, lower costs because recipients avoid check-cashing fees, and greater privacy and dignity. For agencies, EBT programs offer a system that can more efficiently deliver benefits for both state and federal programs by reducing the cost of benefit delivery, facilitating the management of program funds, and helping to reduce fraud.

In March 1994, the Board amended Regulation E to bring EBT programs expressly within its coverage. 59 FR 10678 (March 7, 1994). The special provisions, contained in § 205.15, applied most of the requirements of the regulation—including those relating to liability for unauthorized transactions and error resolution—with some modifications. The major exception related to the requirement to provide periodic statements of account activity: EBT programs need not provide periodic statements as long as (1) account balance information is made available to benefit recipients via telephone and electronic terminals and (2) a written account history is given upon request. The basic premise underlying the Board's 1994 amendments to Regulation E was that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E. To enable states that are interested in EBT to test and implement their programs, the Board delayed the date of mandatory compliance to March 1, 1997.

II. Proposed Regulatory Provisions

On August 22, 1996, the Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a comprehensive welfare reform law (Pub. L. 104–193, 110 Stat. 2105) (''the 1996 Act''). The 1996 Act contains

amendments to the EFTA that exempt ''needs-tested'' EBT programs established or administered under state or local law (for example, benefits such as the food stamp and AFDC programs). The 1996 amendments were enacted by the Congress at the urging of state officials, who expressed concern about the costs of compliance with the EFTA and Regulation E. In particular, the states believed that the EFTA provisions limiting a recipient's liability for unauthorized transfers could raise serious budgetary problems at the state level.

The proposed amendments to Regulation E implement the amendments to the EFTA. Federally administered EBT programs and employment-related programs established by federal, state, or local governments (such as state pension programs) would continue to be subject to the modified rules established by the Board's 1994 rulemaking.

III. Section-by-Section Analysis of Proposed Amendments

Section 205.15—Electronic Fund Transfers of Government Benefits

Section 205.15 contains the rules that apply to EBT programs as defined by the regulation. It provides modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices. Employment-related benefit programs established by federal, state, or local governments (as well as federally administered programs) remain subject to these modified rules.

15(a) Government Agency Subject to Regulation

15(a)(1)

The act and regulation define coverage in terms of ''financial institution,'' a term that is broadly construed. Coverage applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. Paragraph (a)(1) specifies when a government agency is a financial institution for purposes of the act and regulation. Under the Board's proposal, this provision has been revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 statutory amendments.

15(a)(2)

The term ''account'' is defined generally in § 205.2(b). For purposes of EBT programs, ''account'' is defined in § 205.15(a)(2) to mean an account established by a government agency for distributing benefits to a consumer electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an ''account'' under this section includes the use of a database containing the consumer's name and record of benefit transfers that is accessed for verification purposes before a particular transaction is approved. Under the Board's proposal, the definition would be revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 amendments to the EFTA. Government benefits that would remain covered include federally administered benefits such as social security and SSI and state and local benefits that are employment-related such as retirement and unemployment benefits.

IV. Form of Comments Letters

Comment letters should refer to Docket No. R–0959. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments also may be submitted on 3.5 or 5.25 inch computer diskettes, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a paper version.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation E. The amendments, which establish an exemption for certain EBT programs established or administered by a state or local agency, are not expected to have a significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

An agency may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number for Regulation E is 7100–0200.

The disclosures required by this regulation are found in 12 CFR Part 205 and are required to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer services provided to consumers. The recordkeepers are providers of these services. Records must be retained for 24 months.

Regulation E applies to all types of institutions that offer EFT services, not just state member banks. Under the Paperwork Reduction Act, however, the Federal Reserve accounts for the paperwork burden associated with Regulation E only for state member banks. Any estimates of paperwork burden for institutions other than state member banks are provided by the federal agency or agencies that supervise those institutions.

There are 1,042 state member banks that are covered by Regulation E requirements, with an average frequency of 85,808 responses per year per bank. The total annual burden for all state member banks is estimated to be 478,804 hours; the combined annual cost is estimated to be $9,496,080. The proposed amendments provide an exemption for state-administered or state-established electronic benefit transfer (EBT) programs; the amendments are not expected to increase the hour burden that the regulation imposes on state member banks or on other institutions.

The disclosures to consumers under Regulation E are mandatory. Because the records would be maintained at state member banks, no issue of confidentiality under the Freedom of Information Act arises. Disclosures relating to specific transactions or accounts are not publicly available.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation E. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 205 as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for Part 205 is revised to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Section 205.15 would be amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 205.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account fl , other than needs-tested benefits in a program established under state or local law or administered by a state or local agency fi . The agency shall comply with all applicable requirements of the act and this part, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals fl , but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency. fi

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 15, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–1384 Filed 1–21–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209332–80]

RIN 1545–AB43

Installment Obligations Received From Liquidating Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of previous notice of proposed rulemaking; Notice of proposed rulemaking.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the Federal Register (49 FR 1742) on January 13, 1984, and proposes new regulations relating to the use of the installment method to report the gain recognized by a shareholder who receives, in exchange for the shareholder's stock, certain installment obligations that are distributed upon the complete liquidation of a corporation. Changes to the applicable tax law were made by the Installment Sales Revision Act of 1980 and the Tax Reform Act of 1986. These regulations would affect taxpayers who receive installment obligations in exchange for their stock upon the complete liquidation of a corporation.

DATES: Comments or requests for a public hearing must be received by April 22, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209332–80), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209332–80), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: George F. Wright, (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 453(h), relating to the tax treatment of installment obligations received by a shareholder from a liquidating corporation, was added to the Internal Revenue Code of 1954 by the Installment Sales Revision Act of 1980. Proposed regulations under section 453(h) were published in the Federal Register on January 13, 1984 (49 FR 1742). Subsequently, section 453(h) was amended by the Tax Reform Act of 1986. This document withdraws a portion of the regulations proposed on January 13, 1984, at 49 FR 1742 and proposes new regulations under section 453(h). The new proposed regulations are issued under the authority contained in sections 453(j)(1), 453(k) and 7805 of the Internal Revenue Code of 1986 (Code).

Explanation of Provisions

Prior to the Installment Sales Revision Act of 1980, a shareholder recognized gain or loss on receipt of an installment obligation that was distributed by a liquidating corporation in exchange for the shareholder's stock. Gain could not be reported under the installment sale provisions of section 453 as payments were received on the obligation distributed by the corporation in the liquidation.

As enacted by the Installment Sales Revision Act of 1980 and amended by the Tax Reform Act of 1986, section 453(h) provides a different treatment for certain installment obligations that are distributed in a complete liquidation to which section 331 applies. Under section 453(h), a shareholder that does not elect out of the installment method treats the payments under the obligation, rather than the obligation itself, as consideration received in exchange for the stock. The shareholder then takes into account the income from the payments under the obligation using the installment method. In this manner, the shareholder generally is treated as if the shareholder sold the shareholder's stock to an unrelated purchaser on the installment method.

This treatment under section 453(h) applies generally to installment obligations received by a shareholder (in exchange for the shareholder's stock) in a complete liquidation to which section 331 applies if (a) the installment obligations are qualifying installment obligations, i.e., the installment obligations are acquired in respect to a sale or exchange of property by the corporation during the 12-month period beginning on the date a plan of complete liquidation is adopted, and (b) the liquidation is completed within that 12-month period. However, an installment obligation acquired in a sale or exchange of inventory, stock in trade, or property held for sale in the ordinary course of business qualifies for this treatment only if the obligation arises from a single bulk sale of substantially

all of such property attributable to a trade or business of the corporation. If an installment obligation arises from both a sale or exchange of inventory, etc., that does not comply with the requirements of the preceding sentence and a sale or exchange of other assets, the portion of the installment obligation that is attributable to the sale or exchange of other assets is a qualifying installment obligation.

Interaction of Section 453(h) and Limitations on the Installment Method

Under section 453(k)(2), an installment obligation arising out of a sale of stock or securities that are traded on an established securities market does not qualify for installment method reporting. Accordingly, if the stock of a liquidating corporation is traded on an established securities market, an installment obligation received by a shareholder from that corporation as a liquidating distribution is not a qualifying installment obligation and does not qualify for installment reporting, regardless of whether the requirements of section 453(h) are otherwise satisfied. However, if an installment obligation received by a shareholder from a liquidating corporation, the stock of which is not publicly traded, arose from a sale by the corporation of stock or securities that are traded on an established securities market, then the obligation generally is a qualifying installment obligation in the hands of the shareholder. An exception to this rule applies to the extent the liquidating corporation is formed or availed of for a principal purpose of avoiding limitations on the availability of installment sale treatment through the use of a related party. For example, the exception would apply if a shareholder contributed a substantial amount of publicly traded stock to a corporation shortly before or after the corporation adopted a plan of liquidation and sold its assets, including the publicly traded stock, for an installment obligation. Under the exception, the allocable portion of the installment obligation is not a qualifying installment obligation and, thus, is treated as a payment received in exchange for the shareholder's stock. The IRS specifically requests comments on this exception, which is contained in § 1.453–11(c)(5) of these proposed regulations.

Determination of Shareholder's Selling Price

All amounts distributed or treated as distributed incident to the liquidation are included in the selling price of the shareholder's stock in the liquidating corporation. This selling price includes the issue price of a qualifying installment obligation that is distributed in the liquidation. For this purpose, the issue price of a qualifying installment obligation is equal to the sum of the adjusted issue price of the obligation on the date of the distribution and the amount of any qualified stated interest that has accrued prior to the distribution but that is not payable until after the distribution. In this manner, the accrued but unpaid qualified stated interest is treated as having been received and taken into account by the liquidating corporation, and then distributed by the corporation to the shareholder in exchange for the shareholder's stock. The issue price is also used to compute interest and original issue discount accruals for the shareholder.

Liquidating Distributions Received in More Than One Year

Generally, a shareholder that receives liquidating distributions in more than one taxable year may recover the basis in the shareholder's stock completely before recognizing any gain. This general rule is inconsistent with installment method reporting, which requires that basis be ratably recovered as payments are received. Therefore, if a shareholder receives liquidating distributions in more than one taxable year, and included in the distributions is an installment obligation that qualifies for section 453(h) treatment, then upon completion of the liquidation, basis must be reallocated among all property received, or to be received, in all years. See section 453(h)(2). One method of achieving this basis reallocation would be to require the shareholder to file an amended return if the reallocation of basis would affect the computation of gain recognized in an earlier year. An alternative method would be to require the shareholder to recognize in the current year the additional amount of gain that would have been recognized in the earlier year had the total amount of liquidating distributions been known in the earlier year. This portion of the proposed regulations is reserved and comments are specifically requested regarding these and any other methods of accomplishing the basis reallocation.

Recognition of Gain or Loss to the Distributing Corporation Under Section 453B

Under section 453B, the disposition of an installment obligation generally results in the recognition of gain or loss to the transferor. Thus, in accordance with sections 453B and 336, a C corporation generally recognizes gain or loss upon the distribution of an installment obligation to a shareholder in exchange for the shareholder's stock, including complete liquidations covered by section 453(h). Section 453B(d) provides an exception to this general rule if the installment obligation is distributed in a liquidation to which section 337(a) applies (regarding certain complete liquidations of 80 percent owned subsidiaries). However, that exception does not apply to liquidations under section 331.

The Internal Revenue Code provides for a different treatment in the case of a liquidating distribution by an S corporation. Section 453B(h) provides that if an S corporation distributes an installment obligation in exchange for a shareholder's stock, and payments under the obligation are treated as consideration for the stock pursuant to section 453(h)(1), then the distribution generally is not treated as a disposition of the obligation by the S corporation. Thus, except for purposes of sections 1374 and 1375 (relating to certain built-in gains and passive investment income), the S corporation does not recognize gain or loss on the distribution of the installment obligation to a shareholder in a complete liquidation covered by section 453(h).

Proposed Effective Date

The proposed regulations provide that this section will be effective for distributions of qualifying installment obligations made on or after the date final regulations are filed with the Federal Register.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any

comments that are submitted timely (in the manner described in the **ADDRESSES** portion of the preamble) to the IRS. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is George F. Wright of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.453–2 (a), (b), (c), (d) and (f) in the notice of proposed rulemaking that was published on January 13, 1984 (49 FR 1742) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.453–11 also issued under 26 U.S.C. 453 (j)(1) and (k). * * *

Par. 2. Section 1.453–11 is added to read as follows:

§ 1.453–11 Installment obligations received from a liquidating corporation.

(a) *In general*—(1) *Overview.* Except as provided in section 453(h)(1)(C) (relating to installment sales of depreciable property to certain closely related persons), a qualifying shareholder (as defined in paragraph (b) of this section) who receives a qualifying installment obligation (as defined in paragraph (c) of this section) in connection with a liquidation that satisfies section 453(h)(1)(A) treats the receipt of payments in respect to the obligation, rather than the receipt of the obligation itself, as a receipt of payment for the shareholder's stock. The shareholder reports the payments received on the installment method unless the shareholder elects otherwise in accordance with § 15a.453–1(d) of this chapter.

(2) *Coordination with other provisions*—(i) *Deemed sale of stock for installment obligation.* Except as specifically provided in section 453(h)(1)(C), a qualifying shareholder treats a qualifying installment obligation, for all purposes of the Internal Revenue Code, as if the obligation is received by the shareholder from the person issuing the obligation in exchange for the shareholder's stock in the liquidating corporation. For example, if the stock of a corporation that is liquidating is traded on an established securities market, an installment obligation distributed to a shareholder of the corporation in exchange for the shareholder's stock does not qualify for installment reporting pursuant to section 453(k)(2).

(ii) *Special rules to account for the qualifying installment obligation*—(A) *Issue price.* A qualifying installment obligation is treated by a qualifying shareholder as newly issued on the date of the distribution. The issue price of the qualifying installment obligation on that date is equal to the sum of the adjusted issue price of the obligation on the date of the distribution (as determined under § 1.1275–1(b)) and the amount of any qualified stated interest (as defined in § 1.1273–1(c)) that has accrued prior to the distribution but that is not payable until after the distribution. For purposes of the preceding sentence, if the qualifying installment obligation is subject to § 1.446–2 (e.g., a debt instrument that has unstated interest under section 483), the adjusted issue price of the qualifying installment obligation is determined by reference to the issue price of the qualifying installment obligation under § 1.446–2(d)(1).

(B) *Variable rate debt instrument.* If the qualifying installment obligation is a variable rate debt instrument (as defined in § 1.1275–5), the shareholder uses the equivalent fixed rate debt instrument (within the meaning of § 1.1275–5(e)(3)(ii)) constructed for the qualifying installment obligation on the date the obligation was issued to the liquidating corporation to determine the accruals of original issue discount, if any, and interest on the obligation.

(3) *Liquidating distributions treated as selling price.* All amounts distributed or treated as distributed to a qualifying shareholder incident to the liquidation, including cash, the issue price of qualifying installment obligations as determined under paragraph (a)(2)(ii)(A) of this section, and the fair market value of other property (including obligations that are not qualifying installment obligations) are considered as having been received by the shareholder as the selling price (as defined in § 15a.453–1(b)(2)(ii) of this chapter) for the shareholder's stock in the liquidating corporation. For the proper method of reporting liquidating distributions received in more than one taxable year of a shareholder, see paragraph (d) of this section. An election not to report on the installment method an installment obligation received as a liquidating distribution applies to all distributions received in the liquidation.

(4) *Assumption of corporate liability by shareholders.* For purposes of this section, if in the course of a liquidation a shareholder assumes secured or unsecured liabilities of the liquidating corporation, or receives property from the corporation subject to such liabilities (including any tax liabilities incurred by the corporation on the distribution), the amount of the liabilities is added to the shareholder's basis in the stock of the liquidating corporation. These additions to basis do not affect the shareholder's holding period for the stock. These liabilities do not reduce the amounts received in computing the selling price.

(5) *Examples.* The provisions of this paragraph (a) are illustrated by the following examples. Except as otherwise provided, assume in each example that A, an individual who is a calendar-year taxpayer, owns all of the stock of T corporation. A's adjusted tax basis in that stock is $100,000. On February 1, 1998, T, an accrual basis taxpayer, adopts a plan of complete liquidation that satisfies section 453(h)(1)(A) and immediately sells all of its assets to unrelated B corporation in a single transaction. The examples are as follows:

Example 1. (i) The stated purchase price for T's assets is $3,500,000. In consideration for the sale, B makes a down payment of $500,000 and issues a 10-year installment obligation with a stated principal amount of $3,000,000. The obligation provides for interest payments of $150,000 on January 31 of each year, with the total principal amount due at maturity.

(ii) Assume that for purposes of section 1274, the test rate on February 1, 1998, is 8 percent, compounded semi-annually. Also assume that a semi-annual accrual period is used. Under § 1.1274–2, the issue price of the obligation on February 1, 1998, is $2,368,450. Accordingly, the obligation has $631,550 of original issue discount ($3,000,000 − $2,368,450). Between February 1 and July 31, $19,738 of original issue discount and $75,000 of qualified stated interest accrue with respect to the obligation and are taken into account by T.

(iii) On July 31, 1998, T distributes the installment obligation to A in exchange for

A's stock. No other property is ever distributed to A. On January 31, 1999, A receives the first annual payment of $150,000 from B.

(iv) When the obligation is distributed to A on July 31, 1998, it is treated as if the obligation is received by A in an installment sale of shares directly to B on that date. Under § 1.1275–1(b), the adjusted issue price of the obligation on that date is $2,388,188 (original issue price of $2,368,450 plus accrued original issue discount of $19,738). Accordingly, the issue price of the obligation under paragraph (a)(2)(ii)(A) of this section is $2,463,188, the sum of the adjusted issue price of the obligation on that date ($2,388,188) and the amount of accrued but unpaid qualified stated interest ($75,000).

(v) The selling price and contract price of A's stock in T is $2,463,188, and the gross profit is $2,363,188 ($2,463,188 selling price less A's adjusted tax basis of $100,000). A's gross profit ratio is thus 96 percent (gross profit of $2,363,188 divided by total contract price of $2,463,188).

(vi) Under §§ 1.446–2(e)(1) and 1.1275–2(a), $98,527 of the $150,000 payment is treated as a payment of the interest and original issue discount that accrued on the obligation from July 31, 1998, to January 31, 1999 ($75,000 of qualified stated interest and $23,527 of original issue discount). The balance of the payment ($51,473) is treated as a payment of principal. A's gain recognized in 1999 is $49,414 (96 percent of $51,473).

Example 2. (i) T owns Blackacre, unimproved real property, with an adjusted tax basis of $700,000. Blackacre is subject to a mortgage (underlying mortgage) of $1,100,000. A is not personally liable on the underlying mortgage and the T shares held by A are not encumbered by the underlying mortgage. The other assets of T consist of $400,000 of cash and $600,000 of accounts receivable attributable to sales of inventory in the ordinary course of business. The unsecured liabilities of T total $900,000.

(ii) On February 1, 1998, T adopts a plan of complete liquidation complying with section 453(h)(1)(A), and promptly sells Blackacre to B for a 4-year mortgage note (bearing adequate stated interest and otherwise meeting all of the requirements of section 453) in the face amount of $4 million. Under the agreement between T and B, T (or its successor) is to continue to make principal and interest payments on the underlying mortgage. Immediately thereafter, T completes its liquidation by distributing to A its remaining cash of $400,000 (after payment of T's tax liabilities), accounts receivable of $600,000, and the $4 million B note. A assumes T's $900,000 of unsecured liabilities and receives the distributed property subject to the obligation to make payments on the $1,100,000 underlying mortgage. A receives no payments from B on the B note during 1998.

(iii) Unless A elects otherwise, the transaction is reported by A on the installment method. The selling price is $5 million (cash of $400,000, accounts receivable of $600,000, and the B note of $4 million). The total contract price also is $5 million. A's adjusted tax basis in the T shares, initially $100,000, is increased by the $900,000 of unsecured T liabilities assumed by A and by the obligation (subject to which A takes the distributed property) to make payments on the $1,100,000 underlying mortgage on Blackacre, for an aggregate adjusted tax basis of $2,100,000. Accordingly, the gross profit is $2,900,000 (selling price of $5 million less aggregate adjusted tax basis of $2,100,000). The gross profit ratio is 58 percent (gross profit of $2,900,000 divided by the total contract price of $5 million). The 1998 payments to A are $1 million ($400,000 cash plus $600,000 receivables) and A recognizes gain in 1998 of $580,000 (58 percent of $1 million).

(iv) In 1999, A receives payment from B on the B note of $1 million (exclusive of interest). A's gain recognized in 1999 is $580,000 (58 percent of $1 million).

(b) *Qualifying shareholder.* For purposes of this section, *qualifying shareholder* means a shareholder to which, with respect to the liquidating distribution, section 331 applies. For example, a creditor that receives a distribution from a liquidating corporation, in exchange for the creditor's claim, is not a qualifying shareholder as a result of that distribution regardless of whether the liquidation satisfies section 453(h)(1)(A).

(c) *Qualifying installment obligation*—(1) *In general.* For purposes of this section, *qualifying installment obligation* means an installment obligation (other than an evidence of indebtedness described in § 15a.453–1(e) of this chapter, relating to obligations that are payable on demand or are readily tradable) acquired in a sale or exchange of corporate assets by a liquidating corporation during the 12-month period beginning on the date the plan of liquidation is adopted. See paragraph (c)(4) of this section for an exception for installment obligations acquired in respect to certain sales of inventory. Also see paragraph (c)(5) of this section for an exception for installment obligations attributable to sales of certain property that do not generally qualify for installment sale treatment.

(2) *Corporate assets.* Except as provided in section 453(h)(1)(C), in paragraph (c)(4) of this section (relating to certain sales of inventory), and in paragraph (c)(5) of this section (relating to certain tax avoidance transactions), the nature of the assets sold by, and the tax consequences to, the selling corporation do not affect whether an installment obligation is a qualifying installment obligation. Thus, for example, the fact that the fair market value of an asset is less than the adjusted basis of that asset in the hands of the corporation; or that the sale of an asset will subject the corporation to depreciation recapture (e.g., under section 1245 or section 1250); or that the assets of a trade or business sold by the corporation for an installment obligation include depreciable property, certain marketable securities, accounts receivable, installment obligations, or cash; or that the distribution of assets to the shareholder is or is not taxable to the corporation under sections 336 and 453B, does not affect whether installment obligations received in exchange for those assets are treated as qualifying installment obligations by the shareholder. However, an obligation received by the corporation in exchange for cash, in a transaction unrelated to a sale or exchange of noncash assets by the corporation, is not treated as a qualifying installment obligation.

(3) *Installment obligations distributed in liquidations described in section 453(h)(1)(E)*—(i) *In general.* In the case of a liquidation to which section 453(h)(1)(E) (relating to certain liquidating subsidiary corporations) applies, a qualifying installment obligation acquired in respect to a sale or exchange by the liquidating subsidiary corporation will be treated as a qualifying installment obligation if distributed by a controlling corporate shareholder (within the meaning of section 368(c)) to a qualifying shareholder. The preceding sentence is applied successively to each controlling corporate shareholder, if any, above the first controlling corporate shareholder.

(ii) *Examples.* The provisions of this paragraph (c)(3) are illustrated by the following examples:

Example 1. (i) A, an individual, owns all of the stock of T corporation, a C corporation. T has an operating division and three wholly-owned subsidiaries, X, Y, and Z. On February 1, 1998, T, Y, and Z all adopt plans of complete liquidation.

(ii) On March 1, 1998, the following sales are made to unrelated purchasers: T sells the assets of its operating division to B for cash and an installment obligation. T sells the stock of X to C for an installment obligation. Y sells all of its assets to D for an installment obligation. Z sells all of its assets to E for cash. The B, C, and D installment obligations bear adequate stated interest and meet the requirements of section 453.

(iii) In June 1998, Y and Z completely liquidate, distributing their respective assets (the D installment obligation and cash) to T. In July 1998, T completely liquidates, distributing to A cash and the installment obligations respectively issued by B, C, and D. The liquidation of T is a liquidation to which section 453(h) applies and the liquidations of Y and Z into T are liquidations to which section 332 applies.

(iv) Because T is in control of Y (within the meaning of section 368(c)), the D obligation acquired by Y is treated as acquired by T

pursuant to section 453(h)(1)(E). A is a qualifying shareholder and the installment obligations issued by B, C, and D are qualifying installment obligations. Unless A elects otherwise, A reports the transaction on the installment method as if the cash and installment obligations had been received in an installment sale of the stock of T corporation. Under section 453B(d), no gain or loss is recognized by Y on the distribution of the D installment obligation to T. Under sections 453B(a) and 336, T recognizes gain or loss on the distribution of the B, C, and D installment obligations to A in exchange for A's stock.

Example 2. (i) A, a cash-method individual taxpayer, owns all of the stock of P corporation, a C corporation. P owns 30 percent of the stock of Q corporation. The balance of the Q stock is owned by unrelated individuals. On February 1, 1998, P adopts a plan of complete liquidation and sells all of its property, other than its Q stock, to B, an unrelated purchaser for cash and an installment obligation bearing adequate stated interest. On March 1, 1998, Q adopts a plan of complete liquidation and sells all of its property to an unrelated purchaser, C, for cash and installment obligations. Q immediately distributes the cash and installment obligations to its shareholders in completion of its liquidation. Promptly thereafter, P liquidates, distributing to A cash, the B installment obligation, and a C installment obligation that P received in the liquidation of Q.

(ii) In the hands of A, the B installment obligation is a qualifying installment obligation. In the hands of P, the C installment obligation was a qualifying installment obligation. However, in the hands of A, the C installment obligation is not treated as a qualifying installment obligation because P owned only 30 percent of the stock of Q. Because P did not own the requisite 80 percent stock interest in Q, P was not a controlling corporate shareholder of Q (within the meaning of section 368(c)) immediately before the liquidation. Therefore, section 453(h)(1)(E) does not apply. Thus, in the hands of A, the C obligation is considered to be a third-party note (not a purchaser's evidence of indebtedness) and is treated as a payment to A in the year of distribution. Accordingly, for 1998, A reports as payment the cash and the fair market value of the C obligation distributed to A in the liquidation of P.

(iii) Because P held 30 percent of the stock of Q, section 453B(d) is inapplicable to P. Under sections 453B(a) and 336, accordingly, Q recognizes gain or loss on the distribution of the C obligation. P also recognizes gain or loss on the distribution of the B and C installment obligations to A in exchange for A's stock. See sections 453B and 336.

(4) *Installment obligations attributable to certain sales of inventory*—(i) *In general.* An installment obligation acquired by a corporation in a liquidation that satisfies section 453(h)(1)(A) in respect to a broken lot of inventory is not a qualifying installment obligation. If an installment obligation is acquired in respect to a broken lot of inventory and other assets, only the portion of the installment obligation acquired in respect to the broken lot of inventory is not a qualifying installment obligation. The portion of the installment obligation attributable to other assets is a qualifying installment obligation. For purposes of this section, the term *broken lot of inventory* means inventory property that is sold or exchanged other than in bulk to one person in one transaction involving substantially all of the inventory property attributable to a trade or business of the corporation. See paragraph (c)(4)(ii) of this section for rules for determining what portion of an installment obligation is not a qualifying installment obligation.

(ii) *Rules for determining nonqualifying portion of an installment obligation.* If a broken lot of inventory is sold to a purchaser together with other corporate assets for consideration consisting of an installment obligation and either cash, other property, the assumption of (or taking property subject to) corporate liabilities by the purchaser, or some combination thereof, the installment obligation is treated as having been acquired in respect to a broken lot of inventory only to the extent that the fair market value of the broken lot of inventory exceeds the sum of unsecured liabilities assumed by the purchaser, secured liabilities which encumber the broken lot of inventory and are assumed by the purchaser or to which the broken lot of inventory is subject, and the sum of the cash and fair market value of other property received. This rule applies solely for the purpose of determining the portion of the installment obligation (if any) that is attributable to the broken lot of inventory.

(iii) *Example.* The following example illustrates the provisions of this paragraph (c)(4). In this example, assume that all obligations bear adequate stated interest within the meaning of section 1274(c)(2) and that the fair market value of each nonqualifying installment obligation equals its face amount.

The example is as follows:

Example. (i) P corporation has three operating divisions, X, Y, and Z, each engaged in a separate trade or business, and a minor amount of investment assets. On July 1, 1998, P adopts a plan of complete liquidation that meets the criteria of section 453(h)(1)(A). The following sales are promptly made to purchasers unrelated to P: P sells all of the assets of the X division (including all of the inventory property) to B for $30,000 cash and installment obligations totalling $200,000. P sells substantially all of the inventory property of the Y division to C for a $100,000 installment obligation, and sells all of the other assets of the Y division (excluding cash but including installment receivables previously acquired in the ordinary course of the business of the Y division) to D for a $170,000 installment obligation. P sells ⅓ of the inventory property of the Z division to E for $100,000 cash, ⅓ of the inventory property of the Z division to F for a $100,000 installment obligation, and all of the other assets of the Z division (including the remaining ⅓ of the inventory property worth $100,000) to G for $60,000 cash, a $240,000 installment obligation, and the assumption by G of the liabilities of the Z division. The liabilities assumed by G, which are unsecured liabilities and liabilities encumbering the inventory property acquired by G, aggregate $30,000. Thus, the total purchase price G pays is $330,000.

(ii) P immediately completes its liquidation, distributing the cash and installment obligations, which otherwise meet the requirements of section 453, to A, an individual cash-method taxpayer who is its sole shareholder. In 1999, G makes a payment to A of $100,000 (exclusive of interest) on the $240,000 installment obligation.

(iii) In the hands of A, the installment obligations issued by B, C, and D are qualifying installment obligations because they were timely acquired by P in a sale or exchange of its assets. In addition, the installment obligation issued by C is a qualifying installment obligation because it arose from a sale to one person in one transaction of substantially all of the inventory property of the trade or business engaged in by the Y division.

(iv) The installment obligation issued by F is not a qualifying installment obligation because it is in respect to a broken lot of inventory. A portion of the installment obligation issued by G is a qualifying installment obligation and a portion is not a qualifying installment obligation, determined as follows: G purchased part of the inventory property (with a fair market value of $100,000) and all of the other assets of the Z division by paying cash ($60,000), issuing an installment obligation ($240,000), and assuming liabilities of the Z division ($30,000). The assumed liabilities ($30,000) and cash ($60,000) are attributed first to the inventory property. Therefore, only $10,000 of the $240,000 installment obligation is attributed to inventory property. Accordingly, in the hands of A, the G installment obligation is a qualifying installment obligation to the extent of $230,000, but is not a qualifying installment obligation to the extent of the $10,000 attributable to the inventory property.

(v) In the 1998 liquidation of P, A receives a liquidating distribution as follows:

Item	Qualifying installment obligations	Cash and other property
cash		$190,000
B note	$200,000	
C note	100,000	
D note	170,000	
F note		100,000

Item	Qualifying installment obligations	Cash and other property
G note [1]	230,000	10,000
Total	700,000	300,000

[1] Face amount $240,000.

(vi) Assume that A's adjusted tax basis in the stock of P is $100,000. Under the installment method, A's selling price and the contract price are both $1 million, the gross profit is $900,000 (selling price of $1 million less adjusted tax basis of $100,000), and the gross profit ratio is 90 percent (gross profit of $900,000 divided by the contract price of $1 million). Accordingly, in 1998, A reports gain of $270,000 (90 percent of $300,000 payment in cash and other property). A's adjusted tax basis in each of the qualifying installment obligations is an amount equal to 10 percent of the obligation's respective face amount. A's adjusted tax basis in the F note, a nonqualifying installment obligation, is $100,000, i.e., the fair market value of the note when received by A. A's adjusted tax basis in the G note, a mixed obligation, is $33,000 (10 percent of the $230,000 qualifying installment obligation portion of the note, plus the $10,000 nonqualifying portion of the note).

(vii) In respect to the $100,000 payment received from G in 1999, $10,000 is treated as the recovery of the adjusted tax basis of the nonqualifying portion of the G installment obligation and $9,000 (10 percent of $90,000) is treated as the recovery of the adjusted tax basis of the portion of the note that is a qualifying installment obligation. The remaining $81,000 (90 percent of $90,000) is reported as gain from the sale of A's stock.

(5) *Installment obligations attributable to sales of certain property*—(i) *In general.* An installment obligation acquired by a liquidating corporation, to the extent attributable to the sale of property described in paragraph (c)(5)(ii) of this section, is not a qualifying obligation if the corporation is formed or availed of for a principal purpose of avoiding section 453(b)(2)(A) (relating to dealer dispositions), section 453(i) (relating to sales of property subject to recapture), or section 453(k) (relating to dispositions under a revolving credit plan and sales of stock or securities traded on an established securities market) through the use of a party bearing a relationship, either directly or indirectly, described in section 267(b) to any shareholder of the corporation.

(ii) *Covered property.* Property is described in this paragraph (c)(5)(ii) if, within 12 months before or after the adoption of the plan of liquidation, the property was owned by any shareholder and—

(A) The shareholder regularly sold or otherwise disposed of personal property of the same type on the installment plan or the property is real property that the shareholder held for sale to customers in the ordinary course of a trade or business (provided the property is not described in section 453(l) (2)(relating to certain exceptions to the definition of dealer dispositions));

(B) The sale of the property by the shareholder would result in recapture income (within the meaning of section 453(i)(2)), but only if the amount of recapture is equal to or greater than 50 percent of the property's fair market value on the date of the sale by the corporation;

(C) The property is stock or securities that are traded on an established securities market; or

(D) The sale of the property by the shareholder would have been under a revolving credit plan.

(iii) *Safe harbor.* Paragraph (c)(5)(i) of this section will not apply to the liquidation of a corporation if, on the date the plan of complete liquidation is adopted and thereafter, less than 15 percent of the fair market value of the corporation's assets is attributable to property described in paragraph (c)(5)(ii) of this section.

(iv) *Example.* The provisions of this paragraph (c)(5) are illustrated by the following example:

Example. Ten percent of the fair market value of the assets of T is attributable to stock and securities traded on an established securities market. T owns no other assets described in paragraph (c)(5)(ii) of this section. T, after adopting a plan of complete liquidation, sells all of its stock and securities holdings to C corporation in exchange for an installment obligation bearing adequate stated interest, sells all of its other assets to B corporation for cash, and distributes the cash and installment obligation to its sole shareholder, A, in a complete liquidation that satisfies section 453(h)(1)(A). Because the C installment obligation arose from a sale of publicly traded stock and securities, T cannot report the gain on the sale under the installment method pursuant to section 453(k)(2). In the hands of A, however, the C installment obligation is treated as having arisen out of a sale of the stock of T corporation. In addition, the general rule of paragraph (c)(5)(i) of this section does not apply, even if a principal purpose of the liquidation was the avoidance of section 453(k)(2), because the fair market value of the publicly traded stock and securities is less than 15 percent of the total fair market value of T's assets. Accordingly, section 453(k)(2) does not apply to A, and A may use the installment method to report the gain recognized on the payments it receives in respect to the obligation.

(d) *Liquidating distributions received in more than one taxable year.* [Reserved]

(e) *Effective date.* This section is applicable for distributions of qualifying installment obligations made on or after the date final regulations are filed with the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–1522 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

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31 CFR Part 103

RIN 1506–AA15

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting of Cross-Border Transportation of Certain Monetary Instruments

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the regulations implementing the statute generally referred to as the Bank Secrecy Act to include instruments drawn by foreign banks on accounts in the United States within the definition of monetary instruments for purposes of the requirement under those regulations to report the physical transportation of currency or monetary instruments in an aggregate amount exceeding $10,000 into or out of the United States.

DATES: Written comments must be received on or before April 22, 1997.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182–2536, *Attention*: NPRM—Foreign Bank Drafts. For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Request for Comments on Specific Subjects.''

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the Financial Crimes Enforcement Network (''FinCEN'') reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

FOR FURTHER INFORMATION CONTACT: Roger G. Weiner, Assistant Director (Compliance and Enforcement), Office

of Regulatory Policy and Enforcement, FinCEN, at (202) 622–0400, or Stephen R. Kroll, Legal Counsel, FinCEN, at (703) 905–3534.

SUPPLEMENTARY INFORMATION:

Introduction

The Department of the Treasury (''Treasury'') proposes to expand the definition of ''monetary instrument'' for purposes of the Bank Secrecy Act rules. The expansion, contained in a proposed new paragraph (u)(1)(vi) of 31 CFR 103.11, would treat as a monetary instrument any bank draft, bank or cashier's check or similar instrument drawn by a bank operating outside of the United States on an account of that bank at a financial institution in the United States. The change in the definition of ''monetary instrument'' would apply for purposes of 31 CFR 103.23 and other provisions of Part 103 that implement the provisions of 31 U.S.C. 5316 (Reports on exporting and importing monetary instruments). The proposed rule reflects the authority contained in 31 U.S.C. 5312(a)(3)(C), which was added to the Bank Secrecy Act by section 405(a) of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (September 23, 1994).

Background

The statute popularly known as the ''Bank Secrecy Act,'' Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting of the transportation of currency or monetary instruments into or out of the United States at any one time in aggregate amounts exceeding $10,000 (and of the receipt of currency or monetary instruments in that amount transported into the United States) has long been a major component of the Department of the Treasury's implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.23, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5316. Reports required by 31 CFR 103.23 are made on United States Customs Service Form 4790 (Report of International Transportation of Currency or Monetary Instruments); the form is commonly called a ''CMIR'' and the reporting requirement is sometimes referred to below as the ''CMIR reporting requirement.''

As indicated, the CMIR reporting requirement applies to transportation not just of currency but also of certain non-currency monetary instruments. The statutory boundaries of the monetary instrument definition are set by 31 U.S.C. 5312(a)(3). Prior to enactment of the Money Laundering Suppression Act, paragraph (a)(3) provided that:

> 'monetary instruments' means—
> (A) United States coins and currency; and
> (B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material.

Implementing rules reflecting the statutory language defined the term ''monetary instrument'' to include traveler's checks in any form; all negotiable instruments in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; incomplete instruments; and securities or stock in bearer form (or, again, otherwise in such form that title thereto passes upon delivery). *See* 31 CFR 103.11(u)(1) (ii)–(iv).

Section 405 of the Money Laundering Suppression Act added a third category to the definition of monetary instrument in 31 U.S.C. 5312(a)(3), specifically for purposes of the CMIR reporting requirement. Under the new language, the definition could include:

> (C) as the Secretary of the Treasury shall provide by regulation for purposes of section 5316 [the CMIR reporting requirement], checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

Enactment of the new, potentially extremely broad, authority reflected Congressional concern that the effect of the CMIR reporting requirement was being vitiated, and money laundering fostered, by the increasing flow into the United States of drafts (often called ''foreign bank drafts'') drawn by banks outside the United States on dollar accounts of those banks at financial institutions in the United States. Although the foreign bank drafts were not in bearer form, and hence not subject to the CMIR reporting requirements under the existing terms of the rules, the drafts were the practical equivalent of currency or bearer instruments. The Conference Report on the Money Laundering Suppression Act explains:

> The Conferees' concern about these instruments stems from reports by Treasury that they are frequently used in money laundering schemes. . . . These drafts are U.S. dollar-denominated checks drawn by the foreign bank on its own account at a U.S. bank and sold to customers like cashier's checks.

See H.R. Rep. 130–652 (the ''Conference Report''), 103d Cong., 2nd Sess. 189 (August 2, 1994). As the Conferees Noted, section 405 of the Money Laundering Suppression Act reflected descriptions of the problem and the need for corrective legislation to meet it, presented by the Assistant Secretary of the Treasury (Enforcement), the Director of FinCEN, and the United States Customs Service. *See* Conference Report, *supra,* at 189–190.[1]

The resultant legislation was drawn broadly, to permit the Secretary of the Treasury as much flexibility as was necessary to deal with the use of non-bearer instruments to move the proceeds of crime into or out of the United States. The present notice of proposed rulemaking thus implements only so much of the permitted authority as the Department of the Treasury believes is required to deal with the issue that sparked the legislation: the sale outside the United States of bank drafts drawn on U.S. dollar accounts within the United States.

[1] The statement of Brian Bruh, then the Director of FinCEN, referred to at page 189 of the Conference Report, can be found in Serial No. 103–53, ''Anti-Money Laundering Efforts in Texas,'' Field Hearing Before the Committee on Banking, Finance and Urban Affairs of the House of Representatives, 103d Cong., 1st Sess. 110, 115–16 (July 8, 1993). The statement of Ronald K. Noble, then Assistant Secretary of the Treasury (Enforcement), also referred to at page 189 of the Conference Report, can be found in Serial No. 103–79, ''H.R. 3235; The Anti-Money Laundering Act of 1993, Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance, of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, 103d Cong., 1st Sess. 2, 6 (oral statement), 17 (questions from Chairman Neal) (October 20, 1993) ; Assistant Secretary Noble's prepared statement can be found in Serial No. 103–79, *supra,* at 58, 64–65. *See also,* S. Hrg. 103–574, the Anti-Money Laundering Act of 1993—S. 1664, Hearing before the Committee on Banking, Housing, and Urban Affairs, United States Senate, 103d. Cong., 2d Sess. 2, 4 (oral statement of Assistant Secretary Noble), 35, 37–38 (prepared statement of Assistant Secretary Noble) (March 15, 1994).

Explanation of Provisions

A. Overview

The proposed regulations would expand the definition of monetary instrument, for purposes of the CMIR reporting requirement and related rules, to include official bank checks, cashier's checks, drafts, and similar instruments issued or made out by a foreign bank on an account in the name of, or maintained on behalf of, such foreign bank in the United States. Such instruments would hence become subject to the CMIR reporting requirements—*i.e.,* reports would be required upon their transportation into or out of the United States in amounts that, by themselves or combined with currency or other instruments treated as monetary instruments for purposes of the reporting requirements, exceeded $10,000.

B. Expanded Definition of ''Monetary Instrument''

The expanded definition of monetary instrument is contained in a proposed new paragraph 31 CFR 103.11(u)(1)(vi).[2] The definition itself is straightforward and relies to the extent possible upon the terms used in paragraph (u)(1)(iii) relating to negotiable instruments in bearer form. Similarly, the new definition does not change the CMIR reporting requirement's procedures or the placement of the filing obligation. Rather, it simply adds instruments drawn by foreign banks[3] on accounts in the United States to the classes of monetary instruments that are to be counted in determining whether a cross-border transportation of monetary instruments exceeding $10,000 has occurred.

C. Exemption for Interbank Collection and Reconciliation Process

The Conference Report states that Congress intended that the expanded definition of monetary instrument should be implemented in such a way as to ''avoid unnecessary burdens on routine financial transactions of foreign financial institutions,'' and specifically notes that:

> An exemption should be prescribed with regard to CMIRs when the monetary instruments cross the border as part of the interbank collection and reconciliation process.

Conference Report, *supra,* at 190. However, it is unclear whether any change in the relevant rules is necessary to accomplish that result, in light of the exemptions from the CMIR reporting requirement already contained in 31 CFR 103.23(c). Treasury intends to implement the new requirements consistently with the Congressional intent, and comments are thus specifically requested below upon whether additional language is required to avoid, or where that is impossible, to minimize burden, by virtue of the expanded definition of monetary instrument, upon either the interbank collection and reconciliation process or other aspects of routine financial transactions of foreign banks.

D. Coverage or Exemption of Instruments From Particular Nations

Congress was aware, in considering the Money Laundering Suppression Act, that an expanded definition of monetary instrument for purposes of the CMIR reporting requirements would affect certain nations more than others. However, in light of the general obligations of the United States with respect to the trade in financial services, and in recognition of the continued ingenuity and flexibility of those who seek to launder the proceeds of crime, the authorizing legislation was general in scope. Congress noted only that:

> The Conferees * * * believe that Treasury, in adopting regulations under this section, should consider whether a foreign country is participating in the Financial Action Task Force (FATF), has implemented the FATF's recommendations for combatting money laundering, and has appropriate currency recordkeeping or reporting requirements.

Conference Report, *Id.* Comments are specifically requested below on the best way to incorporate these considerations.

E. Request for Comments on Specific Subjects

FinCEN specifically seeks comment on the following questions:

1. Are additional changes necessary to prevent the imposition of burden on routine transactions of foreign banks as a result of the expanded definition of monetary instrument proposed in this document?
2. Does commercial practice provide a basis for distinguishing between instruments drawn by foreign banks on dollar accounts in the United States and instruments drawn on such accounts by financial services providers outside the United States that are not banks?
3. Are changes to the language of 31 CFR 103.23(c) necessary to exempt from the CMIR reporting requirements the transportation of the proposed new class of monetary instrument in the course of the interbank reconciliation and clearance process?
4. Are other changes to the exemptions in 31 CFR 103.23(c) necessary to prevent unnecessary interference with commercial activities?
5. What steps can and should be taken at this time, consistent with the obligations of the United States generally, to differentiate among particular nations in the application of the CMIR reporting requirements to the proposed new class of monetary instrument?
6. What steps should be taken to publicize the new reporting requirement in advance of its effective date?

In seeking guidance on these and other issues raised by this notice of proposed rulemaking, FinCEN is interested in hearing from all parties potentially affected by the proposed rule.

Treasury is continuing to consider the need for modernization of the CMIR reporting requirements generally. Comments are requested on this matter as well.

Submission of Comments

Comments on all aspects of the proposed regulation are welcome and will be considered if submitted in writing prior to April 22, 1997. An original and four copies of any comments must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

Proposed Effective Date

The amendments to 31 CFR Part 103 proposed in this notice of proposed rulemaking will become effective 90 days following publication in the Federal Register of the final rule to which this notice of proposed rulemaking relates.

Special Analyses

It has been determined that this notice of proposed rulemaking (i) is not subject to the ''budgetary impact statement'' requirement of section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and (ii) is not a significant regulatory action as defined in Executive Order 12866. It is not anticipated that this proposed rule, if adopted as a final rule, will have an annual effect on the economy of $100 million or more. Nor will it, if so adopted, affect adversely in a material

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[2] No language in the monetary instrument definition is being deleted; the word ''and'' that separates current paragraphs (u)(1) (iv) and (v) of 103.11 is simply being moved to reflect the addition of a new paragraph (u)(1)(vi).

[3] ''Foreign bank'' is already a defined term in the Bank Secrecy Act regulations. *See* 31 CFR 103.11(o).

way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. The proposed rule is neither inconsistent with, nor does it interfere with, actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues.

A ''description of the reasons why action by the agency is being considered'' and a ''succinct statement of the objectives of, and legal basis for, the proposed rule''—all as required by 5 U.S.C. 553(b)—are found elsewhere in this preamble.

Paperwork Reduction Act

FinCEN hereby presents the following information concerning the retention of information on currency and monetary instruments, in accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, to assist those persons wishing to comment on the proposed information retention requirement.

Title: Report of International Transportation of Currency or Monetary Instruments.

Form Number: U.S. Customs Service Form 4790.

OMB Number: 1506–0005.

Description of Respondents: All persons.

Estimated Number of Respondents: 250,000.

Frequency: As required.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = approximately 54,167 hours; recordkeeping burden estimate = 8,333 hours. Estimated combined total of 62,500 hours per year.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost of compliance with the proposed recordkeeping rule is estimated to be approximately $1,250,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: Extension.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary to further the purposes of the Bank Secrecy Act, including whether the information retained shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be retained; and (d) ways to minimize the burden of the collection of information on the affected industry, including through the use of automated storage and retrieval techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995, *supra*, requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the retention of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the retention of the information covered by the requirement.

The information collection in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. Comments on the proposed collection may be directed to FinCEN, Office of Regulatory Policy and Enforcement, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182–2536, Attn: Paperwork Reduction Act, and to the Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for the Treasury Department. Responses to this request for comments from FinCEN will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, banking, Currency, Foreign banking, Gambling, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Regulations

Accordingly, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11 is amended by:

a. Removing the word ''and'' at the end of paragraph (u)(1)(iv);

b. Removing the period and adding ''; and'' at the end of paragraph (u)(1)(v); and

c. Adding new paragraph (u)(1)(vi).

The addition reads as follows:

§ 103.11 Meaning of terms.

* * * * *

(u) * * *

(1) * * *

(vi) For purposes of § 103.23 and other provisions of this part implementing 31 U.S.C. 5316, official bank checks, cashier's checks, drafts, and similar instruments issued or made out by a foreign bank on an account in the name of, or maintained on behalf of, such foreign bank in the United States.

* * * * *

Dated: January 15, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–1403 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–03–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 157–0022b; FRL–5677–1]

Clean Air Act Approval and Promulgation of Emission Reduction Credit Banking Provisions; Implementation Plan for California State Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules submitted by the State of California on behalf of the Mojave Desert Air Quality Management District (MDAQMD or the District) for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) with regard to emission reduction credit (ERC) banking for new source review (NSR).

The intended effect of proposing approval of these rules is to control air pollution in accordance with the requirements of the Act. In the Final Rules section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second public comment period on this

document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 21, 1997.

ADDRESSES: Written comments on this action should be addressed to: Steve Ringer, Permits Office (A–5–1), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permitting Office (A–5–1), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street S.W., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Mojave Desert AQMD, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

FOR FURTHER INFORMATION CONTACT: Steve Ringer at (415) 744–1260.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve the following rules into the SIP:

Rule 1400, General; rule 1401, Definitions; rule 1402, Emission Reduction Credit Registry; and rule 1404, Emission Reduction Credit Calculation (rules 1400, 1401, 1402, and 1404 will hereafter be referred to as the ''submitted rules''). The submitted rules were adopted on June 28, 1995, and were submitted by the State of California to EPA on August 10, 1995. EPA found the submitted rules to be complete on October 4, 1995.

For further information, please see the information provided in the direct final action which is located in the Rules section of this Federal Register.

Dated: December 8, 1996.

Authority: 42 U.S.C. 7401–7671q.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–1422 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN70–1b; FRL–5675–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 13, 1996, and June 27, 1996, the State of Indiana submitted rules for the control of volatile organic compound (VOC) emissions from shipbuilding and ship repair operations in Clark, Floyd, Lake, and Porter Counties, as a requested revision to the State Implementation Plan (SIP) for ozone. This rule is part of the State's 15% Rate-of-Progress plan for reducing VOC emissions in Clark and Floyd Counties. This rule requires facilities which build or repair commercial ships or barges to use coatings which meet volatile organic compound content limits, as well as comply with certain work practices to lower emissions when using solvents. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 21, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: December 24, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–1426 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 105–0012b; FRL–5673–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; San Diego Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_x) emissions from the operations of boilers, steam generators, process heaters, electric utility boilers, internal combustion engines, and stationary gas turbines.

The intended effect of proposing approval of these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rule Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed action, no further activity is contemplated in relation to this action. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 21, 1997.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District's (KCAPCD) Rule 425.2, Boilers, Steam Generators, and Process Heaters (Oxides of Nitrogen), Rule 427, Stationary Piston Engines (Oxides of Nitrogen), San Diego County Air Pollution Control District's (SDCAPCD) Rule 69.4, Stationary Reciprocating Internal Combustion Engines, and Ventura County Air Pollution Control District's (VCAPCD) Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions, and Rule 74.23, Stationary Gas Turbines. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 25, 1995, March 26, 1996, October 19, 1994, February 11, 1994 and March 26, 1996, respectively. For further information, please see the information provided in the direct final action which is located in the rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 23, 1996.

Felicia Marcus,

Regional Administrator.

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40 CFR Part 52

[PA 098–4032; FRL–5679–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Conditional Approval of 15 Percent Reasonable-Further-Progress Plan and 1990 VOC Emission Inventory for the Pittsburgh Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to conditionally approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, for the Pittsburgh ozone nonattainment area, to meet the 15 percent reasonable further progress (RFP, or 15% plan), also known as rate-of-progress (ROP) requirements of the Clean Air Act. EPA is proposing conditional approval because the 15 percent plan submitted by Pennsylvania for the Pittsburgh area requires additional documentation to quantify the 15% emission reduction. The 1990 emissions inventory for volatile organic compounds (VOCs) used in the 15% plan as the baseline for reasonable further progress contains inconsistencies, which must be reconciled by Pennsylvania. EPA is, therefore, proposing conditional approval of the 1990 VOC emission inventory.

DATES: Comments on this proposed action must be postmarked by February 21, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2180. Questions may also be addressed via e-mail, at the following address: stahl.cynthia@epamail.epa.gov Please note that while information may be requested via e-mail, only written comments can be accepted for inclusion in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 182(b)(1) of the Clean Air Act (the Act or CAA), as amended in 1990, requires ozone nonattainment areas classified as moderate or above to develop plans to reduce VOC emissions by fifteen percent from the 1990 baseline inventory for the area. These ''15% plans'' were due to be submitted to EPA by November 15, 1993, with the reductions to occur within 6 years of enactment of the 1990 Clean Air Act Amendments (i.e. November 15, 1996). Furthermore, the Act sets limitations on the creditability of certain control measures toward reasonable further progress. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g. new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure) of gasoline. The Act also does not allow credit towards RFP for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in-place prior to 1990.

Additionally, section 172(c)(9) of the Act requires ''contingency measures'' to be included in the plan revision. These measures are required to be implemented immediately if reasonable further progress is not achieved, or if the NAAQS standard is not attained under the deadlines set forth in the Act.

In Pennsylvania, three nonattainment areas are subject to the Clean Air Act 15% rate-of-progress requirements. These are the Philadelphia severe nonattainment area, the Pittsburgh moderate nonattainment area, and the Reading moderate nonattainment area. On July, 19, 1995, EPA published, in the Federal Register, a final rule waiving the 15% rate-of-progress requirements for the Pittsburgh and Reading moderate ozone nonattainment areas. The basis

for that action was a May 10, 1995 EPA policy memo (entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'') allowing such ''waivers'' for areas having ambient monitoring data which demonstrated compliance with the ozone standard. On June 4, 1996, EPA revoked the waiver for the Pittsburgh area, and reinstated the 15% plan requirement. Pennsylvania submitted separate SIP revisions for Philadelphia and Pittsburgh. EPA is taking action today only on Pennsylvania's 15% plan submittal (including the 1990 VOC emissions inventory), which addresses only the Pittsburgh ozone nonattainment area. EPA will act separately on the contingency plan for the Pittsburgh 15% plan and the 1990 NO_x emissions inventory, at a later date. The Pittsburgh moderate ozone nonattainment area consists of the following counties in Pennsylvania: Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, Westmoreland.

EPA has reviewed the March 22, 1996 Pittsburgh area 15% plan submittal and has identified several deficiencies, which prohibit full approval of this SIP, per section 110 of the Act. A detailed discussion of these deficiencies is included below, in the 'Analysis' portion of this rulemaking action, and also in the technical support document (TSD) for this action. Due to these deficiencies, the 15% plan cannot be assured of achieving the total reductions required by the rate-of-progress requirements of the Act. Therefore, EPA is proposing to conditionally approve this plan.

For further information regarding EPA's analysis of the Commonwealth's submittal, please refer to the TSD for this action (found in the official docket). A summary of the EPA's findings follows.

Analysis of the SIP Revision

Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 VOC base year emission inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile sources, and off-road mobile sources. Pennsylvania submitted a formal SIP revision containing their official 1990 base year emission inventory on November 12, 1992. EPA has not yet taken rulemaking action on that inventory submittal. In its March 22, 1996 submittal, Pennsylvania stated that the 1990 emission inventory included with that submittal is meant to supercede the 1992 emission inventory submittal. Therefore, this rulemaking will address the 1990 VOC emission inventory only as it pertains to the Pittsburgh ozone nonattainment area and no further rulemaking action will be taken on the November 12, 1992 emission inventory submittal as it pertains to the Pittsburgh ozone nonattainment area. The March 1996 inventory submittal of the 1990 inventory contains inconsistencies including inconsistencies with the inventory summaries in the 15% plan. Additional information and documentation from Pennsylvania regarding the March 1996 submittal of the Pittsburgh 1990 emission inventory is necessary in order for EPA to accept it as a replacement for the official 1990 base year inventory SIP revision. EPA has been working with Pennsylvania to compile the necessary documentation to approve the 1990 base year emissions inventory. Pennsylvania has recently submitted some additional information that may clarify some of the questions about the 1990 inventory. This additional information has been placed in the docket for this rulemaking. Please refer to the TSD for a specific discussion of the inventory. Therefore, EPA is proposing to conditionally approve the 1990 VOC emission inventory for the Pittsburgh ozone nonattainment area that was submitted on March 22, 1996.

Growth in Emissions Between 1990 and 1996

EPA has interpreted the Clean Air Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% RFP requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in emissions, in addition to a 15 percent reduction of VOC emissions. Thus, an estimate of VOC emissions growth from 1990 to 1996 is necessary for demonstrating reasonable further progress. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each stationary (point) source or by area source category, since sources typically grow at different rates. Even within a stationary source, individual emission unit emissions may grow at different rates during the same time period. EPA's inventory preparation guidance recommends the following indicators as applied to emission units in the case of stationary sources or to a source category in the case of area sources, in order of preference: Product output, value added, earnings, and employment. As a last resort, population can also serve as a surrogate indicator.

Pennsylvania's 15% plan contains growth projections for point, area, on-road motor vehicle, and non-road vehicle source categories. For a detailed description of the growth methodologies used by the Commonwealth, please refer to the TSD for this action. Although EPA has identified some problematic issues with the methods used to project growth in the 1996 Pittsburgh inventory, EPA is not conditioning the approval of the 15% plan on the resolution of these issues. The rationale for this summarized below and in more detail in the TSD. Consequently, EPA is proposing to approve the Commonwealth's 1990–1996 emissions growth projections for the Pittsburgh 15% plan.

Pennsylvania did not provide EPA with all the documentation necessary to verify the growth projections for the on-road vehicle category. EPA, however, has no reason to believe that the Commonwealth's methodology or assumptions in making these projections are flawed. Therefore, EPA is accepting the Commonwealth's 15% plan projection for highway vehicle emissions growth that is based on growth in total vehicle miles of travel (VMT) for the region, which the Commonwealth expects to increase by 2.8 million miles per day. In addition, the Commonwealth expects that on-road emissions are projected to decrease by 21.35 tons/day. Emissions from on-highway emissions control measures are calculated separately in the plan (including reductions associated with fleet turnover and the pre-1990 motor vehicle standards) and Pennsylvania indicates that this growth is based solely upon increasing VMT growth. Typically, growth in highway emissions is determined independently of mobile source control strategies. Fifteen percent plans usually indicate what, if any, other factors effect highway emissions growth, other than the previously identified VMT influence. EPA cannot definitively determine how motor vehicle emissions are declining from this data but believes, based on the sample calculation submitted by Pennsylvania, that Pennsylvania's mobile model inputs are correct. Those interested in obtaining the data necessary to verify the Commonwealth's calculations are encouraged to contact PA DEP for that information. Therefore, EPA is proposing to approve the

Commonwealth's on-road motor vehicle growth projection.

For the point source categories, Pennsylvania used the Bureau of Economic Analysis (BEA) growth factors to project point source emissions on a point source category basis to 1996. Typically, this is an acceptable method of estimating point source growth. However, Pennsylvania operates an emissions bank in the Commonwealth that allows facilities to bank emission reduction credits for subsequent use or sale. In addition, Pennsylvania states specifically in its 15% plan that it is not taking VOC emission reduction credit from shutdown sources since those sources are being allowed to sell their VOC emission reductions as credits to other sources. These shutdowns all occurred after January 1, 1990. Since the BEA growth factors are devised to account for all economic activity, including the shutdown of facilities (through loss of employment, income, etc.), allowing both the use of the BEA point source growth factors for these source categories where the shutdowns occurred and allowing the sources in these categories to sell their emission reduction credits could result in the double counting of emission reductions, which is not allowed. In the General Preamble for the Implementation of Title I of the Clean Air Act Amendments (57 FR 13498, April 16, 1992), EPA addresses the issue of accounting for emission reduction credits (ERCs) by stating that banked emission reduction credits need to be accounted for such that their use is consistent with the area's 15% rate of progress plan and attainment plan. For any ERCs that are either used or available for use prior to the end of the planning period (in this case, the end of 1996), the state must appropriately account or plan for their use in the applicable air quality plan (in this case, the 15% plan). In Pennsylvania's March 1996 15% plan submittal, DEP did not identify which sources had shut down or in which source categories these shutdowns had occurred. Without the proper identification of these sources and accounting in the 15% plan, there is no guarantee that the use of those shutdown or banked ERCs would be consistent with the 15% plan. This potential double counting of emissions is not a problem unique to Pennsylvania. EPA guidance to date has not addressed this issue in detail. Therefore, EPA is not conditioning the approval of the Pittsburgh 15% plan on the resolution of this issue. EPA will, however, require that this issue be satisfactorily resolved prior to approval of any subsequent air quality plans required for the Pittsburgh nonattainment area such as the attainment demonstration.

Calculation of Target Level Emissions

Pennsylvania calculated a ''target level'' of 1996 VOC emissions, per EPA guidance. First, the Commonwealth calculated the non-creditable reductions from the FMVCP program and subtracted those emissions from the 15 percent plan's 1990 inventory estimate. This yields the 1990 ''adjusted inventory''. The emission reduction required to meet the 15 percent rate-of-progress requirement equals the sum of 15 percent of the adjusted inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996, plus reductions that resulted from corrections to the I/M or VOC RACT rules that were required to be in place before 1990. Table 1 summarizes the calculations for the seven-county Pittsburgh nonattainment area's VOC target level.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS [1] FOR THE PITTSBURGH NONATTAINMENT AREA'S 15% PLAN (TONS/DAY)

1990 Base Year Inventory	402.20
Adjustments for FMVCP/RVP (pre-1990 program)	28.70
1990 Adjusted Base Year Inventory	373.50
15% Reduction Requirement	56.03
RACT ''fix-ups''	0.0
FMVCP & RVP Reductions	8.70
Required Reduction (w/o growth)	84.73
1990 Baseline Emissions	402.20
Required Reductions (w/o growth)	−84.73
1996 Target Level	317.47
1990–1996 Emissions Growth	−20.51
Required Reductions (w/o growth)	84.73
Total Required Reduction	64.22
Total Reduction Claimed by Pennsylvania	67.48

[1] Emission figures presented here are from the March 27, 1996 submittal. These figures will likely change once Pennsylvania makes the corrections to the plan to reconcile inventory inconsistencies, etc.

Control Strategies in the 15% Plan:

The specific measures adopted (either through state or federal rules) for the Pittsburgh area are addressed, in detail, in the Commonwealth's 15% plan. The following is a brief description of each control measure that Pennsylvania has claimed credit for in the submitted 15% plan, as well as the results of EPA's review of the use of that strategy towards the Clean Air Act rate-of-progress requirement.

Creditable Emission Control Strategies

The control measures described below are creditable towards the rate-of-progress requirements of the Act. However, the documentation provided by the Commonwealth with the March 22, 1996 submittal does not clearly show how the claimed emission reductions from the implementation of the benzene National Emission Standards for Hazardous Air Pollutants (NESHAP) were obtained and calculated. Pennsylvania has recently sent EPA additional material pertaining to the calculation of the NESHAP credit. This additional information has been placed in the docket for this rulemaking. If EPA determines that the additional material with the original submittal is adequate to document the NESHAP credit, EPA will state that Pennsylvania has met the condition that requires adequate documentation of the NESHAP credit. For the mobile source measures, which Pennsylvania estimates using a Post-Processor for Air Quality (PPAQ) computer model, limited documentation was provided. The PPAQ model uses MOBILE modeling information as input, and determines total reductions for mobile source control strategies. The Commonwealth recently provided some sample calculations used in this modeling, but no detailed documentation of the MOBILE runs. However, as mentioned earlier, EPA has no reason to believe that Pennsylvania's methodology is flawed. Therefore, EPA is proposing to approve the claimed mobile emission reductions.

As described below, EPA cannot fully approve the reductions from the benzene NESHAP measure without additional documentation to verify the emissions estimates. As mentioned above, the documentation recently submitted by the Commonwealth and placed in the docket for this rulemaking may address this issue. For further details regarding EPA's review of the Commonwealth's control measures, please refer to the TSD for this action.

Benzene NESHAP

EPA promulgated the benzene NESHAP (40 CFR part 61, subpart L, National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants) on September 19, 1991. The coke oven battery NESHAP (40 CFR part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories and for Coke Oven Batteries) was promulgated on October 27, 1993. The rule regulates the emissions from new and existing coke oven batteries. The benzene NESHAPs are expected to produce high emission

reductions. However, EPA is unable to fully verify the 35.0 tons/day credit estimate claimed by the Commonwealth for this program, due to a lack of detail regarding the methodology used to quantify the benzene NESHAP emission reductions and inconsistencies with the emission inventory figures for sources where this credit is being claimed for the 15% plan. Therefore, while it is not unlikely that a 35 ton/day credit from these requirements, Pennsylvania must provide the documentation that supports it. As stated earlier, Pennsylvania has recently provided some additional information regarding this calculation that may clarify how the credits were calculated.

Architectural and Industrial Maintenance (AIM) Coating

EPA is in the process of adopting a national rule to control VOC emissions from solvent evaporation through reformulation of coatings used in architectural and industrial maintenance coatings, such as building and bridge paints, etc. This is a national rule that EPA proposed on June 25, 1995 (61 FR 32729), which expected compliance with the coating requirements by April 1997. Subsequently, EPA has been sued over this proposed national rule and has negotiated a compliance date of no earlier than January 1, 1998. VOC emissions emanate from the evaporation of solvents used in the coating process. In a memorandum dated March 22, 1995 (''Credit for the 15% Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule''), EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. In this memorandum, EPA stated that although the emission reductions are not expected to occur until April 1997, states will be allowed to use the expected emission reduction credit from this measure in their 15% plans. EPA believes that even though the compliance date has been pushed to January 1, 1998, the emission reduction from the national AIM rule are creditable in state 15% plans.

Use of emissions reductions from EPA's expected national rule is acceptable towards the 15% plan target. Pennsylvania claims a 20% reduction, or 5.0 tons/day (1996 uncontrolled emissions x 20% emission reduction) from their 1996 projected uncontrolled AIM emissions. Since the 1996 uncontrolled emissions are 20.83 tons/day, a 20% emission reduction is 4.16 tons/day. Therefore, there appears to be a discrepancy in the calculated emission reduction expected from the implementation of this national rule. Pennsylvania must resolve this discrepancy and determine the proper emission credit from this national rule.

Treatment Storage and Disposal Facilities (TSDFs)

TSDFs are private facilities that manage dilute wastewater, organic/inorganic sludges, and organic/inorganic solids. Waste disposal can be done by various means including: incineration, treatment, or underground injection or landfilling. EPA promulgated a national rule on June 21, 1990 for the control of TSDF emissions (55 FR 25454). Pennsylvania claims an expected VOC reduction of 9.59 tons/day from this national rule in one part of the 15% plan submittal; although in the narrative description of the TSDF credit, Pennsylvania claims 10.0 tons per day (TPD) credit. Using the figures provided by Pennsylvania, the expected emission reduction from this measure is calculated using the 12.75 TPD projected 1996 emissions and multiplying this by the control efficiency (94%) and rule effectiveness (80%), resulting in an emission credit of 9.59 TPD. EPA believes that the creditable emissions from this control measure, given the inventory information provided by Pennsylvania, is 9.59 TPD.

Consumer/Commercial Products National Rule

Section 183(e) of the Clean Air Act required EPA to conduct a study of VOC emissions from consumer and commercial products. EPA was then required to list (and eventually) to regulate those product categories that account for 80% of those consumer products emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule—including personal, household, and automotive products. EPA intends to issue a final rule covering these products in Spring 1997. The Commonwealth claims a 20% reduction from the consumer products portion of their 1996 uncontrolled inventory, or a 4.0 tons/day reduction. Using the amended emission inventory figures provided by DEP on October 7, 1996, the actual emission credit available is 5.06 TPD. This is a creditable emission reduction for the Pittsburgh 15% plan.

Tier I Federal Motor Vehicle Control Program

EPA promulgated a national rule establishing ''new car'' standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Act was amended in 1990, the resulting emission reductions are creditable toward the 15% reduction goal. The EPA agrees with the Commonwealth's projected emission reductions. Due to the three-year phase-in period for this program, and the associated benefits stemming from fleet turnover, the reductions prior to 1996 are somewhat limited. Pennsylvania claimed a reduction of 6.0 tons/day from this post-1990 Federal Motor Vehicle Control Program. EPA accepts this estimate of expected emission reductions from this program.

Inspection and Maintenance Program

Section 182(b)(1) of the CAA requires that States containing ozone nonattainment areas classified as Moderate or above prepare State Implementation Plans (SIPs) that provide for a 15% VOC emissions reduction by November 15, 1996. Most of the 15% SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most States experienced substantial difficulties with these enhanced I/M programs, only a few States are currently actually testing cars using their original enhanced I/M protocols.

On September 18, 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs (60 FR 48029). Subsequently, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides States with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program precludes States that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many States upon enhanced I/M programs to help achieve the 15% VOC emissions reduction required under CAA section 182(b)(1) of the Act, and the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA believes that it is no longer possible for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996. Under these

circumstances, disapproval of the 15% SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow States that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15% plans, even though the emissions reductions from the I/M program will occur after November 15, 1996.

Specifically, EPA will propose approval of 15% SIPs if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15% SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable. To make this ''as soon as practicable'' determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions. However, as a minimum requirement, EPA will approve a 15% SIP only if it achieves the reductions from I/M needed to reach the 15% level by no later than November 15, 1999.

In the case of Pittsburgh, the Pennsylvania has submitted a 15% SIP that would achieve the amount of reductions needed from I/M by late 1998. The Pennsylvania I/M program is an annual program with implementation required to begin no later than November 15, 1997. Pennsylvania has submitted a 15% SIP for Pittsburgh that includes control measures that are creditable toward the 15% plan. Emission reductions in the Pittsburgh nonattainment area resulting from the implementation of the benzene NESHAP and from implementation of FMVCP—Tier I have already occurred. EPA believes that this SIP contains all measures, including I/M, that achieves the required reductions as soon as practicable for this nonattainment area.

EPA has examined other potentially available SIP measures to determine if they are practicable for the Pittsburgh moderate ozone nonattainment area and if they would meaningfully accelerate the date by which the area reaches the 15% level of reductions. EPA proposes to determine that the SIP contains the appropriate measures. For the Pittsburgh area, reformulated gasoline (RFG) and Stage II vapor recovery, are regulatory options that, theoretically, might be implemented prior to 1998. For RFG, since the Commonwealth has not petitioned EPA to opt back into the program, and since the section 211(k)(6)(A) of the Act provides a one year implementation timeframe for opt-ins of the RFG program, EPA believes the Commonwealth is meeting 15% as soon as practicably possible. For Stage II, the Commonwealth currently has a compliance moratorium in the Pittsburgh nonattainment area on their existing Stage II regulation (Pennsylvania Code Title 25, Subpart C, Article III, Chapter 129.82). Even if the Commonwealth were to choose to lift their moratorium, the emission reductions from the implementation of Stage II are unlikely to occur prior to 1998 since the regulated community will have to be given some time to make the capital investments, purchase and install the equipment to implement this program.

The Commonwealth has recently concluded the Southwestern Pennsylvania Stakeholders Group process that will result in recommendations to the Governor of Pennsylvania as to the control measures that should be implemented in the Pittsburgh nonattainment area in order to reach attainment of the ozone national ambient air quality standard. The stakeholders final report and recommendation to the Governor is expected to be released soon. For the Pittsburgh 15% plan, the Commonwealth has chosen to implement the I/M program in the Pittsburgh nonattainment area, which is expected to produce a 13 ton per day emission reduction beginning in 1998. The details of this analysis are contained in the accompanying TSD.

SUMMARY OF CREDITABLE EMISSION REDUCTIONS FOR THE PITTSBURGH OZONE NONATTAINMENT AREA

[Tons/day]

Required Reduction for the Pittsburgh area	64.22
Creditable reductions:	
Benzene NESHAP [1]	35.00
FMVCP (Tier I)	6.00
Inspection and Maintenance Program [2]	5.00
AIM Coatings Rules	4.16
Consumer/Commercial Products	5.06
TSDF Controls	9.59
Total	64.81

[1] The emission reductions from this program have not been substantiated by Pennsylvania.

[2] Partial credit from this program is taken in the 15% plan with the remaining credit taken in the contingency plan, which is not the subject of this rulemaking notice.

III. Proposed Action

The EPA has evaluated this submittal for consistency with the Act, applicable EPA regulations, and EPA policy. On its face, this RFP plan for Pittsburgh achieves the required 15% VOC emission reduction to meet the requirements of section 182(b)(1) of the Act. While all the emissions inventory figures have not been substantiated and the amount of creditable reductions for certain control measures has not been adequately documented to qualify for Clean Air Act approval, EPA believes that the submittal for Pittsburgh contains enough of the required structure to warrant conditional approval.

In light of the above deficiencies, EPA is proposing to conditionally approve this SIP revision, which includes the 15% plan and the 1990 emission inventory, under section 110(k)(4) of the Act. The submittal does not fully satisfy the requirements of section 182(b)(1) of the Act regarding the 15 percent reasonable further progress plan or section 182(a)(1) of the Act regarding emission inventories.

Today's notice of proposed rulemaking begins a 30-day clock for the Commonwealth to make a commitment to EPA to correct the major elements of the SIP that EPA considers deficient, by date certain, within 1 year of conditional approval. These elements are described as follows. In order to make this 15% plan approvable, Pennsylvania must fulfill the following conditions by no later than 12 months after EPA's final conditional approval:

(1) Reconcile the 1990 VOC point source emissions inventory with all the appendices, tables and narratives throughout the 15% document, wherever emissions are cited;

(2) After establishing consistent figures as described in (1) above, provide sample calculations for point source 1990, 1990 adjusted, and 1996 projected emissions showing how each of these figures were obtained (The level of documentation must be equivalent to that required for approval of a 1990 emissions inventory as described in the emission inventory documents at the beginning of this technical support document.);

(3) Provide additional documentation for the emissions for those sources categories where credit is claimed (NESHAP);

(4) Provide a written commitment to remodel the I/M program as implemented in the Pittsburgh nonattainment area in accordance with EPA guidance (December 23, 1996 memo entitled ''Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance), submit the remodeling to EPA; and

(5) Fulfill the conditions listed in the I/M SIP rulemaking notice (proposed October 3, 1996, 61 FR 51638) and summarized here as: (a) Geographic program coverage and program start dates, (b) ongoing mass-based transient program evaluation, (c) test types, test procedures and emission standards, (d) test equipment specifications, and (e) motorist compliance enforcement demonstration.

After making all the necessary corrections to establish accuracy and consistency in the emission inventory, baseline and projected figures, and the creditability of chosen control measures, Pennsylvania must demonstrate that 15% emission reduction is obtained in the Pittsburgh nonattainment area as required by section 182(b)(1) of the Act and in accordance with EPA's policies and guidance issued pursuant to section 182(b)(1). Resolution of the issues pertaining to banked emissions and projected growth is not a condition of this 15% plan approval. Satisfactory resolution of these issues will be required for any approval of subsequent air quality plans. If the Commonwealth does not make the required written commitment to EPA within 30 days, EPA is today proposing in the alternative that this SIP revision be disapproved.

EPA and Pennsylvania have worked closely since the March 1996 submittal in order to resolve all the issues necessary to fully approve the Pittburgh 15% plan. Pennsylvania is aware of the above deficiencies and is currently working to amend the Pittsburgh 15% plan to address the above-named deficiencies. Some of these amendments have been sent to EPA and others remain to be sent. While some of these deficiencies currently remain, EPA believes that all issues will be resolved no later than 12 months after EPA's final conditional approval of the Pittsburgh 15% plan. While this rulemaking was being prepared, Pennsylvania has provided some additional information pertaining to their March 1996 submittal. This additional information has been placed in the rulemaking docket and is available to the public. EPA will consider all information submitted as a supplement or amendment to the March 1996 submittal prior to any final rulemaking action. In addition, since Congress passed the National Highway Systems Designation Act of 1995, which amended federal I/M program requirements and granted states authority to revise their I/M programs, and Pennsylvania has utilized that authority to revise its I/M program, revision of the 15% plan to reflect the I/M program changes is expected. When the Commonwealth submits an amended 15% plan, EPA will review the whole Pittsburgh 15% plan and the Pittsburgh 1990 base year emissions inventory, including its amendments, for compliance with the requirements of the Clean Air Act. At that time, EPA will re-propose rulemaking action based on the merits of the original submittal and its amendments.

Nothing in today's action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This proposed conditional approval action for the Pennsylvania 15% plan and the 1990 VOC emission inventory for Pittsburgh has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

The Regional Administrator's decision to approve or disapprove the

SIP revision pertaining to the Pittsburgh ozone nonattainment area 15% plan and 1990 VOC emission inventory will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Dated: January 13, 1997.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 97–1493 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7206]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Madera County (Unincorporated Areas).	Fresno River	Just upstream of State Highway 41	None	*2,253
			Approximately 1,100 feet upstream of Road 426.	None	*2,262
		China Creek	Approximately 500 feet upstream of confluence with Fresno River.	None	*2,256
			Approximately 4,160 feet upstream of Road 425–B.	None	*2,363
		Oak Creek	At confluence with Fresno River	None	*2,262

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Just upstream of Road 428	None	*2,342
		Oak Creek Tributary	Approximately 500 feet upstream of confluence with Oak Creek.	None	*2,310
			Approximately 1,100 feet upstream of confluence with Oak Creek.	None	*2,315
Maps are available for inspection at the Department of Engineering and General Service, 135 West Yosemite Avenue, Madera, California.					
Send comments to The Honorable Al Ginsburg, Chairman, Madera County Board of Commissioners, County Court House, 209 West Yosemite Avenue, Madera, California 93637.					
	Modoc County (Unincorporated Areas).	Bidwell Creek	Approximately 2,300 feet downstream of Fee Street.	None	*4,497
			Approximately 1,800 feet upstream of North Street.	None	*4,595
Maps are available for inspection at the Modoc County Planning Department, 202 West Fourth Street, Alturas, California.					
Send comments to Mr. Mike Maxwell, Director of Administration, Modoc County, 120 South Main Street, Alturas, California 96101.					
	Santa Paula (City) and Ventura County (Unincorporated Areas).	Santa Paula Creek	At Southern Pacific Railroad (SPRR)	None	*319
			Approximately 4,500 feet upstream of SPRR.	None	*400
			Approximately 3,500 feet downstream of Rafferty Road.	*536	*536
		Profile Base Line No. 1.	Approximately 550 feet downstream of Say Road.	*404	None
			Approximately 2,450 feet upstream of Hawthorne Street.	*460	None
		Profile Base Line	At Outer Drive No. 2	*240	*240
			Approximately 150 feet downstream of Seventh Street.	*252	*248
			Just downstream of 12th Street	*270	*267
			At Garcia Street	*275	*#3
		Profile Base Line No. 3.	Approximately 400 feet downstream of Orchard Street.	*340	None
			Approximately 200 feet upstream of Gatewood Lane.	*499	None
Maps are available for inspection at 200 South Tenth, Santa Paula, California.					
Send comments to The Honorable Alfonso Urias, Mayor, City of Santa Paula, P.O. Box 569, Santa Paula, California 93061.					
Maps are available for inspection at 800 South Victoria Avenue, Ventura, California.					
Send comments to The Honorable Maggie Kildee, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.					
Kansas	Finney County (Unincorporated Areas).	Arkansas River	Approximately 11,100 feet downstream of confluence of Ditch No. 1.	None	*2,799
			Approximately 5,000 feet upstream of Main Street.	None	*2,890
Maps are available for inspection at the County Courthouse, 425 North Eighth Street, Garden City, Kansas.					
Send comments to The Honorable Gary Dick, Chairman, Finney County Board of Commissioners, P.O. Box M, Garden City, Kansas 67846–0450.					
	Garden City (City) Finney County.	Arkansas River	Approximately 3,700 feet downstream of U.S. Highway 83.	*2,832	*2,829
			Approximately 6,000 feet upstream of U.S. Highway 83.	None	*2,841
Maps are available for inspection at the City Administration Center, 301 North Eighth Street, Garden City, Kansas.					
Send comments to The Honorable Tim Cruz, Mayor, City of Garden City, 301 North Eighth Street, Garden City, Kansas 67846.					
	Holcomb (City) Finney County.	Arkansas River	At downstream corporate limit (adjacent to Nunn Drive).	None	*2,873
			At upstream corporate limit	None	*2,885
Maps are available for inspection at City Hall, 200 North Lynch, Holcomb, Kansas.					
Send comments to The Honorable Janelle Robins-Gaede, Mayor, City of Holcomb, P.O. Box 69, Holcomb, Kansas 67851.					
	Lyons (City) Rice County.	Salt Creek	Approximately 3,000 feet downstream of American Road.	None	*1,654
			At Second Street	None	*1,686

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Surprise Creek	Approximately 200 feet downstream of American Road.	None	*1,662
			At Second Street	None	*1,686
Maps are available for inspection at City Hall, 217 East Avenue South, Lyons, Kansas.					
Send comments to The Honorable Charles Nichols, Mayor, City of Lyons, 217 East Avenue South, Lyons, Kansas 67554.					
	Rice County (Unincorporated Areas).	Arkansas River	Approximately 7,500 feet downstream of State Highway 96.	None	*1,627
			Approximately 14,000 feet upstream of State Highway 96.	None	*1,648
		Surprise Creek	Approximately 600 feet downstream of American Road.	None	*1,662
			Just downstream of Taylor Street	None	*1,672
		Salt Creek	Approximately 3,000 feet downstream of American Road.	None	*1,655
			Just downstream of American Road	None	*1,666
Maps are available for inspection at the County Courthouse, 101 West Commercial, Lyons, Kansas.					
Send comments to The Honorable Frank Dill, Chairman, Rice County Board of Commissioners, 101 West Commercial, Lyons, Kansas 67554.					
	Sterling (City) Rice County.	Arkansas River	At Highway 96	None	*1,637
			Approximately 7,000 feet upstream of Highway 96.	*1,640	*1,642
Maps are available for inspection at City Hall, 114 North Broadway, Sterling, Kansas.					
Send comments to The Honorable Tom Simpson, Mayor, City of Sterling, 114 North Broadway, Sterling, Kansas 67579.					
Nebraska	Bayard (City) Morrill County.	Wildhorse Drain	Just upstream of Main Street	None	*3,755
			Just downstream of Eighth Street	None	*3,762
Maps are available for inspection at City Hall, 445 Main Street, Bayard, Nebraska.					
Send comments to The Honorable Vern Huck, Mayor, City of Bayard, 445 Main Street, Bayard, Nebraska 69334.					
Oklahoma	Madill (City) and Marshall County (Unincorporated Areas).	Glasses Creek	Approximately 4,000 feet downstream of Burlington Northern Railroad.	None	*732
			Approximately 60 feet upstream of Burlington Northern Railroad.	None	*750
			Just upstream of U.S. Highway 70	None	*757
		Whiskey Creek	Approximately 1,200 feet downstream of Burlington Northern Railroad.	None	*761
			Just upstream of State Route 99	None	*792
		Whiskey Creek Tributary.	Approximately 70 feet downstream of Park Road.	None	*785
			Just upstream of Park Road	None	*791
Maps are available for inspection at the City of Madill City Hall, 201 East Overton Street, Madill, Oklahoma.					
Send comments to The Honorable Donney Raley, Mayor, City of Madill, 201 East Overton Street, Madill, Oklahoma 73446.					
Maps are available for inspection at the Marshall County Courthouse, Madill, Oklahoma.					
Send comments to The Honorable Jim Kusler, Chairman, Marshall County Board of Commissioners, County Courthouse, Courthouse Square, Room 106, Madill, Oklahoma 73446.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 14, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–1504 Filed 1–21–97; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD39

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Endangered Status for Sixteen Plants From the Northern Channel Islands of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period for 16 plant species that have been proposed as endangered—*Arabis hoffmannii* (Hoffmann's rock-cress), *Arctostaphylos confertiflora* (Santa Rosa Island manzanita), *Berberis pinnata* ssp. *insularis* (island barberry), *Castilleja mollis* (soft-leaved paintbrush), *Dudleya blochmaniae* ssp. *insularis* (Santa Rosa Island dudleya), *Dudleya* sp. nov. ''East Point'' (munchkin dudleya), *Dudleya nesiotica* (Santa Cruz Island dudleya), *Galium buxifolium* (island bedstraw), *Gilia tenuiflora* ssp. *hoffmannii* (Hoffmann's slender-flowered gilia), *Helianthemum greenei* (island rush-rose), *Heuchera maxima* (island alumroot), *Malacothamnus fasciculatus* ssp. *nesioticus* (Santa Cruz Island bushmallow), *Malacothrix indecora* (Santa Cruz Island malacothrix), *Malacothrix squalida* (island malacothrix), *Phacelia insularis* ssp. *insularis* (island phacelia), and *Thysanocarpus conchuliferus* (Santa Cruz Island fringepod). The comment period has been reopened to receive public comments on new information on the conservation measures proposed by the National Park Service for those proposed endangered plant species on Santa Rosa Island since the close of the original comment period on October 9, 1995.

DATES: The public comment period, which originally closed on October 9, 1995, now closes February 21, 1997.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, U.S. Fish and Wildlife Service, at the address listed above; telephone 805–644–1766, facsimile 805–644–3958.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1995, the Service published in the Federal Register (60 FR 37993) a proposal to list 16 plants as endangered species pursuant to the Endangered Species Act of 1973, as amended (Act), and requested public comment. The 16 plants are restricted primarily to the northern Channel Islands (Anacapa, Santa Cruz, Santa Rosa, and San Miguel) of California. The Service received comments until the close of the original comment period on October 9, 1995. Since that time, the National Park Service has prepared a Resource Management Plan and Draft Environmental Impact Statement to address the conservation needs for the proposed endangered plants on Santa Rosa Island, which is within the boundaries of the Channel Islands National Park.

Since the publication of the proposed rule, new information has been made available to the Service that may affect the status of one or more of the proposed species. In 1996, *Arabis hoffmannii,* last seen on the Island in the 1930's, was discovered on a small protected ledge in Lobo Canyon on Santa Rosa Island. A small population of *Malacothrix indecora* was discovered on Santa Rosa Island, previously only known from Santa Cruz and San Miguel Islands. A new population of the *Heuchera maxima* has been discovered in Lobo Canyon on Santa Rosa Island. The editor of *Madroño* (Journal of the California Botanical Society) has provisionally accepted the manuscript for the description of the ''new'' dudleya (munchkin dudleya) species from Santa Rosa Island to be published as *Dudleya gnoma.* The National Park Service has constructed exclosure fencing around the entire population of this dudleya and a portion of the largest population of *Gilia tenuiflora* ssp. *hoffmannii.* In compliance with the terms and conditions of a section 7 consultation for the western snowy plover, the park constructed an electric fence to keep cattle off of the beaches that include the entire population of *Dudleya blochmaniae* ssp. *insularis.* In spite of active surveys, there have been no observations of *Thysanocarpus conchuliferus* for 2 years.

Public Comments Solicited

Due to the changes in resource management plans and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. The Service is requesting comments from the public on the measures presented by the National Park Service to protect the proposed endangered plant species on Santa Rosa Island and the new information on distribution and status of the proposed species. All comments received by the date specified above will be considered in the Service's final decision.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 13, 1997.

H. Dale Hall,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 97–1496 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 14
Wednesday, January 22, 1997

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

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) intent to request extensions for and revisions to a currently approved collection of crop and land use information in support of programs administered by FSA as authorized by the Agricultural Adjustment Act of 1938, as amended by the Food Security Act of 1985, and as amended by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before March 24, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David M. Nix, Agricultural Program Specialist, Compliance and Production Adjustment Division, USDA, FSA, STOP 0517, P.O. Box 2415, Washington, D.C. 20250–2415, (202) 690–4091.

SUPPLEMENTARY INFORMATION:

Title: Report of Acreage.

OMB Number: 0560–0004.

Expiration Date: June 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Crop and acreage information is collected from producers to determine eligibility for benefits under a variety of programs administered by FSA. Crop and acreage information is collected once for each crop during established acreage reporting cycles. This single collection supports all FSA requirements. FSA's approach to collecting this information is to collect only the information needed to support program eligibility and compliance requirements. The majority of the information collected is used to support multiple program requirements such as the Noninsured Crop Disaster Assistance Program (NAP), Conservation Reserve Program (CRP), price support loan programs, and the Production Flexibility Contract Program in Title 1 of the 1996 Act. The 1996 Act changed the requirements of previously approved information collections. Specifically, FSA will require acreage data collection for farms with Production Flexibility Contracts only if a fruit or vegetable was planted for harvest. FSA does not require data to be submitted when producers did not plant fruits and vegetables. As a result of the 1996 Act, CCC provided instructions to FSA county offices on the information collection requirements for those crops that need verification of compliance, loan eligibility, or crop loss. As directed by CCC, FSA provided producers information through news releases, newsletters, radio, television, and public meetings on the information required to maintain eligibility for: CRP payments; marketing assistance loans; price support loans; and loan deficiency payments (LDP); and NAP benefits.

In contrast, prior to the enactment of the 1996 Act, FSA required producers to report acreage information for all program crops. The 1995 acreage data collected from producers for all programs used the farm number, tract number, and optional field number to establish the location of the crop. The crop information collected consisted of the crop and variety (if applicable), irrigation practice, intended use of the crop, crop status, land use code, and planting pattern, for applicable crops. Crop acreage, producer identification and producer's percent share in the crop were collected to calculate payments based on acreage. Additional information was also collected for those crops that were eligible for benefits under NAP in those cases where the information was not otherwise collected for another purpose. Consequently, crop and acreage information needed to support eligibility requirements for NAP were not included in the previous OMB approval for collecting this information. These requirements are being included in this revised information collection package.

With respect to loan and LDP eligibility for wheat, corn, grain sorghum, rice, upland cotton, oats, barley, soybeans, ELS cotton, and oilseeds, FSA only requires acreage information from those producers requesting such benefits.

With respect to CRP, the data collected is the acreage enrolled or requested to be enrolled for new CRP contracts. The data collected is utilized in verification that the farm has correctly maintained the CRP acreage and producer identification and percent share is correct.

Acreage report data is not only used for verifying compliance with program provisions in the field offices. Historical and projected plantings are also used for the following:

(1) Supply and demand projections released in the monthly World Agriculture Supply and Demand Estimates publication, (2) the semi-annual long-term supply and demand forecasts released in the President's Budget and Mid-session Review, (3) analyzing supply, demand, outlay, and income impacts of options for implementing CRP provisions, (4) analyzing legislative proposals.

The acreage report data obtained at the farm level is used to examine the planting of crops on individual farms and how these plantings change in response to prices and farm program provisions. The data is also used to forecast plantings on farms with expiring CRP contracts.

The Agency cost estimates are $2.44/ per acreage report for data collection. Identification of crops on acreage reports allows FSA to use 35mm slides for aerial compliance to determine crop acreage. Failure to obtain acreage reports would raise the cost of compliance per farm because FSA would require additional field visits to identify crops.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Individual producers.

Estimated Number of Respondents: 1,239,500.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 309,875 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to David M. Nix, Agricultural Program Specialist, USDA, Farm Service Agency, Compliance and Production Adjustment Division, STOP 0517, PO Box 2415, Washington, D.C. 20250–2415, (202) 690–4091.

Signed at Washington, DC, on January 9, 1997.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–1462 Filed 1–21–97; 8:45 am]

BILLING CODE 3410–05–P

Food and Consumer Service

The Emergency Food Assistance Program; Availability of Commodities for Fiscal Year 1997

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing food assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 1997. The commodities made available under this notice shall, at the discretion of the State, be distributed to organizations for use in preparing meals, and/or for distribution to households for home consumption.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Program Administration Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities determined to be available for donation by the Secretary of Agriculture under the authority of section 416 of the Agricultural Act of 1949, Public Law 81–439 (hereinafter referred to as section 416) and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, Public Law 74–320 (hereinafter referred to as section 32), which have been determined by the Secretary to be in excess of the quantities needed to carry out other programs, including CCC sales obligations. The types of commodities available under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, and fruits. Donations of surplus commodities were initiated in 1981 as part of the Department's efforts to reduce stockpiles of government-owned commodities, such as cheese, flour, butter, and cornmeal, which had been acquired under section 416. These donations responded to concern over the costs to taxpayers of storing large quantities of foods, while at the same time there were persons in need of food assistance. The authority to donate surplus commodities for distribution through TEFAP was codified in Title II of Public Law 98–8, the Emergency Food Assistance Act (EFAA) of 1983 (7 U.S.C. 612c note).

In recent years, the supply of surplus commodities has been drastically reduced. These reductions are the result of changes in the commodity loan programs which have brought supply and demand into better balance, and accelerated donations and sales. As a result, the Department anticipates that there will not be sufficient quantities of commodities available under section 416 to support their donation for distribution through TEFAP in FY 1997. However, the Secretary of Agriculture anticipates that sufficient quantities of dried figs, dried prunes, canned salmon and frozen ground beef will be purchased under section 32 to warrant their donation for distribution through TEFAP during FY 1997. While sufficient quantities of these commodities may be available in FY 1997 to support such donations, the Department would like to point out that commodity purchases under section 32 are based on changing agricultural market conditions; therefore, such commodities may not be available for donation in FY 1998.

Purchased Commodities

Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Public Law 100–435, which added sections 213 and 214 to the EFAA. Those sections required the Secretary to purchase commodities for distribution to States, in addition to those surplus commodities which otherwise might be provided to States for distribution under TEFAP. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (hereinafter referred to as ''the Personal Responsibility Act''), signed by President Clinton on August 22, 1996, amended the Food Stamp Act of 1977 to require the Secretary to use $100 million from the funds made available to carry out the Food Stamp Act of 1977 for each of FYs 1997 through 2002 to purchase a variety of nutritious and useful commodities and distribute the commodities to States for distribution through TEFAP. The Act also amends the EFAA to delete the authorization of appropriations for food purchases under section 214. However, in the Agriculture, Rural Development, Food and Drug Administration and Related Appropriations Act, 1997 (P.L. 104–180), Congress appropriated funds that can be used for TEFAP commodity purchases in addition to the $100 million earmarked by the Personal Responsibility Act. The Department has determined that up to $45 million of the funds appropriated and available to TEFAP under P.L. 104–180 will be used for TEFAP commodity purchases, bringing the maximum amount of funds potentially available to buy TEFAP commodities to $145 million.

For FY 1997, the Department anticipates purchasing for distribution through TEFAP the following commodities: peanut butter, vegetable oil, rice, macaroni, spaghetti, grits, fortified cereal, roasted peanuts, dehydrated potatoes, dry bagged beans and dried egg mix; canned apple, grapefruit, orange and tomato juices, vegetarian beans, carrots, green beans, tomatoes, tomato sauce, corn, peaches, applesauce, pineapple, pork, salmon, beef, and chicken; and frozen ground beef and turkey, cut-up chicken, and turkey roasts. The amounts of each item purchased will depend on the prices USDA must pay, as well as the quantity of each item requested by the States. Changes in agricultural market

conditions may result in the availability of additional types of commodities or the non-availability of one or more types listed above. Once USDA has made the commodities available to States, State officials will be responsible for determining how to allocate the State's ''fair share'' to eligible organizations. States have full discretion in determining the amount of commodities that will be made available to organizations for distribution to needy households for use in home-prepared meals or for providing prepared meals to the needy at congregate feeding sites. In accordance with section 871 of the Personal Responsibility Act, which amended section 202A of the EFAA, the Department does, however, encourage States to establish a State advisory board comprised of public and private entities with an interest in the distribution of TEFAP commodities. Such advisory boards can provide valuable input on how commodities should be allocated among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States to use their resources in the most efficient and effective manner possible.

In section 110 of the Hunger Prevention Act, Congress established the Soup Kitchens/Food Banks Program. Under the provisions of section 110, the Secretary was required to purchase and distribute commodities to States for use by soup kitchens and food banks. Section 873 of the Personal Responsibility Act deletes section 110 of the Hunger Prevention Act and provides for the absorption of the Soup Kitchens/Food Banks Program into TEFAP. Therefore, commodities will not be purchased for distribution under the Soup Kitchens/Food Banks Program in FY 1997. Organizations that had been eligible for SK/FB will, however, be eligible to receive commodities under the expanded TEFAP.

Dated: January 13, 1997.

William E. Ludwig,

Administrator.

[FR Doc. 97–1432 Filed 1–21–97; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Permitting Appalachian Mountain Club (AMC) Huts and Pinkham Notch Visitor Center (PNVC) in the White Mountain National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY:

Proposed Federal Action.—The proposed Federal action is to authorize AMC under a 30-year term special use permit (38 Stat., 11.01, as amended) to continue to occupy National Forest System (NFS) land in order to operate, maintain, and reconstruct its facilities to provide public recreation and information services as defined in the White Mountain National Forest Land and Resource Management Plan (Forest Plan) and to provide other services as outlined in the AMC's Master Development Plan (MDP), consistent with the White Mountain National Forest Land and Resource Management Plan (Forest Plan) and Special Use Permit Authority.

Based on Forest Plan goals, the primary purposes of the Huts and Pinkham Notch Visitor Center (PNVC) are to provide recreation opportunities and information services. Other uses proposed in AMC's master plan are not essential to these two purposes; however, they are not in conflict. Therefore, uses at the huts within the proposed action include: Food and lodging (seasonally); information services; education programs; support for research, trails, and search and rescue; and retail sales. Uses at PNVC include: Food and lodging; visitor information services; educational programs; administration of programs; public meeting space; a support center for search and rescue; employee housing; visitor center store; and other public facilities (parking, showers). The specific activities within the authorized uses will be reviewed through the annual Operating Plan, and subject to environmental review as necessary. For example, we propose to authorize Pinkham Notch Visitor Center as an administrative center for research. Specific research proposals will be addressed on a case by case basis.

The facilities on National Forest System lands are Pinkham Notch Visitor Center, Greenleaf Hut, Galehead Hut, Zealand Hut, Mizpah Hut, Lakes of the Clouds Hut, Carter Notch Hut, and the area around Madison Spring Hut (the Hut itself is on one acre of private land). There is no proposed change to the overnight capacity at PNVC or the Huts. There are also no proposed changes to the facilities, except for the reconstruction of Galehead Hut and the PNVC parking lot.

The proposal to reconstruction Galehead Hut includes adding 430 square feet to the existing footprint and rotating the Hut southward 33 degrees. In addition, the septic system (gray water and grease trap) would be moved to the north of the Hut away from the viewshed of the Pemigewasset Wilderness.

The proposed redesign and reconstruction of the parking lot at PNVC will occur within the existing footprint. The proposal includes: Paving and marking the lot to maximize utilization of available parking space; improving vegetation barriers between the lot and highway; parking and access for persons with disabilities; a minimum 3-foot grass perimeter for snow loading and filtering runoff; and recycling pavement where removed. The existing parking lot lighting will be retained.

This proposed action includes monitoring impacts of solid and sanitary waste disposal on water quality, and the effects of soil compaction on surrounding vegetation within the permitted area of the huts.

Responsible Official.—The responsible official is Donna Hepp, Forest Supervisor, White Mountain National Forest, 719 Main Street, Laconia, New Hampshire.

Decision to be Made.—The decision is whether or not to authorize AMC under a 30 year term special use permit to continue to occupy National Forest System (NFS) land in order to operate, maintain, and reconstruct its facilities to provide public recreation and information services as defined in the White Mountain National Forest Land and Resource Management Plan (Forest Plan) and to provide other services as outlined in the AMC's MDP, consistent with the White Mountain National Forest Land and Resource Management Plan (Forest Plan) and Special Use Permit Authority. The decision includes the Forest Supervisor's approval of site specific mitigation and/or monitoring requirements.

Issuing authority—The issuing authority will be a term special use permit under the Term Permit Act of March 4, 1915 (38 Stat., 11.01, as amended). The length of permit depends on the level of investment on National Forest System lands. The value of PNVC and the Huts indicates a term of 30 years.

Alternatives—In preparing the environmental impact statement the Forest Service will consider a reasonable range of alternatives to the proposed action, including a ''no action'' alternative. The no action alternative will be the continuation of operations under the terms and conditions of the permit issued to the AMC in 1965, as amended up through October 29, 1995. The no action alternative is the baseline against which the effects of other alternatives are

compared, and represents the present course until the action is changed.

Response to AMC's proposed Master Development Plan demonstrated interest by some people to consider removal of the huts from the alpine zone. This, as well as other alternatives based on public comment, may be analyzed. Suggestions on alternatives that meet the purpose and need for action are welcome.

Issues—Tentative physical, biological and socio-economic issues that have been identified related specifically to the AMC Hut and PNVC proposal are: (1) Impacts on the alpine zone; (2) impacts on Threatened and Endangered (T&E) species; (3) impacts on native plants and animals; (4) impacts on water resources; (5) impacts on soil; (6) impacts on the quality of the recreation experience; (7) impacts on the amount of recreation use at the Huts and PNVC; (8) maintenance of recreation opportunities represented by these facilities as part of the implementation of the Forest Plan; (9) impacts on the visual resource; (10) impacts on Wilderness; (11) impacts on Appalachian Trail users; (12) impacts on the quality of life in local communities and (13) impacts on the economy. Other comments were received during the review of the Master Development Plan. Many comments related to administration of the permit, concerns about community relations, advocacy, etc. Since these are not environmental issues they will not be resolved in the EIS. They will be considered through permit administration and other measures.

Assisting Agencies—The U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service, the New Hampshire Department of Resources and Economic Development, Natural Heritage Inventory and New Hampshire Department of Fish and Game have been asked to provide assistance.

For further information—Direct questions about the proposed action and environmental impact statement to AMC Permit Project Coordinator, White Mountain National Forest, 719 Main Street, Laconia, New Hampshire 03246, ATT: R. Oreskes, or phone Rebecca Oreskes at 603–466–2713 Ext 212.

SCOPING: The initial scoping period begins January 21, 1997 and ends March 7, 1997. The DEIS is expected to be completed in the fall of 1997.

The Forest Service is inviting written comments and suggestions on the scope of the analysis. A scoping letter will be sent to interested and affected individuals and organizations. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision.

Public participation has been and will continue to be important throughout this process. Before this official scoping began the Forest Service asked for comment on AMC's proposed Master Development Plan. The Forest held three public listening sessions and received several thousand comments, letters, cards and phone calls on AMC's operation in the Forest. These comments are still valid and will be used in the scoping process and environmental analysis.

All the input received to date as well as the input from this scoping will be used as part of the formal scoping process which includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determining potential cooperating agencies and task assignments.

Submit additional written comments and suggestions concerning the scope of the analysis to AMC Permit Team, White Mountain National Forest, 719 Main St., Laconia, New Hampshire 03246. Comments beyond those already on hand must be received by March 7, 1997.

The second stage of formal public involvement is on the Draft Environmental Impact Statement (DEIS). The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in Fall 1997. At that time EPA will publish a notice of availability of the DEIS in the Federal Register. The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register.

SUPPLEMENTARY INFORMATION: The White Mountain National Forest will begin the process of Forest Plan revision in 1997 and plans to issue a Notice of Intent in 1998. To date we believe three Forest Plan level issues have been raised in the context of the AMC permit. We will carefully separate those comments applicable to the Forest Plan revision from those in the site specific analysis. These three issues are: (1) Appalachian Trail management, (2) the types of recreation use on public lands and (3) the intensity of recreation use on the Forest.

Appalachian Trail Management

PNVC and some of the Huts predate the Appalachian Trail and the Appalachian Trail was routed to take advantage of these existing facilities. There are two types of issues relating to the Appalachian Trail: (1) Forest Plan Standards and Guides and (2) the site specific effects on Appalachian Trail users. We will not address the first issue in this analysis since it relates to a larger Management Area issue than just the AMC Huts; nothing in the AMC Hut or PNVC permitting analysis will compromise the ability to resolve the greater Appalachian Trail/Forest Plan Standards and Guides issue. We will address the site specific Appalachian Trail experience in the EIS.

Types of Recreation Use on Public Lands

The current Forest Plan defines a mix of recreation uses. Neither our monitoring nor public comment has shown user conflicts relevant to the AMC permits that cannot be resolved on a site specific basis.

Intensity of Recreation Use

This concerns the level of recreation use on the Forest. This is a Forest-wide issue and will continue to be addressed in Forest planning. There are specific aspects of this issue which we will look at in this analysis. We will analyze the site specific direct, indirect, and cumulative effects of the Huts and PNVC and major access trails in the EIS.

In all cases the Land and Resource Management Plan takes primacy over special use permits. Changes in the Forest Land and Resource Management Plan may lead to changes to special use permits.

Importance of Timely Response

The Forest Service believes that, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also,

environmental objections that could be raised at the draft environmental impact stage that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by responding to the DEIS by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statements. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated or discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by the Fall of 1997. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal under 36 CFR part 217 and 36 CFR part 251.

Dated: January 14, 1997.

Donna Hepp,

Forest Supervisor.

[FR Doc. 97–1476 Filed 1–21–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Business and Professional Classification Report.

Form Number(s): B–625(97).

Agency Approval Number: 0607–0189.

Type of Request: Revision of a currently approved collection.

Burden: 9,101 hours.

Number of Respondents: 42,000.

Average Hours Per Response: 13 minutes.

Needs and Uses: The Bureau of the Census conducts the Business and Professional Classification Report to collect sales and other information from a sample redrawn every quarter of retail, wholesale, service, and unclassified business recently assigned Federal Employer Identification numbers (EIN). We are informed of the existence of these new businesses from lists provided by the Internal Revenue Service and the Social Security Administration. From the information we collect in this survey, we determine an appropriate measure of size, company organization and establishment information, taxable or tax-exempt status, wholesale inventories, type of operation, and assign a new or more refined kind-of-business classification. We use this information to include these businesses in our retail, wholesale, and service surveys. This keeps the sampling frames for our current business surveys up-to-date with the business universe. We plan to make the necessary revisions to the B–625 form to enable us to assign kind-of-business codes based on the new North American Industry Classification Systems (NAICS) in addition to the existing Standard Industrial Classification (SIC) system.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions.

Frequency: One time only per respondent.

Respondent's Obligation: Voluntary.

Legal Authority: Title, 13 U.S.C., Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the information collection proposal should be sent within 30 days of publication to this notice to Jerry Coffey, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, D.C. 20503.

Dated: January 14, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1525 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–07–F

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Patent Cooperation Treaty.

Agency Form Number: PCT/RO/101 and Annex 134/144; PCT/IPEA/401 and Annex PCT/1B/328; PCT/Model Power of Attorney; Model of General Power of Attorney.

OMB Approval Number: 0651–0021.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 98,195 hours.

Number of Respondents: 15,800 (102,950 submissions per year).

Avg. Hours Per Response: Varies between .25 and 4 hours depending on the requirement.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty. The general purpose of the Treaty is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

Affected Public: Individuals, businesses or other for-profit organizations, not-for profit institutions, farms, federal, state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by

calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, D.C. 20503.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1526 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–16–P

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held February 21, 1997, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Sessions:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session:

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1995, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: January 14, 1997.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 97–1464 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

NOAA's Teacher At Sea Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judy Sohl, 1801 Fairview Ave. E., Seattle, WA 98102 [phone (206) 553–2633].

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's Teacher At Sea Program provides educators with the opportunity to participate in research projects aboard NOAA vessels. Teachers wishing to participate must submit an application that provides information about themselves and their teaching situation, provide two recommendations, submit a follow-up report with ideas for classroom application, and complete a Medical History Form.

II. Method of Collection

Applicants submit application forms.

III. Data

OMB Number: 0648–0283.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals (teachers, educators).

Estimated Number of Respondents: 300.

Estimated Time Per Response: .67 hours.

Estimated Total Annual Burden Hours: 230.

Estimated Total Annual Cost to Public: $0 (no capital, operations, or maintenance costs are expected).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1527 Filed 1–21–97; 8:45 a.m.]

BILLING CODE 3510–12–P

[I.D. 011497B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team will hold a public meeting.

DATES: The meeting will be held on February 3, 1997, beginning at 1:00 p.m. and may go into the evening until business for the day is completed. The team will recess all day February 4, 1997 to participate in a workshop on essential marine fish habitat, and will reconvene from 8:00 a.m. to 5:00 p.m.

on February 5, 1997 and February 6, 1997.

ADDRESSES: The meeting will be held at the Council office.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the Council's October 1996 instructions to the team, review its organization and prepare a schedule of team activities for 1997. The agenda also includes reviews of the inseason catch tracking process for 1997, review of the new stock assessment process, and a review of the harvest rate policy for various species.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 15, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1499 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 011397C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for scientific research permit (P496A).

SUMMARY: Notice is hereby given that David A. Nelson of U.S. Corps of Engineers (P496A) has applied in due form for scientific research permit to take listed sea turtles.

DATES: Written comments or requests for a public hearing on this application must be received on or before February 21, 1997.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250);

or

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141). Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: David A. Nelson, U.S. Corps of Engineers (P496A), requests application under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant has requested a five-year permit to tag, track, blood sample, and relocate 900 loggerhead (*Caretta caretta*), 60 green (*Chelonia mydas*), 40 Kemp's ridley (*Lepidochelys kempii*), 3 leatherback (*Dermochelys coriacea*), and 2 hawksbill (*Eretmochelys imbricata*) sea turtles per year. These turtles would be captured incidental to dredging activities in the Atlantic and the Gulf of Mexico, as authorized by section 7 consultations. The turtles may receive PIT-tags, flipper-tags, and radio, satellite, or sonic tags. The purpose of the research is to minimize sea turtle-dredge interactions by determining sea turtle habits, abundance, and distribution.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: January 15, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–1498 Filed 1–21–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0145]

Submission for OMB Review; Comment Request Entitled Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification (FAR Case 95–307)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0145).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification. A request for public comments was published at 61 FR 47893, September 11, 1996. No comments were received.

DATES: *Comment Due Date:* February 21, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The interim rule amends the Federal Acquisition Regulation to implement changes in the numbering system used by the Government to identify contractors in reporting to the Federal Procurement Data System. The rule substitutes the Data Universal

Numbering System (DUNS) number for the current Contractor Establishment Code (CEC).

Concerns have been raised that the same numbering system should be used for reporting to the Federal Procurement Data System (FPDS) and identifying vendors in the FACNET vendor registration database. Beginning with FY 1996 first quarter submissions to the Federal Procurement Data Center (FPDC), agencies may report the DUNS number.

The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the FPDC which collects, processes, and disseminates official statistical data on Federal contracting. The DUNS number is replacing the current CEC as the primary contractor identification number used to identify contractors in the FPDS. Changes to the FPDS reporting requirements are currently in process to conform to the requirements of Section 10004 of the Federal Acquisition Streamlining Act.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *50,400*; responses per respondent, *4*; total annual responses, *201,600*; preparation hours per response, *.0166*; and total response burden hours, *4,147*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: January 15, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–1494 Filed 1–21–97; 8:45 am]

BILLING CODE 6820–EP–P

Corps of Engineers, Department of the Army

Deauthorization of Water Resources Projects: Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Correction of Project Deauthorization List.

SUMMARY: This notice corrects the list of ''Projects Deauthorized on November 29, 1995, by Section 1001(a) of Public Law 99–662,'' published by the Corps of Engineers in the Federal Register on December 18, 1996, (Vol. 61, No. 244, 66654). The Sault Sainte Marie, Second Lock, MI, project should not have been listed because preconstruction engineering and design funds were obligated on the project prior to November 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Micik, Headquarters, U.S. Army Corps of Engineers, Attention: CECW–BA, Washington, DC 20314–1000. Tel. (202) 761–0705.

Dated: January 15, 1997.

H. Martin Lancaster,

Assistant Secretary of the Army (Civil Works).

PROJECTS DEAUTHORIZED ON NOVEMBER 29, 1995 BY SECTION 1001(A) OF PUBLIC LAW 99–662

[Corrected List.—Corrects the list published in the Federal Register on December 18, 1996 (Vol. 61, No. 244, 66654).]

District	Project name	Primary state	Purpose
SWL	Mud Creek Wetlands	AR	FC
SPK	Pajaro River, Santa Cruz*	CA	FC
SPN	Santa Cruz Harbor, East Jetty*	CA	N
SWA	Belen	NM	FC
NAN	Lake George	NY	FC
NCB	Conneaut Small Boat Harbor*	OH	N
NCB	Fairport Harbor Dredging*	OH	N
NCB	Fairport Small Boat Harbor*	OH	N
LMM	Memphis Harbor*	TN	N
SWF	East Fork of Trinity River*	TX	FC
Total: 10			

*Projects reauthorized in 1990. See Federal Register notice of September 9, 1994.

Key To Abbreviations:
LMM Memphis District
NAN New York District
NCB Buffalo District
SPK Sacramento District
SPN San Francisco District
SWA Albuquerque District
SWF Fort Worth District
SWL Little Rock District
FC Flood Control
N Navigation

[FR Doc. 97–1472 Filed 1–21–97; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Design and Methodology and Reporting and Dissemination committees of the National Assessment Governing Board.

This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 21, 1997.

TIMES: Reporting and Dissemination Committee, 10:00 a.m.–12:00 noon, (open); Reporting and Dissemination and Design and Methodology Joint Committee, 12:00 noon–2:30 p.m., (open); Design and Methodology Committee, 2:30–4:00 p.m., (open).

LOCATION: Homewood Suites Hotel, 432 West Market Street, San Antonio, Texas.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On January 21, between the hours of 10:00 a.m. to 12:00 p.m. there will be a meeting of the Reporting and Dissemination Committee. The Committee will receive a briefing on the 1996 math results by the contractor and review the NAEP constituent survey instrument. Beginning at 12:00 noon, there will be a joint meeting of the Reporting and Dissemination and Design and Methodology Committees to discuss sampling issues related to IEP and LEP students, and private schools. At the conclusion of the joint committee meeting, approximately 2:30 p.m., the Design and Methodology Committee will meet to discuss issues related to the conduct of NAEP at the state level.

The public is being given less than fifteen days notice of this meeting because the Governing Board has been informed that the contractor requires decisions on these issues, no later than, January 23, 1997.

Records are kept on all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: January 15, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–1427 Filed 1–21–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–181–000]

Colorado Interstate Gas Company; Notice of Application

January 15, 1997.

Take notice that on January 3, 1997, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP97–181–000, an application pursuant to Section 7(c) and 7(b) of the Natural Gas Act (NGA), for authority to convert two existing injection/withdrawal wells in CIG's Flank Storage Field in Baca County, Colorado, to observation wells, and to abandon the wellhead facilities and gathering lines to the two injection/withdrawal wells, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

CIG states that the subject two injection/withdrawal wells proposed for conversion to observation wells have failed to function as injection/withdrawal wells to any appreciable extent even after CIG attempted to stimulate the wells by conducting hydraulic fracture treatment. However, because of their location in the storage field, the wells will be of value as observation wells by using electric logs to provide information concerning the integrity of the seal in the reservoir.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 5, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the request should be granted. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1443 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–146–000]

Columbia Gas Transmission Corporation; Notice of Application

January 15, 1997.

Take notice that on December 10, 1996, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–146–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to abandon storage wells, numbered 5918 and 5804 together with associated well lines and appurtenances located in Columbia's Medina Storage Field.

Columbia states that due to ongoing encroachment problems resulting from rapid residential development in the area of the wells, it believes it is imperative to plug and abandon the facilities as soon as possible. Columbia further states that a review of its Medina Storage Field indicates the facilities are

not needed for the continued operation of the field.

The net debit to accumulated provision for depreciation for the proposed abandonment is estimated to be $222,779.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 5, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1442 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–185–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 15, 1997.

Take notice that on January 7, 1997, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP97–185–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an additional point of delivery for interruptible transportation service to Commonwealth Gas Services, Inc. (COS), located in Sussex County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new point of delivery to COS for interruptible service under Part 284 of the Commission's Regulations. Columbia advises that the estimated quantities of natural gas to be delivered at the new point of delivery are 1,080 Mcf/Day and 155,000 Mcf/Annually. Columbia asserts the end use of the gas will be residential and the point of delivery will be utilized to serve Sussex County Prison.

Columbia states the interconnecting facilities to be constructed will consist of installing a 4-inch tap, 4-inch check valve, and approximately 40 feet of 4-inch pipe, located in Sussex County, Virginia, at an estimated cost of $12,500. Columbia advises they will be reimbursed by COS for 100% of the total actual cost of the proposed construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1444 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–542–000]

The Energy Spring, Inc., Notice of Issuance of Order

January 16, 1997.

The Energy Spring, Inc. (Energy Spring) submitted for filing a rate schedule under which Energy Spring will engage in wholesale electric power and energy transactions as a marketer. Energy Spring also requested waiver of various Commission regulations. In particular, Energy Spring requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Energy Spring.

On January 8, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Energy Spring should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Energy Spring is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Energy Spring's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 7, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1511 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–198–001]

Gulf States Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 7, 1997, Gulf States Transmission Corporation (GSTC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Original Sheet No. 58G to be effective January 1, 1997.

GSTC states that the purpose of the filing is to remove a paragraph from Sheet No. 58G which GSTC originally filed in Docket No. RP97–174, and has not yet been approved by the Commission. On December 20, 1996, GSTC filed tariff sheets in compliance with Order No. 582. GSTC inadvertently included certain language on Sheet No. 58G that was filed as part of a compliance filing in Docket No. RP97–174, and has not yet been approved by the Commission. As such, GSTC is refiling Sheet No. 58G to remove that language. The remainder of Sheet No. 58G is unchanged.

GSTC states that copies of the filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1452 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–209–003]

Koch Gateway Pipeline Company; Notice of Refund Report

January 15, 1997.

Take notice that on January 8, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing a final refund report for the Cash-In/Cash-Out program as directed by FERC in Docket No. RP96–2091. On Friday December 13, 1996, Koch states that it refunded to all of its transportation customers the 1995 positive balances in the cash out program pursuant Section 20.1 (D) (ii) of the General Terms and Conditions of Koch's tariff. The refund made by Koch is a credit to each customer's account based on the volume transported during the first, third, and fourth quarters of 1995.

Koch Gateway states that copies of this filing have been served on all affected customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before January 22, 1997. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1448 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–116–001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

January 15, 1997.

Take notice that on January 10, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective January 1, 1997:

Substitute Second Revised Sheet No. 1410
Substitute Third Revised Sheet No. 1411

Koch states that these revised tariff sheets are filed to comply with the Commission's ''Order Accepting Tariff Sheets Subject to Condition'' issued on December 31, 1996 in Docket No. RP97–116. As directed, Koch revised the tariff sheets to allow Customers requesting new firm transportation thirty (30) days to execute a service agreement after its tender by Koch if the term of the contract is greater than one year. For requests with contract terms of less than or equal to one year, Customers will have two (2) business days after tender by Koch to execute a new service agreement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1453 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–188–000]

Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

January 15, 1997.

Take notice that on January 9, 1997, Mississippi River Transmission Corporation (MRT) 1600 Smith Street, Houston, Texas 77002, filed in the above docket a request pursuant to §§ 157.205 and 157.212 of the Regulations under its blanket certificate issued in Docket No. CP82–489–000 to operate certain facilities in Arkansas as jurisdictional facilities to provide transportation services under Subpart G of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, MRT requests authority to operate one 2-inch I-shape meter station under Subpart G of Part 284 of the Commission's Regulations, located no MRT's Mainline 1 in Ashley County, Arkansas. MRT states that these facilities were initially constructed solely to provide transportation of natural gas under section 311 of the Natural Gas Policy Act and Subpart B of the Commission's Regulations to Arkla, a distribution division of NorAm Energy Corporation (ARKLA).

MRT states that the estimated volumes being delivered through these facilities are approximately 80,000 MMBtu annually and 216 MMBtu on a peak day. The cost of construction is estimated to be $9,167 and MRT will be reimbursed by Arkla for the total cost of construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations

under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1445 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–342–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 10, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing, Second Revised Sheet No. 219 to replace First Revised Sheet No. 219 of Third Revised Volume No. 1 of its FERC Gas Tariff.

MRT states that the purpose of this filing is to correct minor pagination problems that have developed as a result of MRT's August 16, 1996 filing in Docket No. RP96–342–000 due to administrative oversight.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1450 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–5–16–001]

National Fuel Gas Supply Corporation; Notice of Correction to Tariff Filing

January 15, 1997.

Take notice that on January 8, 1997, National Fuel Gas Supply Corporation (National) tendered for filing, a correction to part of its FERC Gas Tariff, Third Revised Volume No. 1, with a proposed effective date of January 1, 1997.

National states that it should have captioned Sheet No. 29 in this filing as Fourth Revised Sheet No. 29. This correction is necessary since the changes to that tariff sheet which National proposed in this proceeding must conform to the tariff sheet approved in Docket No. RP96–331–000, in order to retain the negotiated rate language approved in that proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1455 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–302–003]

Northern Natural Gas Company; Notice of Compliance Filing

January 15, 1997.

Take notice that on January 8, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective January 1, 1997:

Substitute 31 Revised Sheet No. 53
Substitute 2 Revised Sheet No. 148
Substitute 1 Revised Sheet No. 290
Substitute 3 Revised Sheet No. 291
Substitute 2 Revised Sheet No. 292

On July 1, 1996 in Docket No. RP96–302–000, Northern filed tariff sheets to revise its penalty provisions. On July 31, 1996, the Commission issued an Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Technical Conference to become effective January 1, 1997. The Technical Conference was convened on September 18, 1996. Northern filed pro forma tariff sheets with its reply comments in the instant proceeding on October 31, 1996. On December 19, 1996, the Commission issued an Order After Technical Conference in Docket No. RP96–302–000 (Order). The reason for this filing is to comply with the Commission's Order.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1449 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–18–000]

P&T Power Company; Notice of Issuance of Order

January 16, 1997.

P&T Power Company (P&T Power) submitted for filing a rate schedule under which P&T Power will engage in wholesale electric power and energy transactions as a marketer. P&T Power also requested waiver of various Commission regulations. In particular, P&T Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by P&T Power.

On January 8, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by P&T Power should file a

motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, P&T Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of P&T Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 7, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1510 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–6–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 9, 1997 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective January 1, 1997.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedule LSS.

Transco states that Appendix B attached to the filing contains explanations of the rate changes and details regarding the computation of the revised Rate Schedule LSS and GSS rates.

Transco states that copies of the filing are being mailed to each of its LSS and GSS 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, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1456 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–352–003]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 10, 1997 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective January 1, 1997

Substitute 3rd Revised Sheet No. 64A
Substitute Original Sheet No. 64A.1
4th Revised Sheet No. 95A
1st Revised Sheet No. 95B.1
5th Revised Sheet No. 95C
4th Revised Sheet No. 95D
4th Revised Sheet No. 95E
4th Revised Sheet No. 95F
3rd Revised Sheet No. 95G
3rd Revised Sheet No. 95H
2nd Revised Sheet No. 95L

Transwestern states that the purpose of this filing is to comply with the Commission's December 31, 1996, order accepting Transwestern's December 2, 1996 Pilot Program filing subject to certain conditions.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1451 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–225–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1997.

Take notice that on January 8, 1997, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective February 8, 1997:

Third Revised Sheet No. 207
Second Revised Sheet No. 208

WNG states that this filing is being made pursuant to Subpart C of part 154 of the Commission's regulations. The purpose of the filing is to permit WNG to respond to customer complaints on gas quality and to bring WNG's quality provisions in line with other connecting pipelines. Third Revised Sheet No. 207 has been revised to restrict the content of nitrogen in the gas to no more than 4% by volume and the total amount of inert gases to 5%. The amount of fuel consumed will be lowered by pumping less inert gases.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1454 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM95–3–000 and Docket No. RM95–4–000]

Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs; Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Data Availability for Working Groups

January 10, 1997.

Take notice that the draft specifications for filing rate cases electronically is available on the Federal Energy Regulatory Commission's (Commission's) bulletin board system (BBS) for review by the Working Group—Filings. The draft rate case filing instructions are available under the Gas Pipeline Data (GPD) option of the BBS under the Order 581/582 Working Group Menu under the topic, ''Rate Filings—Working Group'' in a file entitled RATESJ.EXE.

The Commission invites comments on the draft specifications for filing rate cases. Such comments may be uploaded to the Commission's BBS or addressed to Richard A. White, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments may also be e-mailed to Elizabeth.Taylor@FERC.fed.us, Thomas.Brownfield@FERC.fed.us, or Jacqueline.McDuffy@FERC.fed.us or uploaded to the GPD portion of the BBS. Comments should be received by January 22, 1997. We encourage commenters to submit written comments also on a 3½″ diskette in ASCII so they can be posted on the Commission's bulletin board. It is preferable for comments uploaded to the Commission's BBS to be in ASCII format so files may be viewed on-line and easily converted to other software formats.

The upload option, available under the Order No. 581/582 Working Group Menu, is designed to permit members of the public to upload a file to the BBS. To do so, select upload from the Working Group menu. You will be prompted for the File Mask. Enter the Drive, directory, if applicable, and the filename. For example:

File Mask? C:FERC Rate__com.txt

You will be prompted to enter a file description. A file description must accompany every file. The basic file description can be no more than 70 characters. An option exists which permits you to enter a more detailed description. After typing the detailed description, select send to associate it with your file. Other menu features are explained under the help option.

The system will not allow you to upload a file with the same name as a file already on the bulletin board. It is preferable to incorporate your company initials or some other unique identifier in the file name to distinguish your files from others' files.

Files uploaded to the Commission's bulletin board will not be immediately available for download. The party uploading the file may, however, check the file list to ensure the file uploaded properly.

This document is available for inspection or copying by accessing the Commission Issuance Posting System (CIPS). CIPS and GPD are part of the Commission's electronic bulletin board service providing access to documents issued by or available electronically from the Commission. CIPS and GPD are available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397, if local, or 1–800 856–3920, if long distance.

To access the Commission's bulletin board system, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format.

The Commission's bulletin board system can also be accessed through the FedWorld system directly by modem or through the Internet.

By modem:

Dial (703) 321–3339 and logon to the FedWorld system. After logging on, type:

/go FERC

Through the Internet:

Telnet to: fedworld.gov
Select the option: [1] FedWorld
Logon to the FedWorld system
Type: /go FERC

Or:

Point your Web Browser to: http://www.fedworld.gov
Scroll down the page to select FedWorld Telnet Site
Select the option: [1] FedWorld
Logon to the FedWorld system
Type: /go FERC

Lois D. Cashell,

Secretary.

[FR Doc. 97–1508 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2703–000, et al.]

Citizens Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

January 14, 1996.

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

1. Citizens Utilities Company

[Docket No. ER96–2703–000]

Take notice that on December 24, 1996 and January 6, 1997, Citizens Utilities Company tendered for filing amendments in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. West Penn Power Company

[Docket No. ER96–3146–000]

Take notice that on December 26, 1996, West Penn Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER97–315–000]

Take notice that on December 18, 1996, PECO Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER97–316–000]

Take notice that on December 18, 1996, PECO Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER97–317–000]

Take notice that on December 18, 1996, PECO Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company

[Docket No. ER97–979–000]

Take notice that on December 30, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to NUI Energy Brokers, Inc. pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon NUI Energy Brokers, Inc. and the New Jersey Board of Public Utilities.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER97–980–000]

Take notice that on December 30, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to National Gas and Electric L.P., pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon National Gas and Electric L.P. and the New Jersey Board of Public Utilities.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER97–981–000]

Take notice that on December 30, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy individually to American Electric Power Service Corporation on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company and Ohio Power Company, a New York Corporation (AEP), pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon AEP and the New Jersey Board of Public Utilities.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Company

[Docket No. ER97–982–000]

Take notice that on December 30, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Delmarva Power & Light pursuant to the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon Delmarva Power & Light and the New Jersey Board of Public Utilities.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER97–983–000]

Take notice that on December 30, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated November 19, 1996, between KCPL and Tennessee Power Company (TPCO). KCPL proposes an effective date of December 12, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and TPCO.

In this filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Corporation

[Docket No. ER97–984–000]

Take notice that on December 30, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Baltimore Gas and Electric Company under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 1, 1997.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Power and Light Company

[Docket No. ER97–985–000]

Take notice that on December 30, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a Form of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service establishing CNG Power Services Corporation as a point-to-point transmission customer under the terms of WP&L's Transmission Tariff.

WP&L requests an effective date of December 19, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Texas-New Mexico Power Company

[Docket No. ER97–988–000]

Take notice that on December 31, 1996, Texas-New Mexico Power Company, tendered for filing an application for a Commission order accepting a proffered rate schedule for market-based rates and providing for associated authorizations and requirements.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota Company)

[Docket No. ER97–989–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Termination Agreement for the Twin Cities-Iowa-Omaha-Kansas City 345 Kv Interconnection and Coordinating Agreement.

NSP requests that the Commission accept the agreement effective December 31, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota Company)

[Docket No. ER97–990–000]

Take notice that on December 31, 1996, Northern States Power Company (NSP), tendered its Amendment No. 1 to the Electric Services Agreement among the City of Rice Lake, Wisconsin, Northern States Power Company (MIN) and NSPW dated December 24, 1996, unbundled power sale rate information

and cost support data for the Electric Services Agreement with the City of Rice Lake. NSP requests an effective date of January 1, 1997.

Under this Amendment No. 1, provision is made to include requirements for reactive power and power factor.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company)

[Docket No. ER97–991–000]

Take notice that on December 31, 1996, Northern States Power Company, Minnesota (NSP), tendered its filing of Amendment No. 1 to the Municipal Interconnection and Interchange Agreement between NSP and the City of Buffalo, Minnesota. The filing contains cost support and the unbundled power sale rate information.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota Company)

[Docket No. ER97–992–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of Minnkota Power Cooperative) under the Northern States Power Company's Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company)

[Docket No. ER97–993–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and City of New Ulm, MN.

NSP requests that the Commission accept the agreement effective December 18, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company (Minnesota Company)

[Docket No. ER97–994–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of United Power Association) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northern States Power Company (Minnesota Company)

[Docket No. ER97–995–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of City of Buffalo, Minnesota) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota Company)

[Docket No. ER97–996–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and City of Medford, Wisconsin.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Northern States Power Company (Minnesota Company)

[Docket No. ER97–997–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and City of Rice Lake, Wisconsin.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Northern States Power Company (Minnesota Company)

[Docket No. ER97–998–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP-Wholesale (on behalf of City of Cornell, Wisconsin).

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northern States Power Company (Minnesota Company)

[Docket No. ER97–999–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of Ottertail Power Company) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northern States Power Company (Wisconsin Company)

[Docket No. ER97–1000–000]

Take notice that on December 31, 1996, Northern States Power Company, (Wisconsin) (NSPW), tendered its revised Service Schedule A to the Electric Services Agreement between

the City of Wisconsin Rapids, Wisconsin and NSPW, unbundled power sale rate information and cost support data. NSP requests an effective date of January 1, 1997.

Under the revised Service Schedule A, NSP is responsible for providing the reserve capacity obligation associated with the capacity sold.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1001–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement and the Non-Firm Transmission Service Agreement between NSP and Northwestern Wisconsin Electric Company.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Northeast Utilities Service Company

[Docket No. OA97–442–000]

Take notice that on January 3, 1997, Northeast Utilities Service Company tendered for filing a Request for Temporary Waiver of Reporting Requirements under Part 37 of the Commission's Regulations.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1509 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER97–1002–000, et al.]

Northern States Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 15, 1997.

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

1. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1002–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement and the Non-Firm Transmission Service Agreement between NSP and North Central Power Co., Inc.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company

[Docket No. ER97–1003–000]

Take notice that on December 31, 1996, Northern States Power Company, Wisconsin (NSPW), tendered its Power and Energy Supply Agreement by and between the City of Cornell, Wisconsin and NSPW dated December 2, 1996, cost support data and unbundled power sale rate information. NSP requests an effective date of January 1, 1997.

Under this new agreement, the City of Cornell will be entitled to discounts from NSPW's rates currently in effect under its W–1 Rate Schedule and that such discounts are being offered to all of its wholesale electric customers. The agreement contains a provision allowing the customer to obtain a negotiated rate upon two years prior notice.

A copy of the filing was served upon the City of Cornell, the Wisconsin Public Service Commission and the Michigan Public Service Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1004–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of City of Kasson, Minnesota) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1005–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and City of Wisconsin Rapids, Wisconsin.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1006–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP-Wholesale (on behalf of City of Bangor, Wisconsin).

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1007–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission

Service Agreement between NSP and the City of Medford, Wisconsin.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1008–000]

Take notice that on December 31, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale (on behalf of Enron) under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective January 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1009–000]

Take notice that on December 31, 1996, Northern States Power Company, Minnesota (NSP), tendered its filing of Amendment No. 1 to the Municipal Interconnection and Interchange Agreement between NSP and the City of Kasson, Minnesota. The filing contains cost support and the unbundled power sale rate information.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER97–1010–000]

Take notice that on December 31, 1996, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Central Hudson Gas & Electric Corporation, Western Power Services, Inc., PanEnergy Trading and Market Services, L.L.C., North American Energy Conservation, Inc., Orange and Rockland Utilities, Inc., Morgan Stanley, Inc., and Niagara Mohawk Power Corporation (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of January 2, 1997 for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER97–1011–000]

Take notice that on December 31, 1996, Southern California Edison Company (Edison), tendered for filing amendments (Amendments) to the following supplemental agreements and associated FTS agreement to the 1990 Integrated Operations Agreement (1990 IOA) between Edison and the City of Azusa (Azusa):

Amendment No. 1 to the Supplemental Agreement for the Integration of the Pasadena Power Sales Agreement

Amendment No. 1—1995 Supplemental Agreement Between Southern California Edison Company and the City of Azusa for the Integration City's Entitlement in San Juan Unit 3

Amendment No. 1 to the Edison-Azusa 1995 San Juan Unit 3 Firm Transmission Service Agreement Between Southern California Edison Company and City of Azusa

Amendment No. 2 to the Edison-Azusa Pasadena Firm Transmission Service Agreement

Additionally, pursuant to 35.15 of the Commission's Regulations under the Federal Power Act (18 CFR 35.15) and the Amendments, Edison tenders for filing a Notice of Cancellation of FERC Rate Schedule Nos. 247.13 and 247.13.1, to be effective January 1, 1997.

Edison and Azusa entered into the Amendments to accommodate changes made in the Pasadena Power Sale Agreement between Azusa and the City of Pasadena. Edison requests waiver of the Commission's 60-day notice requirement and an effective date of January 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER97–1012–000]

Take notice that on December 31, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing an Agreement with Oneida Madison Electric Cooperative, Inc. of New York (OMEC), for facilities Agreement.

NYSEG requests an effective date of January 2, 1997, and therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Oneida Madison Electric Cooperative, Inc. and on the Public Service Commission of the State of New York.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER97–1015–000]

Take notice that on December 31, 1996, Southern California Edison Company (Edison), tendered for filing a Transmission Substation Facilities Agreement (Agreement) between Edison and the City of Azusa. Pursuant to the terms of the Agreement, Edison is also submitting revisions to Rate Schedule FERC Nos. 16, 160, 247.4, 247.6, 247.8, 247.24, and 247.29, and a Notice of Cancellation of Rate Schedule FERC No. 247.32 and Supplements thereto.

Edison requests waiver of the Commission's 60-day notice requirement and an effective date of January 1, 1997 for the Agreement, the rate schedule changes, and the Notice of Cancellation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Western Resources, Inc.

[Docket No. ER97–1016–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Rate Schedule FPC No. 4, Power Transmission Agreement between Western Resources, Inc. (formerly The Kansas Power and Light Company), Kansas Gas and Electric Company (a wholly owned subsidiary of Western Resources) and Omaha Public Power District (OPPD).

Notice of the proposed cancellation has been served upon Omaha Public Power District and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Western Resources, Inc.

[Docket No. ER97–1017–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement Nos. 1 and 3 to Rate Schedule FPC No. 72, Electric Interconnection Contract between WestPlains Energy, a division of Utilicorp United, Inc. and Western Resources, Inc. (formerly The Kansas Power and Light Company).

Notice of proposed cancellation has been served upon UtiliCorp United, Inc. and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER97–1018–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement No. 2 to Rate Schedule FPC No. 84, Electric Interchange Agreement between Missouri Public Service, a division of UtiliCorp United, Inc. and Western Resources, Inc. (formerly The Kansas Power and Light Company).

Notice of the proposed cancellation has been served upon UtiliCorp United, Inc., the Kansas Corporation Commission, and the Missouri Public Service Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER97–1019–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Rate Schedule FPC No. 92, Power Interchange Agreement between Western Resources, Inc.'s wholly owned subsidiary Kansas Gas and Electric Company and Omaha Public Power District.

Notice of the proposed cancellation has been served upon Omaha Public Power District and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER97–1020–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement No. 3 to Rate Schedule FPC No. 101, the Electric Interconnection Contract between WestPlains Energy, a division of UtiliCorp United, Inc. and Kansas Gas and Electric Company (KGE), as filed by Western Resources, Inc. on behalf of Western Resources' wholly owned subsidiary KGE.

Notice of the proposed cancellation has been served upon UtiliCorp United, Inc. and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER97–1021–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement No. 2 to Rate Schedule FPC No. 106, the Power Interchange Agreement between Missouri Public Service, a division of UtiliCorp United, Inc. and Kansas Gas and Electric Company (KGE), as filed by Western Resources, Inc. on behalf of Western Resources' wholly owned subsidiary KGE.

Notice of the proposed cancellation has been served upon UtiliCorp United, Inc., the Kansas Corporation Commission, and the Missouri Public Service Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Western Resources, Inc.

[Docket No. ER97–1022–000]

Take notice that on December 31, 1996, Western Resources, Inc., tendered for filing, a Notice of Cancellation of Supplement Nos. 1 and 2 to Rate Schedule FPC No. 123, Electric Interconnection contract between Midwest Energy, Inc. and Western Resources Inc. (formerly the Kansas Power and Light Company).

Notice of the proposed cancellation has been served upon Midwest Energy, Inc. and the Kansas Corporation Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Detroit Edison Company

[Docket No. ER97–1024–000]

Take notice that on December 31, 1996, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service (the Service Agreement) between Detroit Edison Power Delivery Transactions and Detroit Edison Merchant Operations dated as of December 26, 1996. Detroit Edison requests that the Service Agreement be made effective as of January 1, 1997.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power & Light Company

[Docket No. ER97–1025–000]

Take notice that on December 31, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated August 1, 1996, with CINergy Operating Companies (CINergy), for and on behalf of the CINergy Operating Companies (The Cincinnati Gas & Electric Company and PSI Energy, Inc.), for the sale of capacity and/or energy under PP&L's Short Term Capacity and/or Energy Sales Tariff. The Service Agreement adds CINergy as an eligible customer under the Tariff.

PP&L requests an effective date of December 30, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CINergy and to the Pennsylvania Public Utility Commission.

Comment date: January 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1512 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11286–SC]

City of Abbeville; Notice of Availability of Draft Environmental Assessment

January 15, 1997.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for relicensing the Abbeville Hydroelectric Project, located in Abbeville and Anderson Counties, South Carolina, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of licensing the existing project and has concluded that issuing a license for the project, with appropriate environmental projection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1–A, Washington, D.C. 20426. Please affix ''Abbeville Hydroelectric Project No. 11286'' to all comments. For further information, please contact Frank Karwoski at (202) 219–2782.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1447 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Non-Project Use of Project Lands

January 15, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Non-project Use of Project Lands (Expansion of Marina).

b. Project No.: 1494–135.

c. Date Filed: December 17, 1996.

d. Applicant: Grand River Dam Authority (GRDA).

e. Name of Project: Pensacola Project.

f. Location: The proposed marina expansion would be located in the Elk River arm of Grand Lake O' the Cherokees in Delaware County, Oklahoma.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant contact: Marsha Hawkins, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. FERC contact: John K. Hannula, (202) 219–0116.

j. Comment date: February 27, 1997.

k. Description of the Application: GRDA requests approval to permit Billy Kuykendall, d/b/a The Ponderosa, to add two additional docks containing 20 boat slips and replace one existing dock.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1446 Filed 1–21–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00206; FRL–5582–2]

Renewal of Agency Information Collection Activities; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: This notice announces that the Agency intends to renew the Information Collection Request (ICR) entitled ''Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection'' (ICR No. 1249.05; OMB No. 2070-0074) which will expire on April 30, 1997. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the information collection as described below.

DATES: Comments must be submitted on or before March 24, 1997.

ADDRESSES: Submit written comments identified by the docket control number OPP–00206 and the appropriate ICR number by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–00206'' and the appropriate ICR number. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not

contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305-6475, e-mail: kramer.ellen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under ''Rules and Regulations.''

I. Information Collection Request

EPA is seeking comments on the following Information Collection Request (ICR).

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection (ICR No. 1249.05; OMB No. 2070-0074). Expiration date: April 30, 1997.

Affected entities: Parties affected by this information collection are registrants of 1080 collars, the state lead agencies of participating states, and certified pesticide applicators using the 1080 collars for livestock protection.

Abstract: As a condition of the Sodium Monofluoroacetate (Compound 1080) registration, EPA has required submission of annual reports monitoring use of all Livestock Protection Collar products. This ICR is a recordkeeping activity in which respondents keep records of: (a) Number of collars purchased; (b) number of collars placed on livestock; (c) number of collars punctured or ruptured; (d) apparent cause of puncture or rupture; (e) number of collars lost or unrecovered; (f) number of collars in use and in storage; and (g) location and species data on each animal poisoned as an apparent result of the toxic collar. As a condition of registration, EPA has required submission of annual reports monitoring use of all Livestock Protection Collar products as required by a 1982 court decision.

Burden statement: The annual respondent burden for the 1080 Livestock Collar Program is estimated to average 32 hours per certified applicator, 77 hours per state, and 9 hours per registrant participating in the program, including time for: Planning activities; creating information; gathering information; processing, compiling, and reviewing information for accuracy; recording, disclosing or displaying the information; and storing, filing, and maintaining the data. Third party notification is included in this ICR as the applicators are reporting to state lead agencies.

The entities affected include small business, however, the degree of imposition that these recordkeeping and reporting requirements impose on such individuals is minimal. The main purpose of the recordkeeping requirements is to promote responsible use and handling, and the main purpose for requiring monitoring reports is to establish a process through which it is mandatory to inform the EPA of the results of collar use.

Any Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are contained in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

III. Public Record

A record has been established for this action under docket number ''OPP-00206'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Information collection requests.

Dated: January 14, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–1489 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66234; FRL 5579–4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by July 21, 1997 orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 49 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000000 WA—96—0035	Baciticide	Sodium hypochlorite
000100 AR—90—0005	Ridomil 5G-Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 AZ—85—0008	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 AZ—86—0015	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA—82—0024	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA—85—0068	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA—86—0018	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA—91—0005	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CO—88—0001	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 FL—81—0017	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 FL—86—0002	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 FL—89—0023	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 GA—81—0004	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ID—83—0033	Apron TM 70SD	*cis*-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ID—89—0005	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 KY—81—0003	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 LA—92—0004	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 MD—81—0014	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 MD—88—0004	Triumph 4E Insecticide	*O,O*-Diethyl*O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)phosphorothioate
000100 NC—81—0011	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 OH—81—0011	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 OK—90—0005	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 OR—89—0008	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 PA—81—0018	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 PA—93—0006	Pace Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 SC—81—0001	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 TN—87—0015	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 TX—91—0011	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 TX—92—0015	Pace Turf Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 VA—81—0007	Ridomil 2E	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 VA—88—0006	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA—83—0035	Apron TM 70SD	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA—87—0002	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA—89—0015	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA—90—0033	Apron 35 SD	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000100 WA—92—0042	Ridomil MZ 58 Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
		N-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000264—00326	Sevin Brand 85% Manufacturing Concentrate Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264—00329	Sevin 95% Technical Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264—00347	Sevin Bait MC Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000769—00622	SMCP Professional Exterminators Concentrated Aerosol Insecticide	Aliphatic petroleum hydrocarbons
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
002596—00027	Hartz Indoor No	Methyl nonyl ketone
006665—00008	Gro Green Weed 'n Feed 60	Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester
		Isooctyl 2-(2-methyl-4-chlorophenoxy)propionate
007078—00001	Cidex Aqueous Activated Dialdehyde Solution	Glutaraldehyde
007078—00004	Cidex Formula 7* Long-Life Activated Dialdehyde Solution	Glutaraldehyde
007078—00014	Cidex Plus* 28 Day Solution	Glutaraldehyde
049320—00006	Natur - Gro R-50	Ryanodine
049320—00007	Tri-Excel DS Natur - Gro Triple Plus	Pyrethrins
		Rotenone
		Cube Resins other than rotenone
		Ryanodine
069421—00063	Insecticide Aerosol D-Phenothrin, 2%	(3-Phenoxyphenyl)methyl *d-cis and trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
070051—00010	Superneem 4.5 Botanical Insecticide	Azadirachtin

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000769	Sureco Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
002596	Hartz Mountain Corp., 400 Plaza Dr, Secaucus, NJ 07094.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
006665	Gro Green Prod Inc., 717 Elk St., Buffalo, NY 14210.
007078	Johnson & Johnson Medical Inc., Box 90130, Arlington, TX 76004.
049320	Progressive Agri-Systems, Inc., 125 W. Seventh Street, Wind Gap, PA 18091.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
069421	Black Flag Insect Control Systems, c/o PS & RC, Box 493, Pleasanton, CA 94566.
070051	Thermo Trilogy Corp., 7500 Grace Dr., Columbia, MD 21044.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrants to explore the possibility of withdrawing their request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
15662–33–6	Ryanodine	049320

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before July 21, 1997. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 30, 1996.

Oscar Morales,

Acting Director, Program Management Support Division, Office of Pesticide Programs.

[FR Doc. 97–1262 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30427; FRL–5582–4]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by February 21, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30427] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30427]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joan Karrie, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8699; e-mail: karrie.joan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 67702–G. Applicant: W. Neudorff GmbH KG, Postfach 1209, an der Muhle 3, D–31860 Emmerthal, Germany. Product name: NEU 1165M Slug and Snail Bait. Molluscicide. Active ingredient: Iron phosphate at 1.0 percent. Proposed classification/Use: None. For on vegetables, fruits (including citrus), berries, outdoor ornamentals, greenhouses, and lawns.

2. File Symbol: 70061–R. Applicant: Themac Incorporation P.O. Box 5209, Valdosta, GA 31603–5209. Product name: Game Stop. Vertebrate repellent. Active ingredient: Fish oil at 11.6 percent. Proposed classification/Use: None. For use on foliage and twigs of trees, shrubs, and ornamental plants which are fed on by rabbits and deer.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30427] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: January 6, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–1264 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50823; FRL–5581–4]

Issuance of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (13), Office of Pesticide Programs, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit: *54555–EUP–6*. Extension. SKW Trostberg, AG, c/o Siemer & Associates, Inc., 4672 W. Jennifer, Suite 103, Fresno, CA 93722. This experimental use permit allows the use of 20,978 pounds of the growth regulator hydrogen cyanamide on 4,680 acres of various crops to evaluate its ability to stimulate uniform budbreak. The program is authorized only in the States of California and Georgia. The experimental use permit is effective from October 18, 1996 to March 1, 1998.

Persons wishing to review this experimental use permit are referred to the designated product manager. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 8, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–1490 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–690; FRL–5583–3]

Interregional Research Project No. 4; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: This notice announces the filing of an amendment to pesticide petition (PP) 5E4598 proposing to extend the effective date for the time-limited tolerance established for indirect or inadvertent combined residues of the insecticide imidacloprid and its metabolites resulting from crop rotational practices in or on the raw agricultural commodities of the cucurbit vegetables crop group. This notice includes a summary of the amended petition that was prepared by Bayer Corporation (Bayer), the registrant, and submitted by the Interregional Research Project No. 4, the petitioner.

DATES: Comments, identified by the docket number [PF–690], must be received on or before February 21, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov or by submitting disks. Electronic comments must be submitted either in ASCII format (avoiding the use of special characters and any form of encryption) or in WordPerfect in 5.1 file format. All comments and data in electronic form must be identified by the docket number [PF–690]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. No CBI should be submitted through e-mail. A copy of the comment that does

not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8783, e-mail:jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received an amendment to PP 5E4598 from the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. The amended petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR 180.472 by extending the effective date to expire on December 31, 1997, for the time-limited tolerance established for the indirect or inadvertent combined residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, resulting from crop rotational practices in or on the raw agricultural commodities in the cucurbit vegetables crop group at 0.2 parts per million (ppm). This tolerance will not support registration for imidacloprid on cucurbit vegetables. EPA will not consider applications for section 3 or section 24(c) registration for use of imidacloprid on cucurbit vegetables based on this time-limited tolerance. The tolerance will allow growers to produce cucurbit vegetables in rotation with crops that are treated in accordance with registered uses of imidacloprid. Imidacloprid registrations prohibit growers from planting crops that lack an imidacloprid tolerance on ground treated with the insecticide within a 12-month period. Crop rotational studies indicate that plant back crops grown in fields treated with imidacloprid may contain measurable amounts of the pesticide residue, if the rotational crop is planted within 12 months of application of the pesticide. In some areas, however, it is a common practice for growers to plant back cucurbit vegetables (melons, squash and cucumbers) in fields that have been used to produce tomatoes and peppers. Imidacloprid is registered and tolerances are established for the fruiting vegetables crop group (including tomatoes and peppers).

IR–4 has submitted PP 6E4766, which proposes a permanent tolerance for residues of imidacloprid and its metabolites in or on the cucurbit vegetables crop group at 0.5 ppm. Although PP 6E4766 proposes a tolerance in support of registration for use of imidacloprid on cucurbit vegetables, the proposed tolerance, if established, will be adequate to cover indirect or inadvertent residues on cucurbits resulting from registered uses of imidacloprid. EPA's evaluation of PP 6E4766 will not be completed in time to establish a permanent tolerance, prior to the December 31, 1996, expiration date for the time-limited tolerance. Therefore, IR–4 proposes that the time-limited tolerance for imidacloprid be extended to December 31, 1997, to allow EPA additional time to review IR–4's petition for permanent tolerance for residues of imidacloprid on cucurbit vegetables.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality and Protection Act IR–4 included in the amendment a summary of the petition provided by Bayer and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Bayer; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Plant Metabolism and Analytical Method

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. There is an additional confirmatory method available. Imidacloprid and its metabolites have been shown to be stable for at least 24 months in frozen storage.

B. Toxicological Profile of Imidacloprid

1. *Acute toxicity*. The acute oral LD_{50} values for imidacloprid technical ranged from 424 to 475 milligrams (mg)/kilogram (kg) body weight (bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was >69 mg/cubic meter (m^3) air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicity*. Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity.* A two-generation rat reproduction study gave a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity.* Ninety-day feeding studies were conducted in rats and dogs. The NOEL's for these tests were 14 mg/kg bwt/day (150 ppm) and 5 mg/kg bwt/day (200 ppm) for the rat and dog studies, respectively.

5. *Chronic toxicity/oncogenicity.* A 2–year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/ bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

Imidacloprid has been classified under ''Group E'' (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical.

6. *Endocrine effects.* The toxicology database for imidacloprid is current and complete. Studies in this database include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

7. *Mode of action*. Imidacloprid exhibits a mode of action different from

traditional organophosphate, carbamate, or pyrethroid insecticides. Imidacloprid acts by binding to the nicotinergic receptor sites at the postsynaptic membrane of the insect nerve. Due to this novel mode of action, imidacloprid has not shown any cross resistance to registered alternative insecticides.

C. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with systemic and contact toxicity characteristics with both food and non-food uses. Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control. Those potential exposures are addressed below:

1. *Dietary.* The EPA has determined that the reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. As published in the Federal Register of December 13, 1995 (60 FR 64006) and June 12, 1996 (61 FR 2674) (petition to establish tolerances on leafy green vegetables (PP 5F4522/R2237)), the theoretical maximum residue contribution (TMRC) from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7 percent of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (<1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1 percent of the RfD. Therefore, Bayer believes that dietary exposure from the existing uses (including this time-limited tolerance) will not exceed the reference dose for any subpopulation (including infants and children).

2. *Water.* Although the various imidacloprid labels contain a statement that this chemical demonstrates the properties associated with chemicals detected in groundwater, Bayer is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the United States. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. In addition, groundwater monitoring studies are currently underway in California and Michigan. Therefore, Bayer believes that contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

3. *Non-occupational*— a. *residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 to 41,546 for 10–year-old children and 6,859 to 45,249 for 5–year-old children were estimated by comparing dermal exposure doses to the imidacloprid no-observable effect level of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year-old children ranged from 5.6 to 38.2 micrograms (µg)/square centimeter (cm^2) and for 5–year-old children from 5.1 to 33.5 $\mu g/cm^2$. This compares with the average imidacloprid transferable residue level of 0.080 $\mu g/cm^2$ present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

b. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch and Bayer. Data indicate that the Margins of Safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^7 and 2.4×10^8, respectively - and exposure can thus be considered negligible.

c. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2 percent of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

d. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's Occupational and Residential Exposure Branch who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

4. *Cumulative effects.* No other chemicals having the same mechanism of toxicity are currently registered, therefore, Bayer believes that there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

D. Safety Determinations

1. *U.S. population in general.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, Bayer concludes that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 15 percent of the RfD for the U.S. population. EPA generally has no concerns for exposures below 100 percent of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a two-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post-natal effects is complete. Further for imidacloprid, the NOEL of 5.7 mg/kg/bwt from the 2–year rat feeding/carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100-fold uncertainty factor is already used to calculate the RfD, Bayer surmises that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, EPA has concluded that the TMRC from use of imidacloprid from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7 percent of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (<1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1 percent of the RfD. Therefore, Bayer concludes that dietary exposure from the existing uses including the currently proposed tolerances will not exceed the reference dose for any subpopulation (including infants and children).

E. Other Considerations

There is no reasonable expectation that secondary residues will occur in milk and eggs, or meat, fat, and meat byproducts of livestock or poultry; there are no livestock feed items associated with the cucurbit vegetables.

F. International Tolerances

No CODEX Maximum Residue Levels (MRL's) have been established for residues of Imidacloprid on any crops at this time.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docment number [PF–690].

A record has been established for this notice of filing under docket number [PF–690] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 10, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–1491 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5679–6]

Notice of Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the C&J Disposal Superfund Site, Town of Eaton, Madison County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA'') Region II announces a proposed administrative settlement pursuant to Section 122(h) of CERCLA, relating to the C&J Disposal Superfund Site (''Site'') in the Town of Eaton, Madison County, New York. This Site formerly was on the National Priorities List (''NPL'') established pursuant to Section 105(a) of CERCLA. The Site was deleted from the NPL in 1994 following completion of a CERCLA cleanup of the Site. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Cost Recovery Agreement (the ''Agreement''), is being entered into by EPA and the Occidental Chemical Corporation (''Occidental''). Under the Agreement, Occidental will pay $700,000 to the Hazardous Substance Superfund in settlement of EPA's July 31, 1995 demand for past costs, plus interest, incurred by EPA with respect to the Site between May 23, 1991 and January 31, 1995. EPA, in turn, covenants not to sue Occidental for those past costs under Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

DATES: EPA will accept written comments relating to the proposed settlement on or before February 21, 1997.

ADDRESSES: Comments should be addressed to the individual listed below and should refer to: ''C&J Disposal Superfund Site, U.S. EPA Index No. II CERCLA–96–0213''. For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Douglas L. Fischer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: (212) 637–3180.

Dated: December 24, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–1492 Filed 1–21–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (36 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

CNC Shipping International Inc.
7774 N.W. 71 Street
Miami, FL 33166
Officers:
Nilda Correa, President
Frank Cigarroa, Vice President

Aladdin Freight International
1000 Aladdin Avenue
San Leandro, CA 94577
Kristine Highsmith
Sole Proprietor

Dated: January 15, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–1430 Filed 1–21–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Todd E. Arendt, and Revocable Trust Agreement of Angela D. Hulin, both of Gilman, Iowa; to each acquire an additional 25.00 percent, for a total of 50.22 percent, of the voting shares of Gilman Investment Co., Oskaloosa, Iowa, and thereby indirectly acquire Citizens Savings Bank, Gilman, Iowa.

Board of Governors of the Federal Reserve System, January 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1470 Filed 1-21-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–26]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on January 16, 1997.

Proposed Project

Studies of Immunotoxicity in Occupational Groups—(0920–0333)—Reinstatement—A number of chemicals to which U.S. workers are potentially exposed, including metals such as lead and beryllium and solvents such as carbon tetrachloride, have been found to be immunotoxic in experimental animals. There is little data on immunosuppression, hypersensitivity or autoimmune disease in workers exposed to chemicals that are immunotoxic in experimental animals. NIOSH has undertaken a coordinated series of studies to focus on immune-system effects related to specific chemical exposures in the workplace. In the previous three years, NIOSH conducted studies of lead and egg protein exposed workers.

In this reinstatement of the program, it is anticipated that up to six additional research studies will be conducted under this program. Examples of chemicals for which studies are being considered are latex, silica, and solvents. In most of these studies, the immune function of a group of workers exposed to the chemical of interest, and not exposed to any other known or potential immunotoxins, will be compared to the immune function in a group of individuals with no occupational exposure to known or suspected immunotoxins. In some studies, the immune function in a group of individuals will be compared before and after they have exposure to the potential immunotoxin. The primary information collected will be data on the level of exposure to the potential immunotoxin (as measured in the air in the breathing zone of the respondent, and/or in the respondent's blood or urine) and data on specific markers of the status of the immune system from blood or saliva samples provided by the subjects. The questionnaire data will be directed at demographic, lifestyle, and medical factors (other than the exposure or condition of interest) which may influence the function of the immune system. In selected studies, the questionnaire will be used to assess the presence of respiratory symptoms, dermatologic conditions and/or reproductive effects, if the literature indicates a potential relationship to these health problems. Study populations will be identified through telephone contact and follow-up site visits (if needed) with workplace facilities that use the chemical of interest. The total annual burden is 1607.

Respondent (form)	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Interview and blood collection	600	1	1	600
Additional interview module (respiratory, dermatologic, or reproductive)	600	1	.5	300
Peak flow measurement (hypersensitivity studies *only*)	200	28	.08	467
Allergy skin tests (hypersensitivity studies *only*)	200	1	1	200
Company interview	40	1	1	40

Dated: January 15, 1997.

William G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1475 Filed 1–21–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Comprehensive Child Development Program Management Information System.

OMB No.: 0980–0226.

Description: The Comprehensive Child Development Program (CCDP) provides comprehensive services to low-income families through 10 grantees. Data on the feasibility and management of the program will be collected through the management information (MIS) submitted here. The data will be collected from CCDP

grantee agencies and will continue to be used for (1) research, (2) federal monitoring, and (3) internal project management.

Respondents: Not-for-profit institutions; Individuals or Households; and State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Recruitment	566	1	.25	142
New family profile	566	1	.50	283
Updated family profile	2,460	1	.17	418
Development screening/assessment	4,846	.25	.25	1,212
Family needs assessment	2,460	2	.50	2,460
Family service plan	2,460	2	.25	1,230
Contact summary	2,460	50	.12	14,760
Rehabilitative services	8,069	4	.12	3,873
Pregnancy description	418	1	.25	105

Estimated total annual burden hours: 24,483.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: January 15, 1997.

Douglas O. Godesky,

Reports Clearance Officer.

[FR Doc. 97–1497 Filed 1–21–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0454]

Agency Information Collection Activities: Proposed Collections; Comment Request; Reinstatements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on provisions related to investigational device exemptions (IDE) reports and records; requirements for premarket notifications and summaries filed under the Federal Food, Drug, and Cosmetic Act (the act); and reporting and recordkeeping requirements imposed on entities that have had products detained during an establishment inspection that are believed to be adulterated or misbranded, or have had products banned.

DATES: Submit written comments on the collections of information by March 24, 1997.

ADDRESSES: Submit written comments on the collections of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information listed below.

With respect to each of the following collections of information, FDA invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burdens of the proposed collections of information, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

1. Investigational Device Exemptions Reports and Records (Part 812 (21 CFR Part 812)) (OMB Control Number 0910–0078—Reinstatement)

This information is collected under the statutory authority of the act regarding investigational devices (section 520(g) (21 U.S.C. 360j(g))). An IDE allows a device, which would otherwise be subject to provisions of the act such as premarket notification or premarket approval, to be used in

investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of this section, as explained in § 812.1, is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. Under §§ 812.20, 812.25, and 812.27, information collected in the application includes sponsor information; a report of prior investigations including reports of all prior clinical, animal, and laboratory testing of the device, a bibliography of all publications, and a summary of all other unpublished information; an investigational plan including study, purpose, protocol, risk analysis, device description, and monitoring procedures; a description of the methods, facilities, and controls used for the manufacture, processing, packing, and storage of the device; investigator information including agreements and certifications; institutional review board (IRB) information; information on the amount to be charged for the device; device labeling; and informed consent materials.

Section 812.10 (waiver of IDE requirements) states that if a sponsor does not wish to comply with certain requirements of part 812, the sponsor may voluntarily submit a waiver request.

Under § 812.35, when an investigational plan changes, a sponsor is required to submit a supplemental application to FDA, and the sponsor may not begin a part of an investigation at a facility until the IRB has approved the investigation, FDA has received the certification of IRB approval, and FDA has approved the supplemental application relating to that part of the investigation.

Section 812.140 requires investigators to maintain records, including correspondence and reports concerning the study; records of receipt, use or disposition of devices; records of each subject's case history and exposure to the device; informed consent documentation; study protocol and documentation of any deviation from the protocol. Sponsors are required, under the same section, to maintain records including correspondence and reports concerning the study; records of shipment and disposition; signed investigator agreements; adverse device effects information; and, if of nonsignificant risk, an explanation of nonsignificant risk determination, records on device name and intended use, study objectives, investigator information, IRB information, and statement on the extent that good manufacturing practices will be followed.

Section 812.150 requires investigators to submit reports on unanticipated adverse device effects, withdrawal of IRB approval, progress reports, deviations from investigational plan, failure to obtain informed consent, and final report. Sponsors are required to submit reports on unanticipated adverse device effects, withdrawal of IRB approval, withdrawal of FDA approval, current investigator lists, progress reports, notification of recall and device disposition, final report, failure to obtain informed consent, and significant risk device determination.

The following parts of the IDE regulations are covered by other sections of part 812, and thus are not mentioned as separate reporting or recordkeeping burden requirements. The requirements for § 812.18 (import and export requirements for IDE's) are already covered under § 812.20(b)(1). Section 812.18 states that foreign companies are required to be sponsored by a U.S. agent, whose identity is required under the IDE application. This is not an additional information collection, and a separate requirement for information is not essential just because this is an imported device. Sections 812.40, 812.45, and 812.46, regarding the general responsibilities of sponsors, are described under §§ 812.20 (actual application) and 812.150 (recordkeeping).

Section 812.5 (the labeling of investigational devices) is included under § 812.20(b)(10), where the submitter is required to enclose a copy of the label that bears information required by § 812.5 (i.e., name and place of business of manufacturer, packer, or distributor, the quantity of contents if appropriate, and the following statement: ''CAUTION-Investigational device. Limited by Federal (or United States) law to investigational use''). This label shall describe all relevant contraindications, hazards, adverse effects, interfering substances or devices, warnings, and precautions. The label will also not bear any statement that is false or misleading in any particular and shall not represent that the device is safe or effective for the purposes for which it is being investigated. If the device is being used solely for animal research, the label shall bear the following statement: ''CAUTION-Device for investigational use in laboratory animals or other tests that do not involve human subjects.'' This section's burden is required under § 812.20(b)(10), therefore a separate burden estimate is not required.

This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject enrolled in the study and will not violate the subject's rights.

The likely respondents to this information collection will primarily be medical device manufacturers, investigators, hospitals, health maintenance organizations, and businesses.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
812.10 (waiver requests)	0.0	0.0	0.0	0.50[1]	0.1[2]
812.20, 812.25, and 812.27 (original application)	500	0.428	214	80	17,120
812.35 and 812.150 (amendments and supplements)	500	6.86	3,430	6	20,580
Total					37,700

There are no capital costs or operating and maintenance costs associated with this collection of information.
[1]FDA's best estimate given the fact that no waiver request has ever been submitted.
[2]FDA's best estimate given the fact that no sponsor has submitted such a request between fiscal years 1991 and 1995.

Based on past conversations with manufacturers, industry and trade association representatives, and businesses, FDA has estimated that the annual reporting burden for one IDE original application takes approximately 80 hours to complete, and the annual reporting burden for one IDE amendment and supplement takes

approximately 6 hours to complete. The number of respondents who annually respond to this collection of information has decreased from 700 to 500, due to multiple applications received from each respondent.

Based on an average of IDE's submitted from fiscal years 1991 through 1995, approximately 500 respondents submit IDE applications (originals and supplements) annually. Based on data from fiscal years 1991 to 1995, an average of 214 original IDE applications are submitted annually.

The reporting burden for nonsignificant risk device studies is negligible. Normally, nonsignificant risk device studies are not reported to FDA unless a problem is reported such as an unanticipated adverse device reaction, failure to obtain informed consent, withdrawal of IRB approval, or a recall of a device. In the past, an average of 10 incidences or less annually have been reported to FDA.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
812.140 (original and supplement)	500	0.428	214	10	2,140
		6.86	3,430	1	3,430
812.140 (nonsignificant)	500	1	500	6	3,000
Total					8,570

There are no capital costs or operating and maintenance costs associated with this collection of information.

Over the past several years, in conversations with manufacturers, industry trade association groups, and businesses, FDA has estimated that the recordkeeping burden for preparing an original IDE submission averages 10 hours for each original IDE submission. Similarly, through the same conversations mentioned above, FDA has estimated recordkeeping for each supplement requires 1 hour.

The recordkeeping burden for nonsignificant risk device investigations is difficult to estimate because nonsignificant risk device investigations are not required to be submitted to FDA. The IDE staff estimates that the number of nonsignificant risk device investigations is equal to the number of active significant risk device investigations. The recordkeeping burden, however, is reduced for nonsignificant risk device studies.

2. Information Required In A Premarket Notification Submission (21 CFR 807.87, 807.92, and 807.93) (OMB Control Number 0910–0281—Reinstatement)

Under section 510 of the act (21 U.S.C. 360), a premarket notification must be filed before the introduction or delivery for introduction of a device intended for human use. Under § 807.87 (21 CFR 807.87), premarket notifications are required to contain certain information, including the device name, establishment registration number, class of the device, the device's proposed labeling, action taken by the person required to register to comply with performance standards, and a 510(k) summary as described in 21 CFR 807.92 or a 510(k) (of the act) statement as described in § 807.93 (21 CFR 807.93). In addition, § 807.87(i) requires that those filing premarket notification who claim substantial equivalence to certain devices as described in § 807.87(i), that are classified into class III, must submit to FDA a summary of safety and effectiveness problems and a citation to the information upon which the summary is based. The premarket notification submitter must also furnish FDA with a certification that a reasonable search has been conducted of all known information.

The information collected in the premarket notification is necessary to enhance FDA's ability to ensure that only premarket notification submissions for devices that are as safe and as effective as legally marketed predicate devices are cleared for marketing. In addition, FDA makes publicly available this information concerning devices for which a marketing order has been issued, in order to provide to the public the agency's basis for equivalence determinations.

Respondents to this collection of information are medical device manufacturers and distributors.

FDA estimates the burden of this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.87(h) and 807.92 (simple 510(k) summaries)	2,592	1	2,592	8	20,736
807.87(h) and 807.92 (complex 510(k) summaries)	247	1	247	12	2,964
807.87(h) and 807.93 (510(k) statements)	2,896	1	2,896	1	2,896
807.87(i) and 807.94 (certifications)	208	1	208	40	8,320
Total					34,916

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in the table above.

Under § 807.93, anyone submitting a 510(k) statement must make that information available to anyone who requests it.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.93	2,896	10	28,960	0.5	14,480
Total					14,480

There are no capital costs or operating and maintenance costs associated with this collection of information.

3. Administrative Detention and Banned Medical Devices (21 CFR 800.55, 800.55(k), 895.21, and 895.22) (OMB Control Number 0910–0114—Reinstatement)

FDA has the statutory authority under section 304(g) of the act (21 U.S.C. 334(g)), to detain during establishment inspections devices that are believed to be adulterated or misbranded. On March 9, 1979, FDA issued a final regulation on administrative detention procedures, which includes, among other things, certain reporting requirements (§ 800.55(g) (21 CFR 800.55(g))) and recordkeeping requirements (§ 800.55(k)). Under § 800.55(g), an applicant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, as well as records of distribution of the detained devices. These recordkeeping requirements for administrative detentions allow FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the act (21 U.S.C. 360f) to ban devices that present substantial deception or an unreasonable and substantial risk of illness or injury. The final regulation for banned devices contains certain reporting requirements (§§ 895.21(d) and 895.22(a) (21 CFR 895.21(d) and 895.22(a))). Section 895.21(d) states that if the Commissioner of Food and Drugs (the Commissioner) decides to initiate a proceeding to make a device a banned device, a notice of proposed rulemaking will be published in the Federal Register, and this notice will contain the finding that the device presents a substantial deception or an unreasonable and substantial risk of illness or injury. The notice will also contain the reasons why the proceeding was initiated, an evaluation of data and information obtained under other provisions of the act, any consultations with the panel, and a determination as to whether the device could be corrected by labeling or change of labeling, or change of advertising, and if that labeling or change of advertising has been made. Under § 895.21(d), any interested person may request an informal hearing and submit written comments. Under § 895.22, a manufacturer, distributor, or importer of a device may be required to submit to FDA all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals.

Respondents to this collection of information are those manufacturers, distributors, or importers whose products FDA seeks to detain or ban. As previously stated, the collection of data and information under these regulations is conducted on a very infrequent basis and only as necessary.

FDA estimates the burden of this collection of information as follows:

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800.55(g)	1	1	1	25	25
895.21(d) and 895.22(a)[2]	0	0	0	0	0
Total					25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] No devices were banned during the past 3 years (§§ 895.21 and 895.22). Therefore, no burden has been imposed upon industry. When the prosthetic hair fibers were banned, there were no firms in the United States that were manufacturing or distributing the products. Thus, FDA has put zeroes in the columns estimating reporting and recordkeeping burdens.

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
800.55(k)	1	1	1	20	20
Total					20

There are no capital costs or operating and maintenance costs associated with this collection of information.

Over the past 3 years, there has been an average of one new administrative detention action per year. Each administrative detention will have varying amounts of data and information that must be maintained.

FDA's estimate of the burden under the administrative detention provision is based on FDA's discussion with one of the three firms whose devices had been detained over the last 3 years.

Dated: January 15, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1481 Filed 1–21–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0003]

Dulal C. Chatterji; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Dulal C. Chatterji, 8025 Cobble Creek Circle, Potomac, MD 20854, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Chatterji was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Chatterji has notified FDA that he acquiesces to debarment and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: November 1, 1995.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Mr. Dulal C. Chatterji, formerly vice-president for scientific affairs and head of the research and development (R&D) division at Quad Pharmaceuticals, Inc. (Quad), pled guilty to, and on May 12, 1994, was sentenced for, obstructing an agency proceeding, a Federal felony under 18 U.S.C. 1505. The basis for this conviction was as follows:

In its new drug application (NDA) for colistimethate sodium, Quad falsely represented to FDA that it had produced three sterile batches of the drug. In fact, the firm had produced two nonsterile batches and only one sterile batch. During a subsequent FDA audit of Quad's R&D department, Mr. Chatterji directed that samples from the nonsterile batches of colistimethate sodium be destroyed.

Mr. Chatterji is subject to debarment based on a finding, under section 306(a) of the act (21 U.S.C. 355a(a)), that he was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Mr. Chatterji's conduct related to the regulation of a drug product because, in causing the destruction of drug samples, he obstructed FDA's investigation of fraudulent NDA data submitted by Quad.

In a letter received by FDA on November 1, 1995, Mr. Chatterji notified FDA of his acquiescence to debarment, as provided for in section 306(c)(2)(B) of the act. A person subject to debarment is entitled to an opportunity for an agency hearing on disputed issues of material fact under section 306(i) of the act, but by acquiescing to debarment, Mr. Chatterji waived his opportunity for a hearing and any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.99), finds that Mr. Dulal C. Chatterji has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing findings and based on his notification of acquiescence, Mr. Dulal C. Chatterji is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective November 1, 1995, the date of notification of acquiescence (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Chatterji, in any capacity, during his period of debarment, will be subject to civil money penalties. If Mr. Chatterji, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications (ANDA's) submitted by or with the assistance of Mr. Chatterji during his period of debarment.

Any application by Mr. Chatterji for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 96N–0003 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 7, 1997.

Janet Woodcock

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–1477 Filed 1–21–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91N–0404]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information regarding Medical Devices, Humanitarian Use Devices has been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995. This document announces the OMB approval number.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 29, 1996 (61 FR 55804), the agency announced that the proposed information collection requirements on medical devices, humanitarian use devices (21 CFR 814.102, 814.104, 814.106. 814.108, 814.110(a), 814.112(b), 814.116(b), 814.118(d), 814.120(b), 814.124(b), 814.126(b)(i) and (ii)) had been submitted to OMB for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved the collection of information and assigned OMB control number 0910–0332. The approval expires on November 30, 1999. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: January 15, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1482 Filed 1–21–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for Partnering, Informatics and Technology Development

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a company that can collaboratively pursue development of an expert, information based system of technology development and transfer. In particular, the Office of Technology Development (''OTD''), National Cancer Institute seeks to co-develop a system for modeling current OTD processes. The system will be tested using both the selected collaborator's processes and outcomes and real-time OTD experiences.

ADDRESSES: Questions about this opportunity may be addressed to William Cotreau, J.D., or Jeremy A. Cubert, M.S., J.D., Office of Technology Development, NCI, 6120 Executive Blvd., MSC 7182, Bethesda, MD 20892–7182, Phone: (301) 496–0477, Facsimile: (301) 402–2117. from whom further information may be obtained.

DATES: In view of the important priority of developing a technology informatics system, interested parties should notify this office in writing no later than March 10, 1997. Respondents will then be provided an additional 30 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: ''Cooperative Research and Development Agreement'' or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and amendments (including 104 P.L. 133) and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Office of Technology Development (OTD) serves as the Institute focal point for the implementation of the Federal Technology Transfer Act of 1986. The OTD provides advice, guidance and assistance to Institute staff on such things as: the development and management of intellectual property; registration and management of patents; terms and negotiation of licensing and research and development agreements; management and administration of royalties; transfer of research material; interpretation of laws, policies, rules and regulations especially related to the implementation of the Federal Technology Transfer Act; and other related matters.

The Government is seeking a partner with which, in accordance with the requirements of the regulations governing the transfer of technology in which the Government has taken an active role in developing (37 CFR 404.8), can co-develop a system for modeling technology development processes using information technologies. The National Cancer Institute will provide access to its knowledge and skill base, information regarding current processes and a test bed of technologies not subject to confidentiality obligations. The selected Collaborator will provide expertise in Technology Development, current processes and market awareness.

The expected duration of the CRADA will be two (2) to five (5) years.

The role of the National Cancer Institute, includes the following:

(1) demonstrate current technology development processes related to transactional research agreements.

(2) proof model/equations for logical structure.

(3) provide/input historical NCI–OTD data that are not subject to any confidentiality obligation(s) or where necessary ensure appropriate provisions of confidentiality are applied.

(4) input collaborator historical data.

(5) review model for logical structure.

(6) provide current examples that are not subject to confidentiality obligation(s) or where necessary ensure appropriate provisions of confidentiality are applied in order to further test model.

The role of the collaborator company, includes the following:

(1) program model of NCI current processes related to transactional research agreements.

(2) provide input and feedback regarding NCI processes related to transactional research agreements.

(3) amend model based on feedback from NCI and Collaborator.

(4) provide sufficient information about Collaborator technology development processes to elucidate and improve model.

(5) revise model as necessary.

(6) jointly test model using current NCI technology that is not subject to confidentiality obligation(s) as examples or where necessary ensure appropriate provisions of confidentiality are applied.

(7) develop commercial version of technology development information system.

(8) provide resources as necessary.

Dated: January 8, 1997.

Thomas D. Mays,

Director, Office of Technology Development, OIM, NCI.

[FR Doc. 97–1533 Filed 1–21–97; 8:45 am]

BILLING CODE 4140–10–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting George H. Keller, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext. 246; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Hepatitis A Virus Receptor and Methods of Use

G Kaplan, SM Feinstone (FDA)

Serial No. 08/287,001 filed 05 Aug 94

This invention describes the discovery and isolation of HAVcr–1, a simian cellular receptor for the hepatitis A virus (HAV). Cells nonpermissive to HAV infection transfected with HAVcr–1 cDNA, a novel cell surface mucin-like glycoprotein, gain susceptibility to HAV infection. The invention claims nucleic acids encoding cellular receptors to HAV which hybridize with HAVcr–1 probes. The invention also claims peptides encoded by the above-mentioned HAV receptor nucleic acid.

Potential areas of application include use of HAVcr–1 receptors for diagnostics; use of HAVcr–1 receptors for treatment of patients infected with HAV; development of compounds capable of interacting with HAVcr–1 receptors which could inhibit HAV

infection and be used to treat HAV infected patients; development of transgenic animals for HAV vaccine production and testing.

HAVcr–1 has recently been molecularly cloned and its cDNA is available for further development. A Notice of Allowance has recently been issued on this case by the U.S. Patent and Trademark Office; foreign rights are also available. This invention is available for licensing on an exclusive or nonexclusive basis.

Dated: January 9, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–1532 Filed 1–21–97; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESS: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting the indicated licensing specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

2,2′-Bipyridyl, a Ferrous Chelator, Prevents Vasospasm in a Primate Model of Subarachnoid Hemorrhage

LL Horky (NINDS)

Serial No. 08/672,060 filed 26 Jun 96

Licensing Contact: Stephen Finley, Ph.D., 301/496–7735 ext 215

Subarachnoid hemorrhage (SAH) occurs in 28,000 people per year in North America. Symptomatic vasospasm occurs in the majority of individuals suffering SAH and is the most common cause of morbidity and mortality in patients reaching neurological care. Specifically, vasospasm causes cerebral ischemia or stroke, and the prevention of vasospasm could prevent stroke and death as well as allow physicians more freedom in scheduling surgery when the operative risks are lower.

Intravenous administration of 2,2′-bipyridyl successfully prevented vasospasm in a reliable primate model of subarachnoid hemorrhage. Bipyridyl may provide a safe, cost-effective and reliable therapy for vasospasm in the clinical setting. Additional ferrous chelates, which may also prove effective, are also embodied in the invention. (portfolio: Central Nervous System—Therapeutics, neurological, stroke)

Interleukin-4 Stimulated T-Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders and Graft Rejection

MJ Lenardo, SA Boehme, J Critchfield (NIAID)

Serial No. 08/348,286 filed 30 Nov 94

Licensing Contact: Jaconda Wagner, J.D., 301/496–7735 ext 284

The discovery that interleukin-4 (IL–4) predisposes T lymphocytes to programmed cell death (apoptosis) allows for a novel method of therapeutic intervention in diseases caused by the action of IL–4-responsive T cells. Specifically, the therapy induces the death of a subpopulation of T lymphocytes that are capable of causing disease. Current therapies may cause general death or suppression of immune responses involving T-cells, severely comprising a patient's immune system. This treatment affects only the subset of T cells that react with a specified antigen, thereby leaving a patients immune system uncompromised. This invention is useful in treating allergies and HIV complications. Both fields are available for licensing (portfolio: Internal Medicine—Therapeutics, anti-inflammatory)

Interleukin-2 Stimulated T-Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders and Graft Rejection

MJ Lenardo (NIAID)

Serial No. 08/482,724 filed 07 Jun 95

Licensing Contact: Jaconda Wagner, J.D., 301/496–7735 ext 284

T-Cell apoptosis induced by administration of IL–2 and antigen offers an important new treatment for allergic disorders, which are due to the effects of antigen-activated T-cells. Antigen-activated T-cells cause the release of harmful lymphokines and the production of immunoglobulin E by B cells. Presently available methods for treating allergies have limitations because they are nonspecific in their action and have side effects and limited efficacy. IL–2 and antigen stimulates the programmed death of only antigen-specific T-cells while leaving the rest of the patient's T-cells and other immune cells intact. This invention is also useful in treating HIV. Both fields of use, allergies and HIV, are available for licensing. (portfolio: Internal Medicine—Therapeutics, anti-inflammatory)

Dated: January 13, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–1534 Filed 1–21–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: January 20, 1997.

Time: 3:30 p.m.

Place: NIH, Rockledge 2, Room 5168 Telephone Conference.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: February 4, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6170 Telephone Conference.

Contact Person: Dr. Dennis Leszczyski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, Maryland 20892, (301) 435–1044.

Name of SEP: Multidisciplinary Sciences.

Date: February 24–26, 1997.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435–1174.

Name of SEP: Clinical Sciences.

Date: February 24–26, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency, Bethesda, Maryland.

Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Biological and Physiological Sciences.
Date: February 26, 1997
Time: 6 p.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 4120, Bethesda, Maryland 20892, (301) 435–1780.

Name of SEP: Multidisciplinary Sciences.
Date: March 5–7, 1997
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

Name of SEP: Clinical Sciences.
Date: March 10–11, 1997.
Time: 8:30 a.m.
Place: Bethesda Marriott Hotel, Bethesda, MD.
Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Multidisciplinary Sciences.
Date: March 27–28, 1997.
Time: 6:00 p.m.
Place: Courtyard by Marriott, Rochester, New York.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: January 15, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1535 Filed 1–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–08]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: Comments due: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202)–708–1060, Ext. 334 (this is not a toll-free number), or Linda P. Hoyle, Bureau of the Census, Manufacturing and Construction Division, room 2105, FOB 4, Washington, DC 20233–6900, (301) 457–1321.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey of Manufactured (Mobile) Home Placements.

OMB Control Number: 2528–0029.

Description of the need for the information and proposed use: The Survey of Manufactured (Mobile) Home Placements collects data on the characteristics of newly manufactured homes placed for residential use including number, sales price, location, and other selected characteristics. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report mobile home sales and price information for the nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability.

Data

Agency Form Numbers: C–MH–9A, C–MH–9B.

Members of affected public: Business firms or other for-profit institutions.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 4,000.

Estimate Responses per Respondent: 2.

Time per respondent: 30 minutes.

Total hours to respond: 4,000.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 42 U.S.C. 5424 note, Title 13 U.S.C. Section 8(b), and Title 12, U.S.C., Section 1701z–1.

Dated: January 10, 1997.

Lawrence L. Thompson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 97–1457 Filed 1–21–97; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4200–N–06]

Notice of Proposed Information; Collection for Public Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Certificate of Completion—Consolidated.

OMB Control Number: 2577–0021.

Description of the need for the information and proposed use: HUD needs the information on the Certificate of Completion—Consolidated because it transmits information from the PHAs to HUD concerning the completion of construction contracts; this information is needed so that HUD may authorize payment of funds due the contractor or developer. The information is supplied by the project architect, assembled and forwarded by the PHA.

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: For the one form, on a once per project basis, 147 respondents, one response per project, 147 total responses, 1 hour average per response, 184 total burden hours.

Status of the proposed information collection: Reinstatement, with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 10, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Form of Certificate of Completion—Consolidated

(Not to be used if there are any incomplete or unsettled items outstanding)

Certificate of Completion—Consolidated

This is to certify that all work and materials have been carefully inspected by duly authorized representatives or agents of the (name of owner , hereinafter called the Public Housing Agency (PHA), , and that the (name of contractor), hereinafter called the Contractor, has furnished all labor materials, and services required for the (type of contract) of the (name and number of project), located in (city) (state) in accordance with the requirements of the Specifications and Drawings and Contract No. , dated between the Local PHA and the Contractor.

This is to certify:

1. That all work covered by this contract, originally required to be completed on (date), was actually completed on (date) ;

2. That all changes permitted or required to be made, except minor modifications and field adjustments, have been authorized by written and duly approved Change Orders, and all stop orders have been confirmed and listed in writing;

3. That all Proceed Orders have been supported by approved Change Orders equitably adjusting the contract price and/or time, where adjustment is indicated;

4. That Change Orders Nos. constitute the only amendments to the contract price and/or time, and that ALL Change Orders issued in connection with this contract are listed on the attached Schedule;

5. That all certificate, bonds, guaranties, warranties, insurance, and tests required under the contract have been furnished or performed;

6. That the PHA has obtained from the Contractor the attached Certificate and Release releasing the PHA in full from all further claims under this contract;

7. That all laborers and mechanics have been paid not less than the minimum wage rates as established in said contract, and that there have been no claims made for infringement of any patent;

8. That no claims of any nature by any laborer, mechanic, subcontractor, material man, or vendor are outstanding against the PHA; and

9. That:

Date for completion fixed in contract.	
Date for completion as extended ..	
Actual completion date of contract work.	
Original contract price	$
Authorized additions	
Subtotal	$
Authorized deductions excluding liquidated damages.	
Adjusted Contract Price	$
Less:	
Total payments to Contractor. $	
Total Amount of Liquidated Damages assessed.	$
Balance	$

and

10. That voucher for final payment in the amount of _____ (_____) is due and payable.

. . . . . (Signatures) . . . . . .

Form of Signatures for Certificate of Completion

. . . . . body of Certificate of Completion . . . . . .

	(name of PHA)
	By
	Title
	Date
Concurred in:	
Chief, Architectural Staff	(name of Architect)
	By
Date	Title
	Date
Labor Relations Specialist	Approved for HUD:
Date	Date

[FR Doc. 97–1458 Filed 1–21–97; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–4200–N–07]

Notice of Proposed Information; Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection request described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due: March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451—7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Judson James, 202–708–1336, x130 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collections to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Policy Development and Research—Business Establishment Survey for the Interim Outcomes Assessment of the Empowerment Zones and Enterprise Communities Program.

Description of the need for the information and proposed use: HUD is performing an evaluation study of the Empowerment Zones and Enterprise Communities Program, called the Interim Outcomes Assessment. As part of that study, a survey will be conducted in a sample of the Empowerment Zones and Enterprises Communities, and within the sample sites, with a sample of business establishments. It is HUD's intent that this survey establish a baseline measure of the use and awareness of zone program services and incentives by zone businesses. A second set of surveys will be conducted three years later. A single instrument will be used to collect information over the telephone. The information collected includes information about the firm's knowledge of the Empowerment Zone programs, their past and planned use of such programs, their perception of the zone as a place to do business, and some characteristics of firm (including number of employees and industry designation).

Members of affected public: Representatives of business establishments in the six Empowerment Zones (parts of Atlanta, Baltimore, Chicago, Detroit, New York, and Philadelphia/Camden.

Estimated Burden: 4,800 respondents (2,400 in each of two waves). 15 minutes per response on average, resulting in 1,200 hours of total reporting burden.

Status of proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Date: January 9, 1997.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 97–1459 Filed 1–21–97; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–4200–N–09]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing & Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Mr. Stacy Jordan, 202–708–0426 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: National LIHTC Data Collection and Analysis.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: This research will collect basic data on LIHTC project placed in service in the years 1995 and 1996. A previous LIHTC data collection collected similar data for the years 1987–1994. The 1987–1994 database is available at www.huduser.org/lihtc/. The proposed collection would update the database to aid analysis of LIHTC projects and serve as a sampling frame for further research by HUD and others. The Department anticipates using the same data collection instrument for projects placed in service in 1997, 1998, and 1999, as these data become available from state housing agencies.

Attached is the survey instrument OMB approved for the previous LIHTC data collection. The Department anticipates collecting the same information to the extent that the it is available from individual tax credit agencies. Agencies will be allowed to provide the information either on the form or on a computer file.

Agency form numbers, if applicable:

Members of affected public: 54 State and local housing agencies.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Number of respondents, 54; number of responses per respondent, 1; total annual responses, 54; hours per response, 24; and total hours, 1,296.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 9, 1997.

Michael A. Stegman,

A/S Secretary for Policy, Development and Research.

BILLING CODE 4210–62–M

LIHTC DATA FORM

(With corresponding variable names)

State: STATE State Identifying Number: STATE_ID

Project Name: PROJECT _____

Project Street Address: PROJ_ADD _____
(NUMBER) (STREET)

PROJ_CTY _____ PROJ_ST _____ PROJ_ZIP_
(CITY) (STATE) (ZIP)

Owner/Owner's Representative: CONTACT _____
(FIRST NAME LAST NAME)

COMPANY _____
(COMPANY NAME)

CO_ADD _____
(NUMBER) (STREET)

CO_CTY _____ CO_STATE _____ CO_ZIP ___
(CITY) (STATE) (ZIP)

CO_TEL _____
(AREA CODE AND TELEPHONE NUMBER)

Number of *Total* Units: N_UNITS

Number of *Low-Income* Units: LI_UNITS

Number of Total Units *by Size*: N_0BR (0BR) N_1BR (1BR) N_2BR (2BR) N_3BR (3BR) N_4BR (4+BR)

Year Placed In Service: 19 YR_PIS

Year Project Received Allocation or Bond Issued: 19 YR_ALLOC

Type *(check all that apply)*:
- TYPE_1 ☐ New Construction
- TYPE_2 ☐ Rehab (with or without acquisition)
- TYPE_3 ☐ Existing (for 1987-89 only)

Credit Percentage *(check one)*:
- CREDIT_9 ☐ 9% (70% present value)
- CREDIT_4 ☐ 4% (30% present value)
- ☐ Both

		Yes	No
Does project have a non-profit sponsor?	NON_PROF	☐	☐
Increased due to location in qualified tract or difficult development area?	BASIS	☐	☐
Does project use tax exempt bonds?	BOND	☐	☐
Does project use Farmers Home Section 515 loans?	FMHA	☐	☐

Sample

INSTRUCTIONS FOR LIHTC DATA FORM

State: *Enter the Postal Service two character abbreviation for your state.*

State Identifying Number: *Enter the number or code sequence that your agency uses to identify properties. This should be an identifier that will permit future identification of this project.*

Project Name: *Enter the name of the project, if one exists. Example: Westside Terrace Apartments. Do not enter a partnership name (e.g., Venture Limited II).*

Project Address: *Enter the complete street address of the property, including city, state, and (if available) zip code. Do not enter a P.O. box or multiple addresses (e.g., 52-58 Garden Street). If the project consists of more than one building with different street addresses, enter only one address, using the address for the building with the greatest number of units.*

Owner's Contact Name, Address and Phone Number: *Enter the name, address and phone number of the owner or owner's contact person. This will often be a representative of the general partner. This information will be used for future mail or telephone contacts regarding the development. As such, we need an individual and company name and address as opposed to the partnership name.*

Total Number of Units in Project: *Enter the total number of units in this project, summing across buildings if needed.*

Number of Low Income Units: *Enter the number of units in the development (summing across buildings if necessary) that were qualified to receive Low Income Housing Tax Credits at the time the buildings were placed in service.*

Number of Units by Size : *Enter the number of units in the development (summing across buildings if necessary) that have 0, 1, 2, 3 or 4 or more bedrooms.*

Year Placed In Service: *Enter the last 2 digits of the year the project was placed in service. If this is a multiple building project, with more than one placed in service date, enter the most recent date. Placement in service date is available from IRS Form 8609, Item 5.*

Year Project Received Allocation: *Enter the last 2 digits of the initial allocation year for the project. Allocation date is available from IRS Form 8609, Item 1a. If the project received multiple allocations, use the earliest allocation year.*

Type (New Construction or Acquisition/Rehab): *Enter the production type for which the project is receiving tax credits, i.e., a newly constructed project and/or one involving rehabilitation. For projects allocated in 1987-1989 only, an additional type -- acquisition only -- is also possible. If the project involves both New Construction and Rehab, check both boxes. (Construction type can be inferred from IRS Form 8609, Item 6. If box a or b is checked, the building is new construction. If box c and d or e is checked, the building is acquisition/rehab. If box c only is checked, the building is acquisition-only.)*

Credit Percentage: *This item indicates the type of credit provided: 9% credit (70% present value) or 4% (30 % present value). Maximum applicable credit percentage allowable is available from IRS Form 8609, Item 2. The entry on the 8609 is an exact percentage for the project and may include several decimal places (e.g., 8.89% or 4.2%). Please check the closest percentage -- either 9 or 4 percent. The box marked "Both" may be checked for where acquisition is covered at 4% and rehab at 9%*

Does project have a non-profit sponsor? *Check yes if the project sponsor is a 501-3-C non profit entity. Use the same criteria for determining projects to be included in the 10 percent non-profit set aside.*

Increased Basis Due to Location in a Qualified Census Tract or Difficult Development Area *Check yes if the project actually received increased basis due to its location in a qualified census tract or difficult development area. Increased basis can be determined from IRS Form 8609, Item 3b. (Note: projects may be located in a qualified tract without receiving the increase.)*

Does project use tax exempt bonds? *Check yes if financing was provided through tax exempt bonds. Use of tax exempt bonds can be determined from IRS Form 8609, Item 4, which shows the percentage of the basis financed from this source.*

Does project use Farmers Home Section 515 loans? *Check yes, if the project was financed with a Farmers Home Section 515 direct loan.*

[FR Doc. 97–1460 Filed 1–21–97; 8:45 am]

BILLING CODE 4210–62–C

[Docket No. FR–4200–N–10]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: Comments due: Written comments must be submitted on or before March 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Contact Ronald J. Sepanik at (202)–708–1060, Ext. 334 (this is not a toll-free number), or Edward D. Montfort, Bureau of the Census, HHES Division, Washington, DC 20233, (301)–763–8068 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 1997 American Housing Survey—National Survey.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The 1997 American Housing Survey-National Sample (AHS–NS) provides a periodic measure of the size and composition of the housing inventory in our country. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1701Z–10a mandate the collection of this information.

The 1997 survey is similar to previous AHS–NS surveys and collects data on subjects such as the amount and types of housing in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With these data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With these data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–22 and AHS–23.

Members of affected public: Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 55,000.

Estimate Responses per Respondent: 1 every two years.

Time per respondent: 34 minutes.

Total hours to respond: 31,733.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: January 10, 1997.

Lawrence L. Thompson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 97–1461 Filed 1–21–97; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1430–01; CACA 37508]

Public Land Order No. 7238; Partial Revocation of Secretarial Order Dated November 11, 1929; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 6.50 acres of lands withdrawn for Power Site Classification No. 241. The lands are no longer needed for this purpose, and the revocation is necessary to facilitate a pending land exchange under Section 206 of the Federal Land Policy and Management Act of 1976. The lands are temporarily closed to surface entry and mining due to a pending land exchange. The lands have been and continue to be open to mineral leasing. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated November 11, 1929, which established Power Site Classification No. 241, is hereby revoked insofar as its affects the following described lands:

All lands in the following described tracts lying within 20 feet of each side of the center line of the constructed transmission line of the Southern Sierras Power Company as shown on map in 30 sheets filed with its application, Independence 02165, and incorporated in its grant under the act of March 4, 1911 (36 Stat. 1235, 1253), issued by the Secretary of the Interior on May 6, 1919:

Mount Diablo Meridian

T. 7 S., R. 33 E.,

Sec. 30, S½ of lot 2 of NW¼, lot 1, and N½ of lot 2 of SW¼ (originally described as SW¼NW¼, N½SW¼, and SE¼SW¼);
Sec. 31, NW¼NE¼, SE¼NE¼, N½ of lot 1 of NW¼ (originally described as NE¼NW¼), and NE¼SE¼.
The areas described aggregate 6.50 acres in Inyo County.

2. The above described lands are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1988).

3. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1988). However, since this act applies only to lands withdrawn for power purposes, the provisions of the act are no longer applicable. The lands have been and continue to be open to mineral leasing.

4. The State of California has waived its right of selection in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1988).

Dated: January 10, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–1473 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–40–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 11, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by February 6, 1997.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA
Los Angeles County: Farnsworth, Gen. Charles S., County Park, 568 E. Mt. Curve Ave., Altadena, 97000027
Modoc County: Adin Supply Company, W side of Main St. between Center and McDowell Sts., Adin, 97000028
COLORADO
Teller County: Twin Creek Ranch, 1465 Teller Co. Rd. 31, Florissant vicinity, 97000029
GEORGIA
Muscogee County: Green Island Ranch, 6551 Green Island Dr., Columbus, 97000030
ILLINOIS
Adams County: Coca-Cola Bottling Company Building, 616 N. 24th St., Quincy, 97000032
McLean County: Greenlee, Robert, House, 806 N. Evans St., Bloomington, 97000033
Stephenson County: Lena Water Tower, 201 Vernon St., Lena, 97000034
Winnebago County: Chick House, 119–123 S. Main St., Rockford, 97000031
MISSISSIPPI
Lee County: Tupelo Homesteads, Co. Rds. 665 and 657 and Co. Dr. 647, S of jct. with the Natchez Trace Parkway, Tupelo, 97000035
TENNESSEE
Tipton County: Canaan Baptist Church, 211 N. Main St., Covington, 97000036
Tipton County: Coca-Cola Bottling Plant, 126 US 51, S, Covington, 97000038
Tipton County: Old Trinity Episcopal Church, Charleston Rd., 4 mi. NE of Mason, Mason vicinity, 97000039
Tipton County: South College Street Historic District, 600, 700, and 800 Blocks of S. College St., Covington, 97000037
VERMONT
Bennington County: Dorset Village Historic District (Boundary Increase), Jct. of Church St. and West Rd., Dorset, 97000040

[FR Doc. 97–1529 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contractors in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region's contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the Federal Register and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by Reclamation by February 21, 1997.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Marsha Prillwitz, Bureau of Reclamation, 2800 Cottage Way, MP–402 Sacramento CA 95825. To be placed on a mailing list for any subsequent information, please write Marsha Prillwitz or telephone at (916) 979–2397.

SUPPLEMENTARY INFORMATION:

Under provisions of Section 3405(e) of the CVPIA (Title 34 of Public Law 102–575), ''The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria. For evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities.
5. Identify best management practices to be implemented.
6. Develop schedules, budgets, and projected results.
7. Review, evaluate, and adopt the water conservation plan.

8. Implement, monitor, and update the water conservation plan.

The MP contractor listed below has developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Pacheco Water District.

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plan listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plan, please contact Ms. Prillwitz to find the office nearest you.

Dated: January 10, 1997.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 97–1495 Filed 1–21–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 1–97]

Sunshine Act Meeting; Foreign Claims Settlement Commission

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tues., January 28, 1997, 10:00 a.m.

Subject Matter: 1. Consideration of Proposed Decisions on claims against Albania

2. Hearings on the record on objections to Proposed Decisions in the following claims against Albania:

ALB–032, ALB–034, ALB–035, and ALB–043—Cleopatra Karselas, Eftalia Maliou, George Karselas, and Olga Dntule

ALB–067—Zhaneta Faber
ALB–120—Hito Hitaj
ALB–217—Arthur Generalis

Status: Open

Subject matter not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, N.W., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, January 16, 1997.

David E. Bradley,

Chief Counsel.

[FR Doc. 97–1595 Filed 1–17–97; 10:51 am]

BILLING CODE 4410–01–P

[F.C.S.C. Meeting Notice No. 2–97]

Sunshine Act Meeting; Foreign Claims Settlement Commission

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tues., January 28, 1997, approximately 11:30 a.m.

Subject Matter: Consideration of Proposed Decisions on claims of Holocaust survivors against Germany

Status: Closed.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, January 16, 1997.

David E. Bradley,

Chief Counsel.

[FR Doc. 97–1596 Filed 1–17–97; 10:51 am]

BILLING CODE 4410–01–P

Office of Justice Programs

[OJP (NIJ) No. 1112]

RIN 1121–ZA59

National Institute of Justice ''Operation Drug TEST Solicitation''

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice's ''Operation Drug TEST Solicitation''.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

DATES: The deadline for receipt of proposals is close of business on Thursday, February 20, 1997. Postmarked applications received after this date are not acceptable.

FOR FURTHER INFORMATION CONTACT: The National Criminal Justice Reference Service at 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center at 1–800–421–6771.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

Operation Drug TEST (Testing, Effective Sanctions, and Treatment) proposes using the lever of criminal justice supervision to break the cycle of drug abuse and crime among Federal arrestees. Under this cooperative testing and intervention program operated by the Administrative Office of the U.S. Courts, arrestees are tested for drug abuse. Test results are used to implement graduated sanctions and treatment to deter subsequent drug abuse, reducing the social costs of drug abuse among this population. Operation Drug TEST will be conducted initially in 25 urban, suburban, and rural districts.

The purpose of this solicitation is to provide funding for both implementation and impact evaluations of Operation Drug TEST.

Interested persons should call the National Criminal Justice Reference Service, at (800) 851–3420 to obtain a copy of ''Operation Drug TEST Solicitation'' (refer to SL #000191).

For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org, and click on Justice Grants. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Dated: January 15, 1997.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 97–1428 Filed 1–21–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information the Job Training Partnership Act Title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, Department of Labor, Room N–5426, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to Title III of the Job Training Partnership Act (JTPA), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), the Secretary of Labor (Secretary) is required to recapture funds from States identified pursuant to section 303(b) of the Act, and reallot such funds by a Notice of Obligation (NOO) adjustment to current year funds to ''eligible States'' and ''eligible high unemployment States'', as set forth in section 303 (a), (b), and (c) of JTPA. 29 U.S.C. 1653. The basic reallotment process was described in Training and Employment Guidance Letter No. 4–88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under Title III of the Job Training Partnership Act (JTPA), as amended, 53 FR 48737 (December 2, 1988). The reallotment process for Program Year (PY) 1995 funds was described in Training and Employment Guidance Letter No. 3–95, dated February 5, 1996, Subject: Reallotment of Job Training Partnership Act (JTPA) Title III Formula-Allotted Funds.

NOO adjustments to the PY 1996 (July 1, 1996–June 30, 1997) formula allotments are being issued based on expenditures reported to the Secretary by the States, as required by the recapture and reallotment provisions at Section 303 of JTPA. 29 U.S.C. 1653.

Excess funds are recaptued from PY 1996 formula allotments, and are distributed by formula to eligible States and eligible high unemployment States, resulting in either an upward or downward adjustment to every State's PY 1996 allotment.

Unemployment Data

The unemployment data used in the formula for reallotments, relative numbers of unemployed and relative numbers of excess unemployed, were for the October 1995 through September 1996 period. Long-term unemployment data used were for calendar year 1995. The determination of ''eligible high unemployment States'' for the reallotment of excess unexpended funds were also based on unemployment data for the period October 1995 through September 1996, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based upon the Current Population Survey.

The table below displays the distribution of the net changes to PY 1996 formula allotments.

BILLING CODE 4510–30–M

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
PY 1996 JTPA Title III Reallotment to States

	COL 1	COL 2	COL 3	COL 4	COL 5	COL 6
Alabama	5.3	0	39,493	0	15,608	15,608
Alaska	7.5	212,429	0	0	0	-212,429
Arizona	5.0	0	28,608	0	11,306	11,306
Arkansas	5.0	0	15,635	0	6,179	6,179
California	7.5	0	608,805	608,805	240,614	849,419
Colorado	4.0	0	17,180	0	6,790	6,790
Connecticut	5.1	0	32,372	0	12,794	12,794
Delaware	4.8	0	5,173	0	2,044	2,044
District of Columbia	8.7	0	15,114	15,114	5,973	21,087
Florida	5.4	0	126,228	0	49,888	49,888
Georgia	4.6	0	40,509	0	16,010	16,010
Hawaii	5.9	0	14,380	14,380	5,683	20,063
Idaho	5.1	0	8,519	0	3,367	3,367
Illinois	5.3	0	110,632	0	43,724	43,724
Indiana	4.4	0	29,719	0	11,745	11,745
Iowa	3.3	0	11,004	0	4,349	4,349
Kansas	4.0	15,865	0	0	0	-15,865
Kentucky	5.2	0	31,555	0	12,471	12,471
Louisiana	6.6	0	61,548	61,548	24,325	85,873
Maine	5.3	0	12,327	0	4,872	4,872
Maryland	5.0	0	43,060	0	17,018	17,018
Massachusetts	4.8	0	48,535	0	19,182	19,182
Michigan	4.8	0	65,273	0	25,798	25,798
Minnesota	3.6	0	20,964	0	8,286	8,286
Mississippi	6.0	0	28,982	28,982	11,454	40,436
Missouri	4.1	0	28,380	0	11,216	11,216
Montana	5.7	0	9,414	9,414	3,721	13,135
Nebraska	2.8	37,163	0	0	0	-37,163
Nevada	5.1	0	12,277	0	4,852	4,852
New Hampshire	3.8	0	5,897	0	2,331	2,331
New Jersey	6.3	0	119,374	119,374	47,179	166,553
New Mexico	6.7	0	23,170	23,170	9,157	32,327
New York	6.3	0	245,481	245,481	97,020	342,501
North Carolina	4.4	0	34,126	0	13,488	13,488
North Dakota	3.0	0	2,381	0	941	941
Ohio	4.9	0	79,656	0	31,482	31,482
Oklahoma	4.4	0	16,019	0	6,331	6,331
Oregon	5.1	0	22,085	0	8,728	8,728
Pennsylvania	5.6	0	127,013	127,013	50,199	177,212
Puerto Rico	13.8	2,356,568	0	0	0	-2,356,568
Rhode Island	5.6	0	11,814	11,814	4,669	16,483
South Carolina	5.5	0	35,924	0	14,198	14,198
South Dakota	2.9	0	2,134	0	843	843
Tennessee	5.1	0	40,842	0	16,142	16,142
Texas	5.9	0	217,773	217,773	86,069	303,842
Utah	3.2	0	6,546	0	2,587	2,587
Vermont	4.2	0	2,773	0	1,096	1,096
Virginia	4.3	0	34,870	0	13,781	13,781
Washington	6.1	0	70,479	70,479	27,855	98,334
West Virginia	7.5	0	32,398	32,398	12,804	45,202
Wisconsin	3.6	0	22,968	0	9,077	9,077
Wyoming	4.5	0	2,616	0	1,034	1,034
NATIONAL TOTAL	5.5	2,622,025	2,622,025	1,585,745	1,036,280	0

COLUMN 1	Unemployment rate for 12 month period
COLUMN 2	Amount of funds subject to recapture
COLUMN 3	"Zero Excess": Total recaptured dollars distributed among all "eligible" States
COLUMN 4	Step 1: For "eligible high unemployment" States, amount equal to Column 3
COLUMN 5	Step 2: Remaining dollars distributed to all "eligible" States
COLUMN 6	Total: Column 4 (Step 1) + Column 5 (Step 2) less Column 2 (recaptured amount)

BILLING CODE 4510–30–C

Explanation of Table

Column 1: This column shows each State's unemployment rate for the twelve months ending September 1996.

Column 2: This column shows the amount of excess funds which are subject to recapture. PY 1996 funds in an amount equal to the excess funds identified will be recaptured from such States and distributed as discussed below.

Column 3: This column shows total excess funds distributed among all ''eligible States'' by applying the regular Title III formula. ''Eligible States'' are those with unexpended PY 1995 funds at or below the level of 20 percent of their PY 1995 formula allotments as described above.

Column 4: Eligible States with unemployment rates higher than the national average, which was 5.5 percent for the 12-month period, are ''eligible high unemployment States.'' These eligible high unemployment States received amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular Title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4 and total $1,585,745.

Column 5: The sum of the remaining shares of available funds ($1,036,280) is distributed among all eligible States, again using the regular Title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

Column 6: Net changes in PY 1996 formula allotment are presented. This column represents the decreases in Title III funds shown in column 2, and the increases in Title III funds shown in columns 4 and 5. NOOs in the amounts shown in column 6 are being issued to the States listed.

Equitable Procedures

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

Distribution of Funds

Funds are being reallotted by the Secretary in accordance with section 303 (a), (b), and (c) of the Act, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653 (a), (b), and (c). Distribution within States of funds allotted to States shall be in accordance with section 302 (c) and (d) of the Act (29 U.S.C. 1652 (c) and (d)), and the JTPA regulation at 20 CFR 631.12(d).

Signed at Washington, D.C., this 9th day of January, 1997.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 97–1528 Filed 1–21–97; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Washington State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the Federal Register (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

By letter dated August 17, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, the State submitted on its own initiative amendments comparable to 29 CFR 1910.1045, Acrylonitrile. The State repealed WAC 296–62–07341 and re-issued the standard as WAC 296–62–07336, adding four non-mandatory appendices identical to the Federal. The state amendments were adopted in Administrative Order 88–04 on May 11, 1988, effective June 10, 1988. The re-numbered standard retained the substantive amendments to made to WAC 296–62–07341 in 1986: fifteen day notification of a regulated area, twenty-four hour notification of an emergency release, weekly surveys, air supplied respirators, prohibition of the use of compressed air and dry sweeping, and provisions for lunchrooms. These substantive changes were adopted by the state in Administrative Order 86–28 on July 25, 1986, effective August 25, 1986. This standard was originally approved in the Federal Register (44 FR 65485) on November 13, 1979.

Also by letter dated August 17, 1990, the State on its own initiative submitted amendments comparable to 29 CFR 1910.1044, 1, 2-dibromo-3-chloropropane (DBCP). The state repealed WAC 296–62-07345 and re-issued the standard as WAC 296–62–07342, adding three non-mandatory appendices identical to the Federal. The state amendments were adopted in Administrative Order 88–04 on May 11, 1988, effective June 10, 1988. The re-numbered standard retained substantive amendments adopted in Administrative Order 86–28 on July 25, 1986. This standard was originally approved in the Federal Register (47 FR 26949) on June 22, 1982.

In response to Federal standards changes, and on its own initiative, the State submitted by letters from Mark O. Brown, Director, to James W. Lake, Regional Administrator, State standard amendments comparable to 29 CFR 1910.1027, 29 CFR 1915.1027 and 29 CFR 1926.1127, and 29 CFR 1928.1027, Occupational Exposure to Cadmium. The Federal initiated standards and corrections were published in the Federal Register on September 14, 1992, final rule (57 FR 42102); and April 23, 1993, corrections (58 FR 21778). A State initiated change omitted the printing of the entire Appendix F, ''Nonmandatory Protocol for Biological Monitoring.'' Instead, Appendix F is available upon request. The changes and corrections were adopted in Administrative Order 93–01 on March 13, 1993, effective April 27, 1993; Administrative Order 93–06 on October 20, 1993, effective December 1, 1993; and Administrative Order 94–07 on July 20, 1994 effective September 20, 1994.

In response to Federal standard changes, and on its own initiative the state submitted by letter dated February 14, 1995 from Mark O. Brown, Director, to Richard Terrill, Acting Regional Administrator, state standard amendments comparable to 29 CFR 1910.146, Permit Required Confined Space. The Federal initiated standards and corrections were published in the Federal Register on January 14, 1993, Final Rule (58 FR 4462); June 29, 1993, Corrections (58 FR 34844); and May 19, 1994, Technical Amendments (59 FR 26114). The significant state initiated change expanded the scope and application of the OSHA General

Industry Permit Required Confined Space standard to cover employees in all industries. The changes, corrections and technical amendments were adopted in Administrative Order 94–14 on January 18, 1995, effective March 1, 1995.

All of the administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

2. Decision

OSHA has determined that the State standard amendments for acrylonitrile, 1,2-dibromo-3-chloropropane, and confined space are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. The acrylonitrile and DBCP amendments have been in effect since June 10, 1988, and the confined space amendments have been in effect since March 1, 1995. During this time OSHA has received no indication of significant objection to these different state standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different state standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA has also determined that the differences between the state and Federal amendments for cadmium are minimal and that the state amendments are thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW., Washington, D.C. 20210. For electronic copies of this Federal Register notice, contact OSHA's Web Page at http://www.osha.gov/.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the Federal standards which were promulgated in accordance with the Federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective January 22, 1997.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 26th day of November 1996 .

Carl A. Halgren,

Acting Regional Administrator.

[FR Doc. 97–1280 Filed 1–21–97; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 9:30 a.m.–12:00 p.m., on Friday, February 21, 1997.

STATUS: Open.

ADDRESSES: The Biscayne Bay Marriott Hotel and Marina, Loomis Room, 1633 N. Bayshore Drive, Miami, FL 33132.

FOR FURTHER INFORMATION CONTACT: Isa Bauerlein, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506—(202) 606–8536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, February 21 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 606–8536, TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

68th Meeting of the National Museum Services Board, The Biscayne Bay Marriott Hotel and Marina, Loomis Room, Friday, February 21, 1997, 9:30 am—12:00 pm

AGENDA

I. Chairman's welcome and approval of minutes
II. Guests
  A. Mary Sommerville, President of American Library Association
  B. Penny McFee Knight Foundation
III. Director's report
IV. Appropriations report
V. Legislative/public affairs report
VI. IMS programs report
VII. Board reports of blueprint for the future sessions

Dated: January 15, 1997.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum Services.

[FR Doc. 97–1590 Filed 1–17–97; 3:49 pm]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: February 12, 1997, 9:30 a.m.–12:00 p.m.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Anthony Centodocati, SBIR Program Manager, SBIR Office, (703) 306–1391; Gary Strong, Program Officer, Information, Robotics, and Intelligent Systems/CISE, (703) 306–1928, National

Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase II proposals, Topic 19: Information, Robotics, Intelligent Systems, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: January 15, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1467 Filed 1–21–97; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (#1173).

Date and Time: February 5–6, 1997, 9:00 a.m. to 5:00 p.m. and 9:00 a.m. to noon.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Sue Kemnitzer, Executive Secretary, Room 585, NSF, 4201 Wilson Blvd., Arlington, VA 22230. Phone: (703) 306–1382.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

Agenda

1. To discuss and work on Committee's Report to Congress;
2. Follow up on development of a strategic plan for the Committee and other items from previous meetings; and
3. Briefing on the FY 1998 budget.

Dated: January 15, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1466 Filed 1–21–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Panel for Physiology and Ethology (#1160).

Date and Time: February 10–11, 1997, 8:30 a.m.–5:00 p.m.

Place: NSF, Rooms 310 and 320, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part Open.

Contact Persons: Dr. John A. Phillips, Program Director, Ecological and Evolutionary Physiology; Dr. George Uetz, Program Director, Animal Behavior, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: *Open Session:* February 10, 1997; 4:00 p.m. to 5:00 p.m.—Discussion on research trends, opportunities and assessment procedures in integrative Biology and Neuroscience with Dr. May E. Clutter, Assistant Director, Directorate for Biological Sciences.

Closed Session: February 10, 1997, 8:30 a.m.–4:00 p.m.; February 11, 1997, 8:30 a.m. to 5:00 p.m. To review and evaluate Ecological and Evolutionary Physiology and Animal Behavior proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1468 Filed 1–21–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453]

Atlas Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Atlas Corporation to revise a site-reclamation milestone in License No. SUA–917 for the Moab, Utah facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 20, 1996, a request from Atlas Corporation (Atlas) to amend License Condition (LC) 55 A.(3) of Source Material License SUA–917 for the Moab, Utah facility. The license amendment request proposes to modify LC 55 A.(3) to change the completion date for placement of the final radon barrier on the pile. The date proposed by Atlas would extend completion of the final radon barrier by four years.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415–6629.

SUPPLEMENTARY INFORMATION: The portion of LC 55 A.(3) with the proposed change would read as follows:

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m^2/s above background—December 31, 2000.

Atlas' request to amend LC 55 A.(3) of Source Material License SUA–917, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the Federal Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Atlas Corporation, Republic Plaza, 370 Seventeenth Street, Suite 3050, Denver, Colorado 80202, Attention: Richard Blubaugh; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 14th day of January 1997.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Assistant Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–1485 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–8903]

Homestake Mining Company; Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of licensee request to amend source material license.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received, by letter dated December 18, 1996, an application from Homestake Mining Company (HMC) to amend License Condition (LC) 36 of Source Material License No. SUA–1471 to change certain reclamation milestone dates.

The license amendment application proposes to modify LC 36 to change the completion dates for two site reclamation milestones. The new dates proposed by HMC would extend completion of (1) placement of final radon barrier on the Large Tailings Pile (LTP) by seven years, (2) placement of erosion protection on the LTP by five years, (3) placement of final radon barrier on the Small Tailings Pile (STP) by eleven years, and (4) shorten completion of placement of erosion protection on the STP by one year. The application cites technical infeasibility as precluding completion in accordance with the present license dates due to incomplete settlement of the LTP and evaporation ponds associated with the groundwater corrective action program located on the STP.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Hooks, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–7777.

SUPPLEMENTARY INFORMATION: HMC's application to amend Condition 36 of Source Material License SUA–1471, which describes the proposed changes to the license condition and the reason for the request is being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the Federal Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Homestake Mining Company, P.O. Box 98, Grants, New Mexico 87020; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 14th day of January 1997.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Assistant Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–1484 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 999–90004, General License Pursuant to Part 110, EA 96–342]

NDC Systems, Irwindale, California; Confirmatory Order Modifying License (Effective Immediately)

I

NDC Systems (NDC or Licensee) has been granted a General License pursuant to the provisions of 10 CFR 110.19, 110.20, and 110.23. The General License authorizes the Licensee to export licensed material in accordance with the provisions contained therein.

II

Based on the NRC's investigation conducted from April 12 through

August 28, 1996, at NDC's facility in Irwindale, California, and a predecisional enforcement conference held on October 23, 1996, the NRC has concluded that a violation of NRC requirements occurred. The violation involved the willful failure to comply with export requirements (10 CFR 110.50) in that packaging of certain gauging devices containing americium-241 (Am-241) was not in accordance with Department of Transportation (DOT) requirements.

The Commission's regulations in 10 CFR 110.50(a) and 10 CFR 71.5(a) require NDC, as a general licensee, to comply with the applicable DOT requirements in 49 CFR Parts 170 through 189. Prior to November 1, 1995, DOT requirements in 49 CFR Sections 171.11(d), 171.12(d), 173.422, 173.423, 173.431, and 173.475 required shippers to ensure that radioactive materials are packaged properly, with Type A packaging required for packages containing materials having total activity greater than 80 millicuries, and packages containing materials having total activity equal to or less than 80 millicuries being excepted from this requirement. Prior to November 1, 1995, however, NDC systems delivered gauging devices containing 150 millicuries of americium-241 sources for transport by air to foreign countries in excepted packaging, not in Type A packaging.

NDC representatives stated that the circumstances surrounding the failure to comply with DOT requirements began around 1989 with the practice of improperly labeling gauges that were going to certain countries. Gauges going to certain countries were purposefully mislabeled to reflect a lower activity of 25 mCi, even though NDC personnel knew that the gauges contained 150 mCi. (This occurred after Amersham, the manufacturer of the sources, began shipping to NDC 150 mCi cylinder sources rather than 25 mCi disk sources.) Since the lower activity was within the DOT limit for excepted packaging, NDC personnel improperly packaged the mislabeled gauges in excepted packaging rather than the required Type A packaging. Thus, NDC shipping personnel were packaging and sending gauges going to certain countries in excepted packaging, while the same model gauges, with the same sources, were shipped to other countries in Type A packaging. However, NDC personnel stated that they did not realize they were violating DOT requirements.

Some NDC personnel stated that they raised concerns about the practice of mislabeling the gauge to senior NDC management on a number of occasions. Although NDC senior management agreed the practice was improper, NDC personnel were instructed to continue the practice despite their concerns. At the conference, NDC senior management stated that it condoned this inappropriate practice with the rationalization that it would be a temporary practice until the devices were registered in those certain countries. All involved NDC personnel stated that there was no discussion of mispackaging the devices which was the natural consequence of the mislabeling. Due to NDC senior management's admitted ''sloppy'' practices and total lack of oversight, NDC senior management inadequately evaluated the mislabeling concern and did not consider that the mislabeling would result in mispackaging. Thus, the NRC has concluded that this violation was willful based, at least, on the careless disregard by senior NDC management of applicable requirements.

NDC stated that the root causes of the violation are: (1) a lack of management oversight of the NDC shipping program to ensure compliance with DOT regulations and (2) a lack of a thorough understanding of applicable DOT regulations.

During the October 23 predecisional enforcement conference, NDC proposed various corrective actions that it had taken and planned to take to preclude recurrence of this violation and future DOT violations. In later discussions with NDC, the corrective actions were enhanced to address specific NRC concerns.

III

By letter dated November 21, 1996, the NRC described to the Licensee the NRC's understanding of the Licensee's modified corrective actions. The Licensee subsequently consented to issuing this Order with the conditions, as described in Section IV below, in a letter signed on November 29, 1996. The Licensee further agreed that this Order be immediately effective and that its hearing rights be waived. The NRC has reviewed the above conditions and concludes that implementation of these actions would provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments in its November 29, 1996, letter, be confirmed by this Order. Based on the above and on the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 110, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT NDC'S GENERAL LICENSE PURSUANT TO 10 CFR PART 110 IS MODIFIED AS FOLLOWS:

A. NDC shall retain the services of an independent individual or organization (consultant) to perform two audits of the Licensee's activities conducted under the general license, and shall provide the NRC with reports of the audits' findings as described in Provisions D and E below. The audits shall include, but are not limited to:

(1) Review of export activities, including NDC's compliance with Department of Transportation (DOT) regulations;

(2) discussion and interviews with NDC employees to verify that employees understand DOT regulations as they relate to NDC's shipping activities and to verify the effectiveness of NDC's corrective actions to the violation identified in the Order;

(3) discussion and interviews with NDC employees to verify that NDC employees have been adequately trained on and understand NDC's procedures and policies for raising safety concerns and for seeking guidance related to NRC-licensed activities; and

(4) discussion and interviews with NDC employees to determine whether employees have concerns about NDC's policies or procedures for raising safety issues and for seeking guidance.

B. Within 30 days of the date of the Order, NDC shall submit to the NRC, for NRC review and approval, the name and qualifications of the consultant it proposes to use in conducting these audits. The consultant shall be independent of the Licensee's organization and shall be experienced in performing evaluations of NRC or Agreement State licensee programs with respect to implementation of the Department of Transportation (DOT) regulations.

C. Prior to supervising or performing any shipping activities, and no later than 60 days after the date of the Order, NDC will provide formal classroom training consistent with the training requirements of 49 CFR Part 172 Subpart H. All individuals who are

involved in shipping activities, the Shipping Supervisor and Operations Manager, and the individual or individuals with responsibility for oversight of the radiation safety program, are subject to this commitment. For the purpose of the Order, shipping activities include tasks such as packaging, labeling, and completion of appropriate transportation documents.

D. Within 60 days of the date of NRC's approval of a consultant, NDC shall provide the NRC with a copy of the first audit report, including a description of actions taken and planned in response to any recommendations, comments, or findings in the audit report. Alternatively, if NDC does not believe any specific recommendation should be adopted or an audit finding should not be addressed, NDC will provide justification for its position to the NRC.

E. Within 12–18 months of the date of the Order, NDC shall provide the NRC with a copy of the second audit report, including a description of actions taken and planned in response to any recommendations, comments, or findings in the audit report. Alternatively, if NDC does not believe any specific recommendation should be adopted or an audit finding should not be addressed, NDC will provide justification for its position to the NRC. If NDC chooses to use a different auditor for this audit, NDC shall submit the qualifications of the auditor to the NRC for approval prior to conducting the audit.

F. For the purpose of the Order, NDC shall send the audits and its responses, and the qualifications of the auditor, to the Director, Division of Nuclear Material Safety, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and a copy to Chief, Materials Branch, NRC WCFO, 1450 Maria Lane, Walnut Creek, California 94596–5368.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 13th day of January 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement

[FR Doc. 97–1488 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–443]

North Atlantic Energy Service Corporation, et al., Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption for Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (the licensee or North Atlantic) for operation of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire. North Atlantic is authorized to act as agent for the eleven owners of the facility.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment addresses the potential environmental issues related to the proposed issuance of a temporary exemption from certain requirements of 10 CFR 50.75(e)(2). Specifically, the proposed exemption would allow Great Bay Power Corporation (Great Bay) 6 months from the date of issue, to obtain a surety bond or other allowable decommissioning funding assurance mechanism for non-electric utilities. Great Bay holds an undivided 12.1324 percent ownership interest in Seabrook.

The Need for the Proposed Action

On May 8, 1996, North Atlantic submitted to the NRC a request on behalf of Great Bay for Commission consent to the indirect transfer of control of Great Bay's interest in the Seabrook Operating License through formation of a holding company. Additional information relating to this request was submitted on October 18, 1996, and December 9, 1996. Approval of the application would allow Great Bay, through the formation of several corporate entities and a merger, to become a wholly-owned subsidiary of a new holding company, Great Bay Holdings Corporation. Such a restructuring would expand Great Bay's opportunities, thereby potentially improving Great Bay's financial strength, benefiting public health and safety. The indirect transfer of control of Great Bay's share of Seabrook is subject to NRC approval pursuant to 10 CFR 50.80.

Great Bay was established in 1994 as a successor to EUA Power Company, which had filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code. When the NRC staff approved the plan for Great Bay's emergence from bankruptcy in 1993, it believed that Great Bay would continue to be an electric utility based upon its status as such prior to bankruptcy and upon the expectation that the reorganized entity would be successful in obtaining long-term contracts for the sale of most of its share of power from Seabrook. However, Great Bay has been marketing most of its share of electricity from Seabrook on the spot wholesale market. The staff has not yet completed its review of the proposed transfer of control, but it appears that Great Bay does not now meet the definition of ''electric utility'' as provided in 10 CFR 50.2, in that it does not appear to

recover the cost of the electricity it generates and/or distributes, either directly or indirectly, through rates established by a regulatory authority. If Great Bay is no longer an ''electric utility,'' as defined in 10 CFR 50.2, it does not meet the requirements of 10 CFR 50.75(e)(2) in that it does not have a surety bond or other surety method in place to provide additional assurance for decommissioning funding.

Because of its status as an exempt wholesale generator, Great Bay is precluded from participating in opportunities in additional electricity markets under New Hampshire law. The proposed formation of a holding company would protect Great Bay's status as a wholesale electric generator and allow its management to develop opportunities in additional electricity markets through the holding company, thus potentially improving Great Bay's financial position, benefiting public health and safety.

To allow the staff to act upon Great Bay's request for approval of indirect transfer of control of Great Bay, without further delaying the potential benefits that may result therefrom, and at the same time to afford Great Bay a reasonable opportunity to implement a suitable decommissioning funding assurance method required of a non-electric utility, the staff proposes to grant Great Bay a 6 month exemption from compliance with the provisions of 10 CFR 50.75(e)(2) pertaining to the additional surety arrangements for decommissioning funding assurance for non-electric utility licensees.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the temporary exemption, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the temporary exemption would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the temporary exemption would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to not issue the temporary exemption and, thereby, delay completion of the staff's review of the request for approval for indirect transfer of control until the necessary surety arrangement is in place. Delay would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1, dated March 1983.

Agencies and Persons Contacted

In accordance with its stated policy, on January 15, 1997, the NRC staff consulted with the New Hampshire state official, Mr. George Iverson of the New Hampshire Emergency Management Agency regarding the environmental impact of the proposed action. On January 15, 1997, the NRC staff consulted with the Massachusetts state official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency. The state officials had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated May 8, 1996, October 18, 1996, and December 9, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Local Public Document Room located at Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 15th day of January 1997.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1486 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–443]

North Atlantic Energy Service Corporation et al.; Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the transfer of control of certain interests in Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (North Atlantic) and the eleven joint owners (the licensees) of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire. North Atlantic is authorized to act as agent for the eleven owners of the facility, and has exclusive authority to operate the plant. The transfer of control would be effected indirectly by the corporate restructuring of Great Bay Power Corporation, the owner of an undivided 12.1324 percent share of Seabrook.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent, under 10 CFR 50.80, to the transfer of control of Great Bay's interest in the Seabrook license that would result indirectly from the restructuring of Great Bay by the establishment of a holding company, Great Bay Holdings Corporation. Great Bay would become a wholly-owned subsidiary of Great Bay Holdings Corporation. Great Bay would remain the owner of an undivided 12.1324 percent share of Seabrook and continue to hold its interest in the Seabrook operating license. As a part of the restructuring, the current equity owners of Great Bay would exchange ownership of Great Bay for ownership of Great Bay Holdings Corporation on a share for share basis.

The Need for the Proposed Action

The proposed action is required to enable Great Bay to restructure as described above. Great Bay is an exempt wholesale generator as defined in the Energy Policy Act of 1992. Because of its status as an exempt wholesale

generator, Great Bay is precluded from opportunities in additional electricity markets. The proposed formation of a holding company would protect Great Bay's status as an exempt wholesale, electric generator and allow management to develop and participate in opportunities in additional electricity markets through the holding company.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to Seabrook. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate the facilities, as North Atlantic will continue to be responsible for the operation Seabrook.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the restructuring, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the corporate restructuring would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Seabrook Station, Unit No. 1, dated March 1983.

Agencies and Persons Consulted

In accordance with its stated policy, on January 15, 1997, the NRC staff consulted with the New Hampshire state official, Mr. George Iverson of the New Hampshire Emergency Management Agency regarding the environmental impact of the proposed action. On January 15, 1997, the NRC staff consulted with the Massachusetts state official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency. The state officials had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensees' letters dated May 8, 1996, October 18, 1996, and December 9, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Local Public Document Room located at Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 15th day of January 1997.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1487 Filed 1–21–97; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 20, 27, February 3, and 10, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of January 20

Wednesday, January 22

10:00 a.m. Briefing on Codes and Standards (Public meeting) (Contact: Gil Millman, 301–415–5843).

11:30 a.m. Affirmation Session (Public meeting) *(Please note; This item will be affirmed immediately following the conclusion of the preceding meeting.)

a. Final Rule to Amend 10 CFR Part 71 for Fissile Material Shipments and Exemptions (tentative).

b. Sequoyah Fuel Corporation and General Atomics; LBP–96–24. Approving=Settlement with General Atomics and Dismissing Proceedings (tentative) (Contact: Andrew Bates, 301–415–1963).

Week of January 27—Tentative

Monday, January 27

2:30 p.m. Briefing by DOE on Plutonium Disposition (Public meeting) (Contact: Vanice Perin, 301–415–8143).

Wednesday, January 29

10:00 a.m. Briefing on Operating Reactors and Fuel Facilities (Public meeting) (Contact: Victor McCree, 301–415–1711).

11:30 a.m. Affirmation Session (Public meeting) (if needed).

Thursday, January 30

10:00 a.m. Briefing on Millstone by Northeast Utilities and NRC (Public meeting) (Contact: Bill Travers, 301–415–8500).

Friday, January 31

10:00 a.m. Briefing on Integrated Materials Performance Evaluation Program (Public meeting) (Contact: Don Cool, 301–415–7197).

Week of February 3—Tentative

Tuesday, February 4

9:30 a.m. Briefing by Maine Yankee, NRR and Region I (Public meeting) (Contact: Daniel Dorman, 301–415–1429).

Wednesday, February 5

NOON Affirmation Session (Public meeting) (if needed).

Week of February 10—Tentative

Thursday, February 13

2:00 p.m. Briefing on Operating Reactor Oversight Program and Status of Improvements in NRC Inspection Program (Public meeting).

3:30 p.m. Affirmation Session (Public meeting)

* The Schedule for commission meetings is subject to change on short notice. to verify the status of meetings call (recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on January 13, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that ''Affirmation of Direct Final Rulemaking: Privatization Act—Conforming Changes and Revision to the NRC Enforcement Policy (NUREG–1600)'' be held on January 13, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary. Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: January 17, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–1657 Filed 1–17–97; 2:22 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of Data Collection Forms

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of data collection forms. The Establishment Information Form, the Wage Data Collection Form, and the Continuation Form are wage survey forms developed by OPM and used by two lead agencies, the Department of Defense (DOD) and the Department of Veterans Affairs (VA). Data collectors survey 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of 75,800 hours. The lead agencies use this information to establish rates of pay for Federal Wage System employees. For copies of this proposal contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, 1900 E Street, NW, Room 6H31, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Angela Graham Humes, Wage Systems Division, (202) 606–2848.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–1416 Filed 1–21–97; 8:45 am]

BILLING CODE 6325–01–M

[OPM Form 1622]

Submission for OMB Review; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Final notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management is submitting to the Office of Management and Budget a request for clearance of a revised employment information collection. The form is used in conjunction with Project ABLE (ABLE BENEFICIARIES' LINK to EMPLOYERS). OPM Form 1622, ''Project ABLE Enrollment Form,'' is used by authorized State Vocational Rehabilitation Counselors. Project ABLE is designed to enhance Federal job opportunities for people with disabilities who are job ready and want to work. The Social Security Administration identifies those persons who may complete the enrollment process. Information on eligible enrollees is stored in OPM's Automated Applicant Referral System (AARS).

It is estimated that no more than 1,000 enrollments will be processed annually. Each form takes approximately 5 minutes (.08 hours) to complete. The annual estimated burden is 80 hours. For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Armando E. Rodriguez, Director, Office of Diversity, Employment Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 6332, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory, Affairs, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: John Riedel-Alvarez, Office of Diversity, (202) 606–2409.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–1418 Filed 1–21–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 20, 1997.

A closed meeting will be held on Friday, January 24, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, January 24, 1997, at 10:00 a.m., will be:

Injunction and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 17, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–1633 Filed 1–17–97; 12:24 pm]

BILLING CODE 8010–01–M

[Release No. 34–38170; File No. SR–CHX–96–28]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Clearing The Post

January 15, 1997.

On November 4, 1996, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article XX, Rule 10, interpretations and policies .01 relating to clearing the post.

Notice of the proposal was published for comment and appeared in the Federal Register on November 25, 1996.[3] No comments were received on the Exchange proposal. This order approves the Exchange proposal.

I. Description

On May 30, 1996, the Commission approved the CHX's Minor Rule Violations Plan (''Plan'').[4] The Exchange's clearing the post rule, Article XX, Rule 10 was included under the Plan, making violations of this rule subject to the summary fine procedures contained in the Plan. Pursuant to Article XX, Rule 10, interpretations and policies .01, violators of the Exchange's clearing the post rule are currently subject to automatic fines of a minimum of fifty dollars, to be assessed by the Exchange's Committee on Floor Procedure.

The purpose of the proposed rule change is to eliminate the authority of the Exchange's Committee on Floor Procedure with respect to assessing fines for violations of the clearing the post rule. The Exchange believes that minor violations of the clearing the post rule are better handled through the new summary fine procedures contained in the Plan rather than through the Committee on Floor Procedure. The Exchange further believes that using the Plan as the lone summary fine procedure will achieve a uniform procedure for imposing fines for violations of this Exchange rule.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes the proposal is consistent with the requirements of Section 6(b)(5) and Section 6(b)(6).[5] More specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[6]

An Exchange's ability to effectively enforce compliance by its members and member organizations with Exchange rules is central to its self-regulatory functions. The Exchange's earlier inclusion of the clearing the post rule under the Plan was intended to make the Exchange's disciplinary system more efficient in prosecuting more egregious and/or repeated violations of this rule, thereby furthering its mandates to protect investors and the public interest.[7] Under the Plan, the staff of the Exchange presents the facts supporting violative conduct to a Minor Rule Violation Panel (''Panel''), which consists of three floor members appointed by the President of the Exchange.[8] The Panel is then authorized to either impose the fine, reject the staff's recommendation, or recommend that the Exchange commence a formal disciplinary proceeding under Article XII of the CHX rules. If the staff decides not to recommend the commencement of a formal disciplinary proceeding, the Panel is required to impose a fine in accordance with the provisions of the procedure. The Exchange has made a reasonable determination that preserving a similar summary fine procedure vested in the Committee on Floor Procedure is unnecessary and redundant.

The Commission believes the proposal is consistent with the Section 6(b)(6) requirement that the members of an exchange be appropriately disciplined for violations of the rules of the exchange. Under the plan, minor violations of the clearing the post rule are punishable by a minimum fine of $100 (as opposed to a minimum $50 fine imposed by the Committee on Floor Procedure). Eliminating the authority of the Committee on Floor Procedure to fine violations of the clearing the post rule thereby serves to eliminate a potentially inconsistent fine amount and procedure, and ensures a uniform summary fine procedure for minor violations of the clearing the post rule.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–96–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1435 Filed 1–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38153; File No. SR–PTC–96–08]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Time for the Close of the Collateral Loan Facility and the Deadline for Participant Payment of Settlement Obligations

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 37964 (November 19, 1996), 61 FR 59918 (November 25, 1996).

[4] Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (approving File No. SR–CHX–95–25).

[5] 15 U.S.C. § 78f(b)(5) and 15 U.S.C. § 78f(b)(6).

[6] In approving this rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[7] The Minor Rule Violations Panel has the authority to recommend that the Exchange commence a formal disciplinary proceeding. See Securities Exchange Act Release No. 37255 supra note 4.

[8] A Minor Rule Violation Panel must consist of one member of the Committee on Floor Procedure, one member of the Committee's Rules Subcommittee, and one member not on the Committee or any of its subcommittees. See Securities Exchange Act Release No. 37255 supra note 4.

[9] 15 U.S.C. § 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

(''Act''),[1] notice is hereby given that on December 3, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–96–08) as described in Items I, II, and III below, which items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the close of the Collateral Loan Facility (''CLF'') processing vs. payment from 3:30.59 p.m. to 4:00.59 p.m. and extends the deadline for participants to send settlement wire payments to PTC from 4:15 p.m. to 4:30 p.m., beginning on January 6, 1997.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), and (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the close of the CLF processing vs. payment from 3:30.59 p.m. to 4:00.59 p.m. To accommodate the processing extension, the deadline for participant settlement wire payments due PTC also will be extended from 4:15 p.m. to 4:30 p.m. to allow participants sufficient time to arrange for payment when the participant's settlement balance changes as a result of the additional one-half hour financing period. Current opening times and all other deadlines will remain unchanged.

Participants have requested that the extension of the close of the CLF for an additional one-half hour after the normal 3:30.59 p.m. close for regular transaction vs. payment processing be implemented as part of PTC's program to make Federal Home Loan Mortgage Corporation (''FHLMC'') and Federal National Mortgage Association (''FNMA'') securities eligible for PTC's book-entry system to allow participants additional time to finance their positions. PTC plans to implement the rule change on January 6, 1997, so that the new deadlines can be evaluated before the FHLMC and FNMA program is implemented.

PTC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] and the rules and regulations thereunder because it assures the safeguarding of securities and funds in PTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden of Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Participants have requested that PTC make the proposed rule change. PTC has not solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[4] and pursuant to Rule 19b–4(e)(1)[5] promulgated thereunder because the proposal is concerned solely with the administration of PTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–96–08 and should be submitted by February 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1433 Filed 1–21–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(e)(1).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38168; File No. SR–Phlx–96–52]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Customized Foreign Currency Option Expiration Times

January 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 20, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'') or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Phlx has requested accelerated approval for the proposal. On January 10, 1997, Phlx submitted Amendment No. 1 to the proposal in order to clarify when certain classes of foreign currency options (''FCOs'') expire.[1] This Order approves the Phlx proposal, as amended, on an accelerated basis and solicits comments from interested persons.

[1] *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, SEC, dated January 6, 1997.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1000(b)(21)(iv) in order to clarify the transition process in regard to moving the expiration time for customized FCO contracts from an 11:59 p.m. expiration time to a 10:15 a.m. Eastern Time (''ET'') expiration time for customized FCO contracts expiring on a regular mid-month or month-end expiration day.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 24, 1996, the Exchange received approval to change the expiration time for customized FCO contracts which expire on a regular mid-month or month-end expiration date from an 11:59 p.m. expiration (''11:59 p.m. expiration scheme'')[2] to a 10:15 a.m. expiration scheme (''10:15 a.m. expiration scheme'')[3] so that the expiration times for those options would conform to the expiration times for other customized FCO contracts which expire on all other business days (custom dated FCOs).[4] The filing also provided that for those contracts that would expire at 10:15 a.m., the cease trading time and the assignment methodology would also be changed so that the contracts would cease trading at 8:00 a.m. ET on their expiration date and would be subject to a pro-rata (rather than random) assignment process. These changes, however, were approved contingent upon subsequent Commission approval of a corresponding OCC filing.[5] Because OCC only recently received approval for its corresponding filing, Phlx has been unable to implement the new expiration times.[6]

Phlx's original filing, SR–Phlx–96–13, proposed that the earlier expiration time (*i.e.,* the 10:15 a.m. expiration scheme) would become applicable with respect to all newly opened customized FCOs with a few noted exceptions for existing open contracts (''exception dates''). Because Phlx has been unable to implement these changes, however, additional existing series have been opened. Accordingly, Phlx must amend the portion of Phlx Rule 1000(b)(21)(iv) which stated the original exception dates.

Currently, open interest exists in customized FCOs expiring on mid-month and/or month-end expiration Fridays for the months of March, April, July, September and October 1997. These existing series will be ''grandfathered,'' *i.e.,* they will remain subject to an 11:59 pm. expiration scheme. The parties to these contracts (except for the contracts expiring in March),[7] will have the ability to change the expiration times from 11:59 p.m. to the 10:15 a.m. expiration scheme if they desire by notifying the OCC in writing. Phlx believes the ability to switch expiration schemes may be an attractive option to existing parties to the transaction, because the contracts which expire at 11:59 p.m. will not be fungible with those that expire at 10:15 a.m. Further, because the existing contracts may not expire for several months, having different expiration times may become confusing to investors as the expiration date approaches.

Accordingly, Phlx proposes to amend Rule 1000(b)(21) to clarify when customized FCO contracts expire. Specifically, for any customized FCO contract which will expire on a date prior to April 1, 1997, the contract will remain subject to an 11:59 p.m. expiration scheme. Customized FCO contractors opened prior to January 14, 1997 and which expire on or after April 1, 1997 will also remain subject to an 11:59 p.m. expiration scheme unless all parties to the transaction agree to switch to a 10:15 a.m. expiration scheme and notify OCC thereof in writing. Customized FCO contracts opened after January 14, 1997, which expire on or after April 1, 1997, will be subject to a 10:15 a.m. expiration scheme.[8]

The Phlx believes the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing for a transition procedure for changing the time of certain custom FCO contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[9] The purpose of the proposal is to clarify the transition process for customized FCOs as they switch from an 11:59 p.m. expiration scheme, as discussed above, to a 10:15 a.m. expiration scheme.[10] By establishing that any customized FCO contract opened on or after January 14, 1997 and which expires on or after April 1, 1997 will be subject to the 10:15 a.m. expiration scheme, the Phlx is able

[2] Under an 11:59 p.m. expiration scheme, customized FCOs cease trading at 2:30 p.m. on their expiration date and are subject to random assignment.

[3] Under a 10:15 a.m. expiration scheme, customized FCOs cease trading at 8:00 a.m. on their expiration date and are subject to pro-rata assignment.

[4] *See* Securities Exchange Act Release No. 37718 (September 4, 1996) (approving SR–Phlx–96–13 (''SR–PLX–96–13'')) (''Release No. 37718''). The Commission notes, however, that the implementation of these changes was delayed pending approval of conforming changes to the rules of the Options Clearing Corporation (''OCC'').

[5] Release No. 37718 did, however, provide for immediate effectiveness for that portion of the filing which changed the cease trading time from 9:00 a.m. to 8:00 a.m. for custom dated FCOs that currently expire at 10:15 a.m. because they expire on days other than regular mid-month and month-end expiration days.

[6] *See* Securities Exchange Act Release No. 38165 (January 14, 1997) (approving SR–OCC–96–19).

[7] This will not be available for the contract's expiring in March 1997 because the change will be implemented for contracts expiring on or after April 1, 1997. Any contracts expiring prior to April 1, 1997, will remain subject to an 11:59 p.m. expiration scheme.

[8] *See supra* note 3.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] *See supra* note 3.

to create a uniform expiration scheme for all customized FCOs. By allowing existing series of FCOs to remain subject to the 11:59 p.m. expiration scheme, Phlx has adequately ensured that existing parties to the transaction will not see the terms of their contracts unexpectedly changed prior to expiration. As such, the Commission believes the proposal is a reasonable attempt by the Phlx to balance the need to create uniform cease trading and expiration times for all customized FCOs with the need to protect the interests of existing customized FCO holders.

The Phlx proposal also allows holders and writers of existing series of customized FCOs to convert the terms of their ''grandfathered'' contracts to the 10:15 a.m. expiration scheme, as long as all parties to the transaction agree. Because contracts which expire at 11:59 p.m. will not be fungible with contracts that expire at 10:15 a.m., the Commission believes that the ability of holders to convert their contracts to a 10:15 a.m. expiration scheme (if all parties to the transaction agree) may increase the liquidity of their existing contracts. The ability to convert will also allow existing holders to more carefully tailor their customized FCO holdings to meet their investment objectives (*e.g.*, increased liquidity, known exercise exposure with pro-rata assignment).

By requiring that all parties to the transaction agree to change the expiration times of their contracts prior to such changes becoming effective also will ensure that writers and holders are not forced to change their contract terms at the desire of only one party to the transaction. Accordingly, the Commission believes the Phlx proposal, by allowing investors to convert their customized FCO contracts from an 11:59 p.m. expiration scheme to a 10:15 a.m. expiration scheme, will increase liquidity in the FCO market and help to facilitate transactions in securities.

The Commission finds good cause to approve the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The proposal and Amendment No. 1, as discussed above, clarify the transition process as customized FCOs switch to a 10:15 a.m. expiration scheme. Specifically, the proposal, as amended, provides that existing holders of customized FCO contracts will not have the terms of their contracts changed unless all parties to the transaction specifically notify OCC in writing of their intent to change contract terms. As such, the Commission believes the proposed changes will foster investor protection and facilitate transactions in securities. Furthermore, the Commission notes that Release No. 37718, in which Phlx adopted the 10:15 a.m. expiration scheme, was subject to the full notice period and that no comments were received. Accordingly, the Commission believes it is consistent with the Act to approve the proposal, as amended, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–52 and should be submitted by February 12, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [11] that the proposed rule change (SR–Phlx–96–52) is hereby approved, as amended, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1434 Filed 1–21–97; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. § 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35).

DATES: Interested persons are invited to submit comments on or before February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, S.W.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration, (FAA)

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1995, requires that agencies prepare a notice for publication in the Federal Register, listing information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed form and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 22, 1996 [FR 61, page 54833].

Title: Agricultural Aircraft Operations, FAR 137.

OMB Control Number: 2120–0049.

Type Request: Extension of a currently approved collection.

Form(s): FAA Form 8710–3.

Affected Public: Applicants applying for an agricultural aircraft operators certificate.

Abstract: Standards have been established for the operation of agricultural aircraft and for the dispensing of chemicals, pesticides, and toxic substances. Information collected shows applicant compliance and eligibility for certification by FAA. 14 CFR Part 137 prescribes requirements for issuing agricultural aircraft operator certificates and for appropriate operating rules.

Burden: Total estimated annual burden hours requested 14,037.

Addresses: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to the Office of Management and Budget, New Executive Office Building, Room 10202, Attention DOT/FAA Desk Officer, Washington, D.C. 20503.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, D.C. on January 15, 1997.

Phillip A. Leach,

Information Clearance Officer, United States Department of Transportation.

[FR Doc. 97–1513 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–13–P

Federal Highway Administration

Environmental Impact Statement: Salt Lake County and Davis County, Utah

AGENCY: Federal Highway Administration, (FHWA), UDOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the southern limit of the proposed interstate improvement project in Salt Lake County and Davis County has been changed from 500 North in Salt Lake City to 400 South in Salt Lake City. The southern limit has been changed in order to fully analyze all possible access schemes to downtown Salt Lake City. An environmental impact statement will be prepared for the proposed Interstate improvement project in Salt Lake County and Davis County, Utah.

FOR FURTHER INFORMATION CONTACT: Greg Puske, Project Development Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0182; or Larry Kirby, Project Manager, Utah Department of Transportation, Region Two, 2060 South 2400 West, Salt Lake City, Utah 84104, Telephone: (801) 975–4826.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to address the existing and projected traffic needs in the Interstate (I–15) corridor from 400 South in Salt Lake City to 200 North in Kaysville. The Wasatch Front Regional Council has identified a need for improving the I–15 north corridor of Salt Lake City in previous studies. These studies are the I–15 Corridor Study (1991) and the 2015 Salt Lake Area Long Range Transportation Plan Year (1995).

Alternatives that will be considered based on these studies include (1) taking no action (no-build); (2) highway capacity improvements such as additional through lanes, auxiliary lanes, and interchange modifications; (3) transit improvements such as high occupancy vehicle lanes, express bus service, commuter rail, and light rail; (4) travel demand management strategies which create options designed to discourage the single occupant vehicle; (5) transportation system management strategies which improve the efficiency of the existing highway; (6) combinations of any of the above; and (7) other alternatives identified during the scoping process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in the proposed project. An additional formal public scoping meeting will be held in Salt Lake City in January 1997. In addition, a public hearing will be held after the draft EIS has been prepared. Public notice will be given of the time and place of the public scoping meetings and the public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or UDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: January 14, 1997.

Michael G. Ritchie,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 97–1531 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Reinvestment Request For Treasury Notes or Bonds.

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Reinvestment Request For Treasury Notes or Bonds.

OMB Number: 1535–0086.

Form Number: PD F 5262.

Abstract: The information is requested to support a request to reinvest Treasury notes or bonds at maturity, or to cancel/change a reinvestment request.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 140,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 14,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 7, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–1471 Filed 1–21–97; 8:45 am]

BILLING CODE 4810–39–P

Customs Service

[Customs Form 7506]

Proposed Collection; Comment Request; Warehouse Withdrawal Conditionally Free of Duty and Permit

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Warehouse Withdrawal Conditionally Free of Duty and Permit.

OMB Number: 1515–0007.

Form Number: Customs Form 7506.

Abstract: The Warehouse Withdrawal Conditionally Free of Duty and Permit is an application and permit to withdraw goods from a warehouse without paying duties or taxes. The form also covers several types of withdrawals from a Customs Bonded Warehouse subject to Customs controls.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 73.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 12,167.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1405 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

[Customs Form 3485]

Proposed Collection; Comment Request; Lien Notice

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lien Notice.

OMB Number: 1515–0046.

Form Number: Customs Form 3485.

Abstract: The Lien Notice, Customs Form 3485, enable the carriers, cartmen, and similar businesses to notify Customs that a lien exists against an individual/business for non-payment of freight charges, etc., so that Customs will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 8,497.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1406 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Importers of Merchandise Subject to Actual Use Provisions

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1515–0091.

Form Number: None.

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 12,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1407 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Proof of the Use for Rates of Duty Dependent on Actual Use

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and

included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Proof of the Use for Rates of Duty Dependent on Actual Use.

OMB Number: 1515–0109.

Form Number: None.

Abstract: The Proof of the Use for Rates of Duty Dependent on Actual Use declaration is needed to ensure Customs control over merchandise which is duty free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 10,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1408 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Declaration by Originating Artist, or Seller, or Shipper That Goods Imported Are Original Works of Art

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration by Originating Artist, or Seller, or Shipper that Goods Imported are Original Works of Art

OMB Number: 1515–0118.

Form Number: None.

Abstract: The Declaration by Originating Artist, or Seller, or Shipper that Goods Imported are Original Works of Art is needed to ensure that original works of art are in fact originals and therefore permitted free entry into the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, households, non-profit organizations.

Estimated Number of Respondents: 7,215.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 2,405.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1409 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Declaration of Person Who Performed Repairs

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue, NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for

Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1515–0137.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by Customs to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 10,236.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1410 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Manufacturing Drawback Entry and/or Certificate (Customs Form 331)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Manufacturing Drawback Entry and/or Certificate.

OMB Number: 1515–0148.

Form Number: Customs Form 331.

Abstract: The Manufacturing Drawback Entry and/or Certificate serves as an entry, a certificate of manufacture and delivery (or the combination), or a certificate of imported merchandise necessary in the filing of a claim for a refund of duty and/or internal revenue tax paid.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, households, Businesses.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 19,998.

Estimated Total Annualized Cost on the Public: $945,000.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1411 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

[Customs Form 339]

Proposed Collection; Comment Request; User Fees

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for

Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: User Fees.

OMB Number: 1515–0154.

Form Number: Customs Form 339.

Abstract: The User Fees, Customs Form 339, information is necessary for Customs to effectively collect fees from private and commercial vessels, private aircraft, operators of commercial trucks, and passenger and freight railroad cars entering the United States and recipients of certain dutiable mail entries for certain official services.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1412 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers.

OMB Number: 1515–0155.

Form Number: None.

Abstract: The Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers are used by individuals or businesses desiring Customs approval to measure bulk products or analyze importations may apply to Customs by letter. This recognition is required of businesses wishing to perform such work on imported merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 85.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 85.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1413 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Exportation of Used Self-Propelled Vehicles

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and

purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Exportation of Used-Propelled Vehicles.

OMB Number: 1515–0157.

Form Number: None.

Abstract: The Exportation of Used-Propelled Vehicles requires the submission of documents verifying vehicle ownership of exporters for exportation of vehicles in the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 83,330.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1414 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Petroleum Refineries in Foreign Trade Subzones

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before March 24, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Petroleum Refineries in Foreign Trade Subzones.

OMB Number: 1515–0189.

Form Number: None.

Abstract: The Petroleum Refineries in Foreign Trade Subzones is a rule that amended the Customs Regulations by adding special procedures and requirements governing the operations of crude petroleum and refineries approved as foreign trade zones.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 52.

Estimated Time Per Respondent: 6.035.

Estimated Total Annual Burden Hours: 18,824.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 14, 1997.

V. Carol Barr,

Information Services Group.

[FR Doc. 97–1415 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–1 and Revenue Procedure 97–3

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–1 and Revenue Procedure 97–3, 26 CFR 601.201—Rulings and determination letters.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 601.201—Rulings and determination letters.

OMB Number: 1545–1522.

Revenue Procedure Number: Revenue Procedure 97–1 and Revenue Procedure 97–3.

Abstract: The information requested in Revenue Procedure 97–1 and Revenue Procedure 97–3 is required to enable the Internal Revenue Service to give advice on filing letter ruling and determination letter requests and process such requests.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit

organizations, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 3,800.

Estimated Time Per Respondent: 80 hours, 16 minutes.

Estimated Total Annual Burden Hours: 304,990.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1515 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–U

[FI–104–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–104–90 (TD 8390), Tax Treatment of Salvage and Reinsurance (§ 1.832–4(d)).

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Treatment of Salvage and Reinsurance.

OMB Number: 1545–1227.

Regulation Project Number: FI–104–90.

Abstract: Section 1.832–4(d) of this regulation allows a nonlife insurance company to increase unpaid losses on a yearly basis by the amount of estimated salvage recoverable if the company discloses this to the state insurance regulatory authority.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1516 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Revenue Procedure 97–4, Revenue Procedure 97–5, Revenue Procedure 97–6, and Revenue Procedure 97–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–4 (Letter Rulings), Revenue Procedure 97–5 (Technical Advice), Revenue Procedure 97–6 (Determination Letters), and Revenue Procedure 97–8 (User Fees).

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue

Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 97–4 (Letter Rulings), Revenue Procedure 97–5 (Technical Advice), Revenue Procedure 97–6 (Determination Letters), and Revenue Procedure 97–8 (User Fees).

OMB Number: 1545–1520.

Revenue Procedure Number: Revenue Procedure 97–4, Revenue Procedure 97–5, Revenue Procedure 97–6, and Revenue Procedure 97–8.

Abstract: The information requested in the revenue procedures is required to enable the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) of the Internal Revenue Service, to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 83,068.

Estimated Time Per Respondent: 2 hours, 8 minutes.

Estimated Total Annual Burden Hours: 177,686.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1517 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 4684

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4684, Casualties and Thefts.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Casualties and Thefts.

OMB Number: 1545–0177.

Form Number: Form 4684.

Abstract: This form is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 3 hr., 1 min.

Estimated Total Annual Burden Hours: 903,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1518 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7004, Application for Automatic Extension of Time To File Corporation Income Tax Return.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time To File Corporation Income Tax Return.

OMB Number: 1545–0233.

Form Number: Form 7004.

Abstract: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 1,097,748.

Estimated Time Per Respondent: 8 hr., 22 min.

Estimated Total Annual Burden Hours: 9,177,173.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1519 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

[EE–28–78]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–28–78 (TD 7845), Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans (§§ 301.6104(a)–1, 301.6104(a)–5, 301.6104(a)–6, 301.6104(b)–1, 301.6104(c)–1, and 301.6104(d)–1).

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.

OMB Number: 1545–0817.

Regulation Project Number: EE–28–78.

Abstract: Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. The Internal Revenue Service needs the required information to comply with requests for public inspection.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 51,070.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 12,018.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–1520 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

Submission for OMB Review; Comment Request

January 15, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

DATES: Written comments should be received on or before February 21, 1997 to be assured of consideration.

OMB Number: 1550–0023.

Form Number: OTS Form 1393 and OTS Form 1568.

Type of Review: Revision.

Title: Thrift Financial Report.

Description: OTS collects financial data from OTS-regulated savings associations and their subsidiaries in order to assure their safety and soundness as depositories of personal monies of the general public. The OTS monitors the financial position and interest-rate risk so that adverse conditions can be remedied promptly.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1343.

Estimated Burden Hours Per Respondent: 11.38 average.

Frequency of Response: 12.

Estimated Total Reporting and Recordkeeping Burden: 183,343 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–1431 Filed 1–21–97; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 62, No. 14

Wednesday, January 22, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 961227373-6373-01; I.D. 122096B]

RIN 0648-XX78

Correction

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

Document 96--33402 was inadvertently published in the Proposed Rules section of Monday, January 6, 1997, beginning on page 700. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 8, 31, 71, 91, and 107

[GGD 85–010]

RIN 2115–AF11

Correction

In rule document 96–32801, beginning on page 68510, in the issue of Friday, December 27, 1996, make the following corrections.

1. On page 68510, in the first column, in the first line of the title, ''Alternative'' should read ''Alternate''.

2. On the same page, in the same column, in the second line of the DATES: section, ''1997'' should read ''1996''.

3. On the same page in the same column, in the last line of the DATES: section, ''1997'' should read ''1996''.

4. On page 68511, in the second column, in the fourth line under Notice of Proposed Rulemaking, ''compliance'' should read ''Compliance''.

5. On the same page, in the same column, in the fifth line from the bottom, ''ABW'' should read ''ABS''.

6. On page 68512, in the third column, in the thirteenth line, ''deceived'' should read ''described''.

7. On page 68513, in the first column, in the ninth line of the first paragraph, ''Coats'' should read ''Coast''.

§ 8.120 [Corrected]

8. On page 68518, in the second column, in the seventh line of § 8.120(b), ''authorizes'' should read ''authorities''.

§ 8.130 [Corrected]

9. On the same page, in the same column, in the ninth line of § 8.130(a)(4), ''coast'' should read ''Coast''.

10. On the same page, in the third column, in the first line of § 8.130(a)(5), ''commandant'' should read ''Commandant''.

§ 8.320 [Corrected]

11. On page 68520, in § 8.320(b)(9), ''MORPOL'' should read ''MARPOL''.

BILLING CODE 1505–01–D, 1997 / Corrections

federal register

Wednesday
January 22, 1997

Part II

Department of Labor

Employment Standards Administration

20 CFR Parts 718, et al.

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Proposed Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718, 722, 725, 726 and 727

RIN 1215–AA99

Regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to amend the regulations implementing the Black Lung Benefits Act. Most of the affected regulations govern the processing and adjudication of individual claims filed by former coal miners and their surviving dependents, including the medical criteria used to adjudicate the entitlement of those who file claims and the criteria used to determine which of the miner's former employers will be liable for the payment of benefits. In addition, the Department proposes to eliminate outdated regulations setting forth criteria for approving state workers' compensation programs; to discontinue the annual publication, in the Code of Federal Regulations, of the interim criteria governing claims filed prior to April 1, 1980; and to revise the criteria governing the responsibility of coal mine operators to secure the payment of benefits to their employees.

DATES: Comments must be submitted on or before March 24, 1997.

ADDRESSES: All comments concerning these proposed regulations should be addressed to James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Room C–3520, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 219–6692.

SUPPLEMENTARY INFORMATION: The Department last amended the regulations implementing the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, in 1983, more than thirteen years ago. Since then, litigation before the various U.S. courts of appeals and the Benefits Review Board has resulted in the clarification of many substantive areas. Moreover, the Office of Workers' Compensation Programs' experience in administering the program during this period has resulted in a variety of suggestions for change with the goal of helping to improve services, streamline the adjudication process and simplify the regulations' language. Thus, the Department proposes numerous changes in order to streamline, update and clarify these program regulations.

Summary of Noteworthy Proposed Changes

Evidentiary Development

The proposed regulations contain a limitation on the amount of documentary medical evidence parties may submit. The designated responsible coal mine operator or the Director, whichever party is liable, and the claimant are limited in their affirmative presentations to two complete pulmonary evaluations or consultative reports a piece. Documentary rebuttal evidence is limited to one interpretive opinion with respect to each part of the pulmonary evaluation submitted by a party's opponent. *See* proposed § 725.414.

The Department proposes these changes in order to ensure that eligibility determinations are based on the best quality evidence submitted rather than on the quantity of evidence submitted by each side. Currently, in establishing their eligibility to benefits, claimants must confront the vastly superior economic resources of their adversaries: coal mine operators and their insurance carriers. Often, these parties generate medical evidence in such volume that it overwhelms the evidence supporting entitlement that claimants can procure. The proposed changes limiting evidentiary development attempt to make more equitable the adjudication of black lung claims and reduce the costs associated with these cases.

The proposed regulation also fundamentally restructures the claims adjudication process by focusing evidentiary development at the district director level. The regulation requires all parties to develop their documentary medical evidence and submit it to the district director for consideration. Once a claim is referred for a hearing before the Office of Administrative Law Judges, additional documentary medical evidence will be admitted into the record only on a showing of extraordinary circumstances or if the claimant has not been provided with an adequate complete pulmonary evaluation by doctors of the Department's choosing. The administrative law judge who conducts the hearing may permit the parties to elicit testimony only from a limited group of witnesses, including any physician whose report was submitted to the district director. The judge will base his decision on a *de novo* review of the evidentiary record developed by the district director and the hearing testimony. *See* proposed §§ 725.414, 725.456 and 725.457.

This proposed procedure departs from current practice by excluding the admission of most additional documentary evidence while a claim is pending before an administrative law judge. Parties presently often reserve the active development of medical evidence until a claim is referred for hearing. Permitting additional evidentiary development before the administrative law judge was logical when significant delays occurred between the district director's decision and the hearing before the administrative law judge. Such delays no longer occur in a statistically significant percentage of claims. Consequently, the practical need for permitting evidentiary development at the hearing stage has disappeared.

The Department believes that these proposed procedural changes requiring evidentiary development before the district director will encourage prompt and complete evidentiary development at the earliest stages and will therefore allow the Department to conduct a thorough and meaningful initial adjudication of each claim. The Department believes that the fair, efficient and expeditious adjudication of claims is a desirable objective which can be promoted by limiting the amount of medical evidence developed and encouraging all parties to participate actively at the earliest stages of the process.

Identification of Responsible Operators

The proposed regulations provide that a district director may name one or more ''potentially liable operators'' from among a miner's former employers. The potentially liable operator that most recently employed the claimant will generally be the responsible operator liable for the payment of benefits. The proposed regulations afford the district director considerable flexibility, however, in notifying potentially liable operators; they may be notified *seriatim* after the district director evaluates the response from the miner's most recent employer or does not receive any response. If a potentially liable operator contests its identification, it must submit documentary evidence supporting its position to the district director. In cases involving difficult responsible operator identification issues, the district director may retain more than one potentially liable operator as a party to the case. *See* proposed §§ 725.407 and 725.408.

The district director will choose a responsible operator from among the

identified potentially liable operators and will notify the parties of this determination in his initial findings. The designated responsible operator must respond to the notice of initial findings within 30 days and must specifically indicate whether it agrees or disagrees with the initial finding of liability. *See* proposed §§ 725.410, 725.412. In the event further adjudication of the claim is required, the district director may retain as parties to the case other potentially liable operators in order to preserve the Department's right to compel the payment of benefits by the responsible operator ultimately determined to be liable for the claimant's benefits. *See* proposed § 725.413.

To ensure that the claimant is not overwhelmed by operator-developed medical evidence, however, the proposed regulations limit all potentially liable operators and the designated responsible operator to a total of two pulmonary evaluations or consultative reports as an affirmative case. Because all of the named operators have an identical interest with respect to the claimant's eligibility, the Department does not believe that unfairness will result from limiting the total evidence submitted. The designated responsible operator will have the responsibility and, indeed, the obligation, to develop the operators' case in chief on behalf of all named operators. Any named operator, other than the responsible operator, must request the district director's permission in order to schedule the claimant for a medical examination. This permission may be granted only upon a showing that the responsible operator has not undertaken a full development of the evidence. In no event will the claimant be required to undergo more than two pulmonary examinations by the parties opposing his eligibility. *See* proposed § 725.414.

The proposed responsible operator regulations also assign both the Office of Workers' Compensation Programs (OWCP) and the designated responsible operator burdens of proof. Under proposed § 725.495, the Department bears the burden of proof to identify the responsible operator initially found liable for the payment of benefits. In order to carry this burden of proof, OWCP must establish that the responsible operator is a ''potentially liable operator,'' i.e., that it was an operator after June 30, 1973, that it employed the miner for at least one year, that at least one day of that employment occurred after December 31, 1969, and that the miner was exposed to coal mine dust while working for the operator. In addition, in any case in which the designated responsible operator is not the miner's most recent employer, the record must include a statement that OWCP has investigated its files and has determined that it has no record that a more recent employer insured its liability under the Act, or was authorized to self-insure such liability.

Once OWCP has met its burden of proof, the burden shifts to the designated responsible operator. The operator may avoid liability for the claim only if it establishes: (1) that it is not financially capable of assuming liability for the claim; or (2) that one of the miner's more recent employers meets all of the criteria for a potentially liable operator. The burden imposed on the designated responsible operator under this second alternative includes a showing that the more recent employer is financially capable of assuming liability. *See* proposed § 725.495.

If the designated responsible operator carries its burden of proof and establishes that it was incorrectly identified and OWCP has failed to name and retain as a party the coal mine operator ultimately found liable as the responsible operator, the Trust Fund will bear liability for the claim. In such a case, OWCP will make no attempt to name a new responsible operator and force the claimant once again to establish his entitlement to benefits. *See* proposed § 725.407(d) allowing the district director to identify and notify a responsible operator only before a case is referred to the Office of Administrative Law Judges.

Civil Money Penalty

The proposed regulations contain new provisions implementing the Act's civil money penalty provision, which directs the assessment of a penalty of up to $1,000 per day against operators that fail to secure the payment of benefits, either by purchasing commercial insurance or qualifying as a self-insurer. 30 U.S.C. 933(d). The proposed regulations establish criteria and streamlined procedures to be used in assessing penalties. They provide notice of the Department's intention to minimize the financial burden that uninsured operators currently place on those operators in compliance with the Act's security requirements and on the Black Lung Disability Trust Fund. *See* proposed 20 CFR part 726, subpart D, §§ 726.300–726.320.

The proposed regulations provide a graduated series of possible penalties based on a set of criteria, including the operator's size, its prior notice of the Act's insurance requirements and the operator's action, or inaction, following this notification. *See* proposed § 726.302. After receipt of a notice of penalty assessment and entry of a timely notice of contest, an operator may request a hearing before the Office of Administrative Law Judges. *See* proposed § 726.307. The ensuing decision will address whether the operator has violated the Act's insurance requirements, whether the individuals identified by the Director as potentially severally liable for the penalty were in fact the president, treasurer or secretary of the corporation during the relevant time period and, finally, the appropriateness of the penalty assessment. *See* proposed § 726.313. The Director or any party aggrieved by a decision of the administrative law judge may petition the Secretary for review, which will be conducted using a substantial evidence standard. *See* proposed §§ 726.314, 726.318.

The proposed regulations also impose an additional requirement on self-insured operators. They require that such operators continue to secure the payment of benefits to their employees even after the operator has ceased mining coal. This additional requirement is necessary given the limited amount of security typically required of operators who self-insure and the prolonged time periods after coal mine employment has ceased during which miners may file claims for benefits. *See* proposed § 726.114(c).

Treating Physicians' Opinions

The Department proposes a new paragraph (d) of 20 CFR 718.104, the regulation governing reports of physical examinations. The proposed paragraph would give certain treating physicians' opinions controlling weight in determining whether the miner is totally disabled or died due to pneumoconiosis. The proposed language would mandate that, when weighing a treating physician's opinion, the factfinder must consider the nature and duration of the relationship between the miner and the physician, the frequency and extent of the physician's treatment, and the credibility of the doctor's opinion in light of his reasoning and documentation. The factfinder must also consider the opinion's consistency with the other relevant evidence, and the doctor's training and specialization.

Waiver of Overpayments

The Department proposes amending § 725.547(a), which addresses the applicability of overpayment provisions to coal mine operators and their

insurance carriers. The proposed regulation would make available to all overpaid claimants the provisions governing waiver of recovery of an overpayment incorporated from the Social Security Act, 30 U.S.C. 923(b), 940, incorporating 42 U.S.C. 404(b).

Currently, only a claimant who receives an overpayment from the Black Lung Disability Trust Fund may be relieved of his repayment obligation. Such a claimant is entitled to waiver of recovery of the overpayment if he can demonstrate that permitting recovery would ''defeat the purpose of the Act'' or ''be against equity and good conscience.'' Only those individuals who were not ''at fault'' in creating the overpayment are eligible for waiver. The Department has concluded that these waiver provisions should be available to all claimants, including those who are overpaid by operators and insurance carriers. Thus, under the proposed language, any individual who has received an overpayment will have the opportunity to establish that the two-part test for waiver is met.

Establishing Total Disability and Total Disability Due to Pneumoconiosis

Proposed § 718.204 amends the definition of ''total disability'' and makes explicit the Department's position with regard to establishing total disability due to pneumoconiosis. Both of these changes reflect the decisions of numerous courts of appeals. In order to be found ''totally disabled,'' a miner must have a respiratory or pulmonary impairment which, standing alone, prevents him from performing his usual coal mine employment. See proposed § 718.204(b). In order to establish entitlement, the miner must also demonstrate that his total disability is due to pneumoconiosis. This showing is made by establishing that pneumoconiosis is a substantially contributing cause of the totally disabling respiratory or pulmonary impairment. See proposed § 718.204(c). Finally, proposed § 718.204(a) also makes clear that a concurrent disability due to a nonrespiratory or nonpulmonary condition will not disqualify the miner from receipt of black lung benefits if the miner can also demonstrate total disability due to pneumoconiosis.

Additional or Subsequent Claims

The proposed regulations clarify claimants' right to file ''additional'' or ''subsequent'' claims, those claims filed more than one year after denial of a previous claim. See proposed § 725.309(d). Under this proposal, the claimant may escape automatic denial of an additional claim on the grounds of the prior denial, by demonstrating that a change in one of the applicable conditions of entitlement has occurred since the date upon which the order denying the prior claim became final. The changed regulatory language codifies the holdings of several courts of appeals.

The applicable conditions of entitlement are limited to those conditions upon which the prior denial was based. If the applicable conditions of entitlement relate to the miner's physical condition and the new evidence submitted with the additional claim establishes a change in at least one applicable condition, the proposed regulation contains a rebuttable presumption that the miner's physical condition has changed. Once a change in an applicable condition of entitlement is established, none of the findings made in connection with the prior claim, except those based on a party's failure to contest an issue, shall be binding in the adjudication of the subsequent claim, and the claim must be adjudicated on the merits.

Medical Benefits

Proposed § 725.701(e) provides that in any claim for compensation for treatment of a pulmonary disorder filed by a miner entitled to medical benefits, there shall be a rebuttable presumption that the treatment was for a disorder caused or aggravated by pneumoconiosis. This amended regulatory language codifies a decision of the United States Court of Appeals for the Fourth Circuit. The presumption may be rebutted only by evidence that the specific pulmonary disorder being treated is neither related to, nor aggravated by, the miner's pneumoconiosis. The proposed regulation also provides that evidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment, i.e., evidence which challenges the miner's underlying entitlement to medical benefits, is insufficient to demonstrate that the specific treatment for which compensation is claimed is not compensable. *See* proposed § 725.701(f).

Explanation of Proposed Changes

The Department proposes to revise the regulations implementing the Black Lung Benefits Act, set forth at Chapter VI of Title 20 of the Code of Federal Regulations. In order to make all the proposed changes more easily understandable, the Department proposes to re-promulgate Parts 718, 722, 725, and 726 in their entirety. This action is intended to aid the readers of the Federal Register, and should not be construed as inviting comments on any regulation which has not been substantively revised. The regulations within these parts may be divided into three categories: (1) those which will be substantively revised; (2) those to which the Department is proposing only technical changes; and (3) those which will not be revised at all.

Substantive revisions

The following regulations are being substantively revised: § 718.3, § 718.101, § 718.102, § 718.103, § 718.104, § 718.105, § 718.106, § 718.107, § 718.201, § 718.202, § 718.204, § 718.205, § 718.301, § 718.307, § 718.401, § 718.402, § 718.403, § 718.404, Appendix B to part 718, Appendix C to Part 718, part 722 (entire), § 725.1, § 725.2, § 725.4, § 725.101, § 725.103, § 725.202, § 725.203, § 725.204, § 725.209, § 725.212, § 725.213, § 725.214, § 725.215, § 725.219, § 725.221, § 725.222, § 725.223, § 725.306, § 725.309, § 725.310, § 725.311, § 725.362, § 725.367, § 725.405, § 725.406, § 725.407, § 725.408, § 725.409, § 725.410, § 725.411, § 725.412, § 725.413, § 725.414, § 725.415, § 725.416, § 725.417, § 725.418, § 725.421, § 725.423, § 725.452, § 725.454, § 725.456, § 725.457, § 725.458, § 725.459, § 725.478, § 725.479, § 725.490, § 725.491, § 725.492, § 725.493, § 725.494, § 725.495, § 725.502, § 725.503, § 725.522, § 725.530, § 725.537, § 725.547, § 725.606, § 725.608, § 725.609, § 725.620, § 725.621, § 725.701, § 725.706, § 726.2, § 726.8, § 726.101, § 726.104, § 726.105, § 726.106, § 726.109, § 726.110, § 726.111, § 726.114, § 726.300, § 726.301, § 726.302, § 726.303, § 726.304, § 726.305, § 726.306, § 726.307, § 726.308, § 726.309, § 726.310, § 726.311, § 726.312, § 726.313, § 726.314, § 726.315, § 726.316, § 726.317, § 726.318, § 726.319, § 726.320, and part 727 (entire). The substantive revisions to these regulations are explained in further detail below.

Technical revisions

In addition, a number of regulations have been revised to make certain technical changes. The proposed regulations substitute the term ''district director'' for the term ''deputy commissioner'' wherever it appears. This change is explained in detail at 55 FR 28604–28607, July 12, 1990. The proposed regulations also add a cross-reference to § 725.4(d) to each regulation

which currently contains a cross-reference to part 727. Section 725.4(d) explains that although the Department is discontinuing publication of the interim criteria set forth in 20 CFR Part 727 in the Code of Federal Regulations, part 727 remains applicable to all claims filed prior to April 1, 1980. In addition, certain proposed regulations have been revised and/or renumbered in order to conform with the current requirements of the Office of the Federal Register. The text of § 725.453A has been incorporated into § 725.454 as paragraphs (a), (b) and (c) and § 725.454 has been retitled. The text of § 725.459A has been incorporated into § 725.455 as paragraph (d). Section 725.503A has been renumbered as § 725.504, and §§ 725.504–.506 have been renumbered §§ 725.505–.507. Section 725.701A has been renumbered § 725.702, and §§ 725.702–.707 have been renumbered §§ 725.703–.708. Finally, the proposed regulations correct minor typographical errors, revise cross references to subparts of part 725 which have been redesignated and regulations that have been renumbered, and conform the regulations to the current practices of the Office of the Federal Register. The Department has included technical changes to the following regulations: § 718.1, § 718.2, § 718.4, § 718.303, § 725.102, § 725.216, § 725.217, § 725.301, § 725.302, § 725.350, § 725.351, § 725.360, § 725.366, § 725.401, § 725.402, § 725.403, § 725.404, § 725.419, § 725.420, § 725.450, § 725.451, § 725.453A, § 725.455, § 725.459A, § 725.462, § 725.463, § 725.465, § 725.466, § 725.480, § 725.496, § 725.501, § 725.503A, § 725.504, § 725.505, § 725.506, § 725.507, § 725.510, § 725.513, § 725.514, § 725.521, § 725.532, § 725.533, § 725.543, § 725.603, § 725.604, § 725.605, § 725.607, § 725.701A, § 725.702, § 725.703, § 725.704, § 725.705, § 725.707, § 725.708, § 725.711, § 726.4, and § 726.203. Pursuant to the authority set forth in 5 U.S.C. 552(b)(3)(A), which allows federal agencies to alter ''rules of agency organization, procedure, or practice'' without notice and comment, the Department is not accepting comments on any of these regulations.

Unchanged Regulations

Certain regulations are merely being repromulgated without alteration and are also not open for public comment. To the extent appropriate, the Department's previous explanations of these regulations, set forth in the Federal Register, *see* 43 FR 36772–36831, Aug. 18, 1978; 48 FR 24272–24294, May 31, 1983, remain applicable. The same is true of those regulations to which the Department is making only technical changes. The following regulations are being repromulgated for the convenience of readers: § 718.203, § 718.206, § 718.302, § 718.304, § 718.305, § 718.306, Appendix A to Part 718, § 725.3, § 725.201, § 725.205, § 725.206, § 725.207, § 725.208, § 725.210, § 725.211, § 725.218, § 725.220, § 725.224, § 725.225, § 725.226, § 725.227, § 725.228, § 725.229, § 725.230, § 725.231, § 725.232, § 725.233, § 725.303, § 725.304, § 725.305, § 725.307, § 725.308, § 725.352, § 725.361, § 725.363, § 725.364, § 725.365, § 725.422, § 725.453, § 725.460, § 725.461, § 725.464, § 725.475, § 725.476, § 725.477, § 725.481, § 725.482, § 725.483, § 725.497, § 725.511, § 725.512, § 725.515, § 725.520, § 725.531, § 725.534, § 725.535, § 725.536, § 725.538, § 725.539, § 725.540, § 725.541, § 725.542, § 725.544, § 725.545, § 725.546, § 725.601, § 725.602, § 725.710, § 726.1, § 726.3, § 726.5, § 726.6, § 726.7, § 726.102, § 726.103, § 726.107, § 726.108, § 726.112, § 726.113, § 726.115, § 726.201, § 726.202, § 726.204, § 726.205, § 726.206, § 726.207, § 726.208, § 726.209, § 726.210, § 726.211, § 726.212, and § 726.213.

For purposes of this preamble, ''he'', ''his'', and ''him'' shall include ''she'', ''hers'', and ''her''.

20 CFR Part 718—Standards for Determining Coal Miners' Total Disability or Death Due to Pneumoconiosis

Subpart A—General

20 CFR 718.3. We are specifically seeking comment on § 718.3. Paragraph (c) of § 718.3 was used to support the ''true doubt'' rule, which provides that an evidentiary issue will be resolved in favor of the claimant if the probative evidence for and against the claimant is in equipoise. The United States Supreme Court invalidated the ''true doubt'' rule in *Director, OWCP* v. *Greenwich Collieries*, 114 S.Ct. 2251 (1994). The Court concluded that paragraph (c) failed to define the ''true doubt'' rule effectively. It then held that the rule, as applied by the Benefits Review Board, contravenes the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, by relieving the claimant of the APA-imposed burden of proving his claim by a preponderance of the evidence. Paragraph (c) also appeared to conflict with § 718.403, which requires the party alleging any fact to bear the burden of proving that fact. Section 718.403 more accurately reflects the allocation of burdens of proof under the APA, and paragraph (c) of § 718.3 should therefore be deleted.

Subpart B—Criteria for the Development of Medical Evidence

20 CFR 718.101. The current text of § 718.101 should be redesignated as paragraph (a), without further amendment, and a new paragraph (b) should be added. The Department has consistently maintained the position that the ''quality'' standards addressing the administration of certain clinical tests and examinations apply to all evidence developed by any party in connection with a claim for black lung benefits filed after March 31, 1980. The Benefits Review Board has rejected this position, and held that the standards govern only the evidence developed by the Department; for all other parties, the standards are advisory. The Board has also held that evidence cannot be rejected by the adjudicator solely for noncompliance with the relevant standard. *See generally Gorzalka* v. *Big Horn Coal Co.,* 16 Black Lung Rep. (MB) 1–48, 1–51 (1990) and authorities cited. Only the Third Circuit has addressed this issue, and has agreed with the Department's position. *Director, OWCP* v. *Mangifest,* 826 F.2d 1318 (3d Cir. 1987). Although the existing regulations provide ample authority for making the quality standards generally applicable (see paragraphs 718.3(a), 725.406(b), 725.456(c)), § 718.101 should be amended to leave no doubt on this point.

The Department has also consistently maintained that the part 718 quality standards apply to part 727 claims if the test was conducted after March 31, 1980. *See* 20 CFR 727.203(c). The Sixth Circuit has accepted this interpretation of the regulations. *Wiley* v. *Consolidation Coal Co.,* 915 F.2d 1076, 1080 (6th Cir. 1990). Both the Board and the Seventh Circuit, however, have rejected the Department's position. *Coleman* v. *Ramey Coal Co.,* 18 Black Lung Rep. (MB) 1–9, 1–15 (1993); *Peabody Coal Co.* v. *Director, OWCP [Brinkley],* 972 F.2d 880, 882 (7th Cir. 1992). Accordingly, the proposed paragraph (b) includes a reference to part 727 claims to clarify the applicability of the quality standards to such claims.

The individual quality standards address the compliance requirement in various ways. *See* 20 CFR 718.102 (x-ray) and 718.103 (pulmonary function study): substantial compliance; 718.104 (medical report) and 718.105 (blood gas study): no reference; 718.106 (autopsy/biopsy): compliance. In order to clarify

the criterion for compliance and place it in logical sequence in the regulations, language should be added to §718.101 requiring ''substantial compliance'' with all the standards. This regulation applies generally to all the quality standards, making it the rational provision to contain the compliance requirement. A single reference in one regulation also eliminates repetitive language from three other regulations while making explicit the applicability of the standard to the remaining two regulations. Finally, the phrase ''[e]xcept as otherwise provided'' recognizes the exemption from compliance for a deceased miner whose only X-ray is nonconforming, and autopsies or biopsies of miners who died before March 31, 1980.

The purpose of the quality standards is to ensure the utilization of reliable evidence in adjudicating claims. The effect of noncompliance in terms of proving or refuting entitlement should therefore be obvious. In order to emphasize the insufficiency of such evidence as proof, however, proposed paragraph (b) contains an affirmative prohibition.

20 CFR 718.102. Paragraph (e) should be reorganized in view of the proposed paragraph 718.101(b) general compliance standard. As noted with respect to proposed paragraph 718.101(b), codifying the ''substantial compliance'' standard in that regulation of general applicability eliminates the need to reiterate it in each specific quality standard. The proposed paragraph (e) also makes §718.102 consistent with §718.103 (pulmonary function studies) in presuming compliance with the technical criteria in the Appendix. Finally, the parenthetical citation to ''§718.208'' in the current regulation is a typographical error; no such provision exists. Reference to ''§718.202'' is therefore substituted as a correction inasmuch as that regulation contains definitions of Board-eligible and -certified radiologists and ''B'' readers. *See* 20 CFR 718.202(a)(1)(ii) (C)–(E).

20 CFR 718.103. The last two sentences of paragraph (a) should be removed, and the content of those sentences added to paragraph (c) to take into account the changes to §718.101. The explanation provided for eliminating the ''substantial compliance'' language in §718.102 applies with equal force to §718.103. Furthermore, the proposed paragraphs 718.102(e) and 718.103(c) operate in a functionally equivalent manner: both regulations (i) presume compliance with technical requirements contained in the appendices; (ii) permit rebuttal of that presumption with ''contrary'' evidence; and (iii) recognize an exception to compliance for claims involving deceased miners and limited evidence. Given the identity of purpose in the current regulations, proposed paragraph 718.103(c) mirrors proposed paragraph 718.102(c) to ensure similar interpretation and operation.

20 CFR 718.104. Section 718.104 should be amended to make clear that the enumerated data represents the minimum information and testing upon which a physician's report can be based if obtained in connection with a claim for benefits. This regulation also is the logical provision to implement guidelines for the weighing of medical reports from a miner's treating physician. Proposed paragraph (d) describes the relevant factors the adjudicator must consider in determining whether to accord ''controlling weight'' to the treating physician's opinion. The primary objective in changing the format of §718.104 is to clarify the requirement that any physician's report developed in connection with a claim must be based on certain enumerated information and data in order to establish or refute entitlement. Furthermore, the proposed regulation makes clear the necessity for utilizing at least an x-ray and a pulmonary function test which satisfy the quality standards as a clinical basis for a physician's pulmonary diagnosis. *See Director, OWCP* v. *Siwiec,* 894 F.2d 635, 639 (3d Cir. 1990) (holding that physician's report which was based on nonconforming pulmonary function study was insufficient to prove miner was disabled). Finally, proposed paragraph (c) parallels similar provisions in §§718.102, 718.103 and 718.106, which permit the utilization of nonconforming evidence to establish entitlement if the miner is deceased and complying evidence is unavailable. This provision adds the requirement that the physician must be unavailable; otherwise, in at least some instances, the physician could be requested to address, and cure, the deficiencies in his report.

With respect to paragraph (d), judicial precedent has long recognized that special weight may be given the opinion of a miner's treating physician, based on the doctor's opportunity to observe the miner over a period of time. *See, e.g., Thorn* v. *Itmann Coal Co.,* 3 F.3d 713, 717 n. 3 (4th Cir. 1993); *Tussey* v. *Island Creek Coal Co.,* 982 F.2d 1036, 1042 (6th Cir. 1993); *McClendon* v. *Drummond Coal Co.,* 861 F.2d 1512, 1514 (11th Cir. 1988); *Micheli* v. *Director, OWCP,* 846 F.2d 632, 636 (10th Cir. 1988); *Schaaf* v. *Matthews,* 574 F.2d 157, 160 (3d Cir. 1978). Such deference, however, is not an unqualified ''blanket rule'' which must be applied mechanically; the adjudicator must still determine whether the physician's opinion is reasoned, documented and credible before accepting it over contrary opinions. *Grizzle* v. *Pickands Mather and Co.,* 994 F.2d 1093, 1097 (4th Cir. 1993); *Peabody Coal Co.* v. *Helms,* 901 F.2d 571, 573 (7th Cir. 1990); *Halsey* v. *Richardson,* 441 F.2d 1230, 1236 (6th Cir. 1971); *Tedesco* v. *Director, OWCP,* 18 Black Lung Rep. (MB) 1–104, 1–105 (1994). The proposed changes to §718.104 codify the principles embodied in both lines of cases and draw on a similar regulation adopted by the Social Security Administration, 20 CFR 404.1527(d)(2).

A physician's status as the miner's treating physician can provide a legitimate basis for preferring that opinion over the reports of doctors who have examined the miner only once or reviewed only medical records and test data. Such status alone, however, is no substitute for a critical analysis of both the nature and extent of the patient-doctor relationship and the credibility of the opinion submitted by the physician. The proposed regulation enumerates the four basic factors in evaluating the physician's relationship with the miner: (i) nature of relationship (pulmonary versus non-pulmonary treatment); (ii) duration of relationship (length of time treating the miner); (iii) frequency of treatment (number of visits over time); and (iv) extent of treatment (types of tests and examinations conducted). Each factor will vary from claim to claim. Consequently, no ''bright-line'' rule can be utilized which defines when a treating physician's opinion should be given controlling weight.

Paragraph (d)(5) underscores the requirement that, status aside, the treating physician must provide a reasoned and documented opinion before his conclusions can be accorded controlling weight. Status cannot cure deficiencies in testing and explanation which would be fatal flaws in reports from a non-treating physician. Accordingly, this provision requires the adjudicator to consider the treating physician's opinion on its own merits and in the context of the remainder of the record to determine whether deference to the treating physician is appropriate.

20 CFR 718.105. Section 718.105 should be amended to address studies administered during the miner's terminal illness. During such an illness, arterial blood gas studies may produce qualifying results for reasons unrelated

to a chronic respiratory or pulmonary disease. In order to avoid reliance on ''deathbed'' qualifying data, proposed paragraph (d) should be added. This provision simply ensures the probative value of such tests as evidence of a chronic respiratory or pulmonary impairment by requiring the claimant to submit a physician's report attesting to the link between the qualifying scores and the miner's chronic pulmonary condition.

20 CFR 718.106. Paragraph (b) should be rewritten to account for the changes to § 718.101. Paragraph (b) is revised to utilize language similar to parallel provisions in the other quality standards provisions, which account for the general ''substantial compliance'' standard contained in the amended § 718.101. The word ''noncomplying'' is substituted for ''nonconforming'' to ensure consistent terminology in similar circumstances.

20 CFR 718.107. Section 718.107 should be amended to make explicit the burden of proof a party bears to demonstrate that the proffered test or procedure is ''medically acceptable.'' Section 718.107 enables any party to submit medical evidence based on tests or procedures not covered by the other provisions of subpart B. This regulation permits flexibility in accommodating the use of developing or future medical diagnostic techniques beyond the traditional tests specifically covered by the quality standards. Proposed paragraph (b) emphasizes the requirement that the party proffering the evidence must establish both that the evidence is based on medically acceptable tests or procedures and that the evidence is relevant to determining the medical issues in a benefits claim.

Subpart C—Determining Entitlement to Benefits

20 CFR 718.201. We are specifically seeking comment on § 718.201. The regulatory definition of ''pneumoconiosis'' should be revised to clarify the Department's position that this disease is a progressive condition which, in some instances, may become detectable only after cessation of coal mine employment. The definition should also reflect the inclusive nature of the disease, such that no category of chronic lung disease can be categorically excluded from the ambit of the definition. Two important issues have emerged in recent litigation involving the definition of ''pneumoconiosis'': (i) whether the disease includes obstructive disorders; and (ii) whether pneumoconiosis is a latent disease which can progress after the cessation of dust exposure to the point of clinical manifestation. Heretofore, the Department has consistently taken the position in litigation and rulemaking that no specific lung disease could be categorically excluded from the definition of ''pneumoconiosis''; thus, any disease which could be medically linked to occupational dust exposure in a particular case could be pneumoconiosis. *See* 43 FR 36825, Aug. 18, 1978, § 727.202 *Discussion and changes* (a); 45 FR 13685, Feb. 29, 1980, § 718.201 *Discussion and changes* (a); *Barber* v. *Director, OWCP*, 43 F.3d 899 (4th Cir. 1995). The Department has also argued that pneumoconiosis can progress absent exacerbating dust exposure, and may require many years to reach the point of detection. The Department has been largely successful in litigation involving these issues. The prevalence of the issues and the availability of supportive medical research, however, warrant making explicit the current regulatory definition to codify both positions.

Scope of Definition

The statutory definition of ''pneumoconiosis,'' as implemented by § 718.201, encompasses any chronic respiratory or pulmonary disease or impairment caused by the inhalation of coal mine dust. *See* 30 U.S.C. 902(b). Thus, any such disease or impairment which can be linked to occupational dust exposure by credible medical evidence may be considered ''pneumoconiosis'' for purposes of that particular claim. As such, the Act recognizes a far broader concept of the disease than does the medical community; the latter confines ''coal workers' pneumoconiosis'' to the pathologic reaction of lung tissue to dust inhalation, resulting in characteristic patterns or markings on chest X-rays. *See, e.g.*, ''The Merck Manual of Diagnosis and Therapy'' 681 (15th ed. 1987); ''National Institute for Occupational Safety and Health, Occupational Exposure to Respirable Coal Mine Dust'' § 4.1.2 (1995); *Freeman United Coal Mine Co.* v. *Director, OWCP*, 957 F.2d 302, 303 (7th Cir. 1992). Amending § 718.201 to acknowledge the distinction between the medical and legal definitions emphasizes the inclusive nature of ''pneumoconiosis'' for purposes of the black lung benefits program.

In the same vein, adding the phrase ''any chronic restrictive or obstructive pulmonary disease'' will foreclose litigation attempting to narrow the definition on a claim-by-claim basis with medical opinions which exclude obstructive lung disorders from occupationally-related pathologies. The NIOSH study on occupational dust exposure contains ample medical authority suggesting at least some relationship between coal mine dust exposure and the development of chronic obstructive lung disease. *See* ''National Institute for Occupational Safety and Health, Occupational Exposure to Respirable Coal Mine Dust'' § 4.2.2 *et seq.* Thus, leaving the issue to resolution in litigation risks inconsistent results; indeed, one court has invited such inconsistencies:

> The Act and its regulations define 'pneumoconiosis' broadly and do not establish that dust exposure from coal mine work can necessarily cause obstructive pulmonary disease or impairment. * * * Rather, the facts and medical opinions in each specific case answer this question.

Blakley v. *Amax Coal Co.*, 54 F.3d 1313, 1321 (7th Cir. 1995); *compare Warth* v. *Southern Ohio Coal Co.*, 60 F.3d 173, 175 (4th Cir. 1995) (stating that ''[c]hronic obstructive lung disease thus is encompassed within the definition of pneumoconiosis for purposes of entitlement to Black Lung benefits[,]'' and rejecting medical opinions based on ''erroneous assumptions'' to the contrary); *Eagle* v. *Armco, Inc.*, 943 F.2d 509, 511 n. 2 (4th Cir. 1991) (describing as ''bizarre'' a medical opinion which rejected occupational dust exposure as possible cause of chronic obstructive lung disease).

Progressive Nature

The Department has long maintained the view that simple pneumoconiosis is an irreversible disease, which may cause progressive deterioration of the lung even after the miner has ceased inhaling coal mine dust. Many court and Board decisions reflect acceptance of this characterization of the disease's pathology. *See, e.g., Mullins Coal Co.* v. *Director, OWCP*, 484 U.S. 135, 151 (1987); *LaBelle Processing Co.* v. *Swarrow*, 72 F.3d 308, 314–315 (3d Cir. 1995); *Adkins* v. *Director, OWCP*, 958 F.2d 49, 51 (4th Cir. 1992); *Lukman* v. *Director, OWCP*, 896 F.2d 1248, 1253 (10th Cir. 1990); *Orange* v. *Island Creek Coal Co.*, 786 F.2d 724, 727 (6th Cir. 1986); *Consolidation Coal Co.* v. *Chubb*, 741 F.2d 968, 973 (7th Cir. 1984); *Elkins* v. *Beth-Elkhorn Coal Co.*, 2 Black Lung Rep. (MB) 1–683, 1–686 (1979). *But see Zeigler Coal Co.* v. *Lemon*, 23 F.3d 1235, 1238 (7th Cir. 1994) (chastising an administrative law judge for assuming that pneumoconiosis is progressive without any medical evidence in the record to support the assumption). Indeed, the propensity for progressive deterioration provides the legal justification for permitting additional or

subsequent claims, even for miners who do not return to coal mining after the first claim's denial. *See* 43 FR 36785, Aug. 18, 1978, § 725.309 *Discussion and changes (a)* (''The Department agrees that a miner whose claim has once been finally denied * * * should be allowed to file a new claim on the grounds of a progression to total disability.''). The fact that the miner was unable to prove even the existence of the disease in his initial claim is no bar to a later claim since the disease may not have progressed to the point of clinical manifestation when he filed the application.

Current medical science supports the Department's position that pneumoconiosis may progress. In P. Francois *et al.*, ''Pneumoconiosis of Delayed Apparition: Large Scaled Screening in a Population of Retired Coal Miners of the Northern Coal Fields of France,'' in Seventh International Pneumoconiosis Conference, Abstracts of Communications 979 (1988), 741 new cases of pneumoconiosis (out of 3070 miners, or 24%) were discovered in miners who did not have pneumoconiosis at retirement and who had not been exposed to dust for at least 3 years. Of these 741 new cases, only 10% had large opacities (complicated pneumoconiosis), 69% had category 1 simple pneumoconiosis, and 21% had category 2 simple pneumoconiosis. Indeed, the authors specifically recite one example of a 66 year old ex-miner who had retired 24 years earlier after 25 years of dust exposure. The x-ray at retirement showed no evidence of pneumoconiosis, but the one taken 20 years later showed obvious pneumoconiosis. Thus, the authors write:

> The coalworker's pneumoconiosis may appear a long time after the exposure to nocive [harmful] dust has ceased. This is a well established fact. What we don't know is the frequency of such forms of pneumoconiosis of long delayed apparition.

Francois at p. 979.

An earlier study from France provides additional support. In David V. Bates *et al.*, ''A Longitudinal Study of Pulmonary Function in Coal Miners in Lorraine, France'', 8 Am. J. Ind. Med. 21 (1985), the authors observed continued and accelerated rates of decline in lung function after retirement from mining in both smokers and nonsmokers. The authors suggest that pneumoconiosis at all stages progresses, based on ''dust loading in the lung, and once this has reached some critical level, it is not much affected by removal from exposure.'' Bates at p. 29. The study includes several graphs depicting ''radiologic category at retirement and 10 years later.'' Bates at p. 27. These graphs demonstrate a decrease in the percentage of miners with normal or 0/1 readings, and an increase in the percentage of miners with simple pneumoconiosis (category 1/2) as well as complicated pneumoconiosis. By way of explanation, Dr. Bates identified miners with normal or 0/1 readings as ''o-p;'' miners with 1/2 were ''m, n, A, B,'' and miners with complicated pneumoconiosis were delineated as ''C.'' Bates at p. 22. An x-ray showing opacity perfusion of 0/1 is considered negative for pneumoconiosis under the regulations. 20 CFR 718.102(b). Thus, the data clearly depicts a progression from normal, or negative, x-rays to positive x-rays, with the initial appearance of simple pneumoconiosis occurring some 10 years after the miners' last dust exposure.

Other studies and treatises inferentially document, or otherwise support, the progressivity of simple pneumoconiosis. *See*, Helen Dimich-Ward & David V. Bates, ''Reanalysis of a Longitudinal Study of Pulmonary Function in Coal Miners in Lorraine, France,'' 25 Am. J. Ind. Med. 613, 621 (1994) (lung function loss and disability may progress after exposure ceases); Cockcroft *et al.*, ''Prevalence and Relation to Underground Exposure of Radiological Irregular Opacities in South Wales Coal Workers with Pneumoconiosis,'' Br. J. Ind. Med. 40: 169, 172 (1983) (increase in irregular opacities without further dust exposure indicates continued tissue reaction to inhaled dust and progression of the disease after exposure, although increase in overall profusion of opacities not found); 4A Roscoe N. Gray, ''Attorneys' Textbook Of Medicine,'' ¶ 205.71 (3d ed. 1982) (while only method of preventing progression of pneumoconiosis is removal from dusty environment, with some pneumoconioses progression will continue even after exposure ceases); ''The Merck Manual of Diagnosis and Therapy'' 704 (16th ed. 1992) (explaining that complicated pneumoconiosis may develop and progress without further dust exposure); David V. Bates, ''Respiratory Function in Disease'' 303 (3d ed. 1989) (silicosis commonly progresses after dust exposure ceases). The definition of ''pneumoconiosis'' includes silicosis. 20 CFR 718.202. Moreover, complicated pneumoconiosis normally develops on a background of category 2 or 3 simple pneumoconiosis. *See e.g.* ''The Merck Manual of Diagnosis and Therapy'' at p. 704. Thus, the development from simple to complicated pneumoconiosis without further dust exposure reveals progression of the disease.

In view of the ample scientific support for the Department's interpretation of the scope and nature of the definition of ''pneumoconiosis,'' § 718.201 should reflect that interpretation with more specificity.

20 CFR 718.202. Paragraph (a)(2) should be amended to make clear that a finding of anthracotic pigment in a biopsy procedure, without more, is insufficient to establish the presence of pneumoconiosis. The current regulation imposes this limitation only with respect to an autopsy, but there is no reason to treat these two types of evidence differently.

20 CFR 718.204. The proposed changes to § 718.204 codify several of the positions which the Department has taken in litigation to clarify the meaning of ''total disability.'' The regulation should explicitly reflect the Department's view that ''total disability'' means a totally disabling respiratory or pulmonary impairment. The proposed changes also provide guidance for establishing the degree to which pneumoconiosis must contribute to the miner's disabling impairment; to date, the quantification of disability contribution has been articulated solely through appellate decisions. In addition, the proposed changes make clear that a miner who is totally disabled by a compensable respiratory condition is entitled to black lung benefits regardless of any concurrent disability by non-respiratory impairments or diseases. Finally, the Department proposes to revise the regulation to separate disability and disability causation criteria, unify the various provisions dealing with lay evidence, and delete paragraph (f), which is unnecessary in view of corresponding material in 20 CFR 725.504.

Two significant changes have been made to the concept of ''total disability.'' First, paragraph (a) makes clear that disabling nonrespiratory conditions are irrelevant to determining whether a miner is, or was, totally disabled by pneumoconiosis. This change makes clear the Department's disagreement with the holding in *Peabody Coal Co.* v. *Vigna*, 22 F.3d 1388 (7th Cir. 1994). In that case, the miner suffered a disabling stroke in 1971, and thereafter applied for benefits under part 727. He invoked the interim presumption with qualifying pulmonary function evidence from 1979. The Seventh Circuit held, however, that the operator rebutted the presumption because the miner's disability was caused by the stroke, which was

unrelated to coal mine dust exposure and occurred before the qualifying ventilatory study. *Compare Youghiogheny and Ohio Coal Co.* v. *McAngues,* 996 F.2d 130 (6th Cir. 1993), *cert. den.* 114 S. Ct. 683 (1994) (holding that miner's disabling injuries from automobile accident were irrelevant to determining whether he was totally disabled by pneumoconiosis). Although *Vigna* was decided under part 727, the proposed changes to paragraph 718.204(a) are designed to ensure that the Seventh Circuit's view will not be applied outside that circuit to cases arising under part 718.

The proposed paragraph (a) does recognize one exception to the irrelevancy of disabling nonrespiratory conditions in determining whether the miner is totally disabled by pneumoconiosis. Such conditions or diseases are relevant if they produce a chronic respiratory or pulmonary impairment. Some cardiac and neurological diseases, for example, may affect the respiratory musculature in such a way as to impair the individual's ability to breathe without actually affecting the lungs. *See, e.g., Panco* v. *Jeddo-Highland Coal Co.,* 5 Black Lung Rep. 1–37 (1982) (concerning respiratory impairment from amyotrophic lateral sclerosis, a neurological disease); *Maynard* v. *Central Coal Co.,* 2 Black Lung Rep. 1–985 (1980) (concerning respiratory impairment from heart disease); *Skursha* v. *U.S. Steel Corp.,* 2 Black Lung Rep. 1–518 (1980) (same). Similarly, a traumatic accident such as an injury to the spinal column may affect breathing but not the lungs. The effect of the disease or trauma, its relationship to the miner's ability to breathe, and the interplay with the miner's pneumoconiosis, all determine the contributing causes of the miner's disability.

The second change involves the definition of ''total disability''. The proposed change to paragraph (b)(1) expresses what the Department has always maintained: that the ''disability'' which the miner suffers is a totally disabling respiratory or pulmonary impairment, and not ''whole person'' disability. Although the two courts of appeals to consider the issue have accepted the Department's position, clarifying the definition will hopefully end litigation on this issue. *See Beatty* v. *Danri Corp. & Triangle Enterprises,* 49 F.3d 993 (3d Cir. 1995); *Jewell Smokeless Coal Corp.* v. *Street,* 42 F.3d 241 (4th Cir. 1994).

Another significant change is the addition of criteria defining ''disability causation,'' or the degree to which pneumoconiosis must contribute to the miner's disability. Several courts have addressed the issue, and formulated various standards: *Robinson* v. *Pickands Mather & Co./Leslie Coal Co.,* 914 F.2d 35, 38 (4th Cir. 1990) (''contributing cause''); *Shelton* v. *Director, OWCP,* 899 F.2d 690, 693 (7th Cir. 1990) (necessary though not sufficient cause); *Lollar* v. *Alabama By-Products,* 893 F.2d 1258, 1265 (11th Cir. 1990) (''substantial contributing factor''); *Adams* v. *Director, OWCP,* 886 F.2d 818, 825 (6th Cir. 1989) (disability ''due at least in part'' to pneumoconiosis); *Bonessa* v. *United States Steel Corp.,* 884 F.2d 726, 733 (3d Cir. 1989) (''substantial contributor''); *Mangus* v. *Director, OWCP,* 882 F.2d 1527, 1531 (10th Cir. 1989) (at least a ''contributing cause''). Few, if any, practical differences exist in the various expressions of the contribution standard.

The Department has concluded that a single standard should be articulated to eliminate needless confusion and litigation over the relationship between a miner's pneumoconiosis and his disability. The Department has selected the ''substantially contributing cause'' language because it ensures a tangible and actual contribution; a more demanding standard would be too harsh, especially when many miners suffer from a multiplicity of respiratory problems. Moreover, the ''substantially contributing cause'' standard mirrors the criteria for proving that pneumoconiosis contributed to the miner's death. *See* 20 CFR 718.205(c). The U.S. Court of Appeals for the Third Circuit found the contribution standard for death a persuasive basis for interpreting the disability standard: ''We perceive no reason why the phrase 'total disability due to pneumoconiosis' should not track the phrase 'death due to pneumoconiosis.'" *Bonessa,* 884 F.2d at 733.

Proposed paragraph (c)(1) also defines disability causation in terms of worsening a totally disabling respiratory or pulmonary condition which is itself wholly caused by non-coal mine exposures. Thus, a miner whose pneumoconiosis further damages his lungs may establish the necessary causal link even if nonoccupational exposure is a self-sufficient cause of the respiratory disability. The proposed language reflects the Department's disagreement with the result reached by the U.S. Court of Appeals for the Fourth Circuit in *Dehue Coal Co.* v. *Ballard,* 65 F.3d 1189 (4th Cir. 1995) (holding that a miner who was totally disabled by lung cancer was not entitled to benefits because his pneumoconiosis could not, by definition, contribute to the disability).

The remaining changes are structural or editorial. Paragraph (c)(5) has been changed to paragraph (d) (i) and (ii); the remaining provisions addressing the use of lay evidence have been moved into paragraph (d) given the commonality of their purpose: establishing entitlement through lay evidence. The last sentence of current paragraph (c)(5) makes clear that proving disability through clinical tests or physicians' reports does not necessarily prove that pneumoconiosis caused the disability. This provision therefore underscores the difference between disability and disability causation as separate elements of entitlement. This point is sufficiently important to warrant placement in a separate paragraph as proposed paragraph (c)(2). Finally, current paragraph (f) is deleted because it simply duplicates 20 CFR 725.504 to the extent that both provisions preclude a working miner from receiving benefits unless the award is based on a finding of complicated pneumoconiosis.

20 CFR 718.205. The Department has taken the position that pneumoconiosis causes the miner's death if the disease is either the actual cause of death or hastens death to an appreciable extent. This interpretation of the phrase ''death due to pneumoconiosis'' should be made explicit in the regulation. Under the 1981 amendments to the BLBA, a deceased miner's survivor who filed a claim on or after January 1, 1982, is eligible for benefits only if pneumoconiosis caused, or contributed to, the miner's death. The Department added paragraph (c) to § 718.205 to implement congressional intent that pneumoconiosis must play a role in the miner's death in order to entitle a survivor to benefits. Based on the legislative history of the 1981 amendments, the Department concluded that the disease must be at least a ''substantially contributing cause'' of the miner's death. *See* 48 FR 24276—24277, May 31, 1983, § 718.205 *Discussion and changes* (h)–(n). In order to give practical meaning to that phrase, the Department has consistently argued in litigation that the medical evidence must at least prove that the miner's pneumoconiosis actually hastened his death. Four courts of appeals have deferred to the agency's interpretation of the regulation. *Brown* v. *Rock Creek Mining Co.,* 996 F.2d 812, 816 (6th Cir. 1993); *Peabody Coal Co.* v. *Director, OWCP,* 972 F.2d 178, 183 (7th Cir. 1992); *Shuff* v. *Cedar Creek Coal Co.,* 967 F.2d 977, 980 (4th Cir. 1992), *cert. den.* 113 S.Ct. 969 (1993); *Lukosevicz* v. *Director, OWCP,* 888 F.3d 1001, 1006

(3d Cir. 1989). The Benefits Review Board has refused to adopt the Department's position, but has not articulated an alternative standard. *See, e.g., Tackett* v. *Armco, Inc.,* 16 Black Lung Rep. (MB) 1–88, 1–93 (1992), *vacated on remand* 17 Black Lung Rep. (MB) 1–103, 1–104 (1993). In order to ensure consistent application of a single legal standard, paragraph (c) of § 718.205 should be amended by adding proposed paragraph (c)(5), which codifies the Department's views.

Subpart D—Presumptions Applicable to Eligibility Determinations

20 CFR 718.301. Paragraph (b) should be removed because a new definition of ''year'' is added to 20 CFR 725.101(a). Paragraph (a) of § 718.301 should be amended to make reference to proposed § 725.101(a)(32) and its requirements. Section 718.301 is one of two regulations which currently define ''year'' for determining the length of a miner's occupational history; the other regulation is 20 CFR 725.493(b) (identifying responsible operator). The Department has concluded that a single regulatory definition with program-wide application should replace the two current regulations. Determining the length of a miner's occupational history is the same inquiry for establishing eligibility for presumptions as for identifying a responsible operator, and a single standard should apply in both cases.

20 CFR 718.307. Remove 20 CFR 718.307 (a) and (b) and add the contents of § 718.307(a) to 20 CFR 725.103. Paragraph (a) contains material which concerns any claim filed under the BLBA, and not just claims governed by the part 718 medical criteria. Accordingly, the contents of paragraph (a) will be removed from part 718 and placed in § 725.103. *See* proposed § 725.103. Paragraph (b) effectively duplicates new proposed § 725.103, which more broadly describes the burden of proof. This language should therefore be removed.

Subpart E—Miscellaneous Provisions

20 CFR 718.401. Remove § 718.401 because it duplicates proposed § 725.406. Current § 718.401 recognizes each miner's statutory right to a complete pulmonary evaluation at the Department's expense. *See* 30 U.S.C. 923(b). This regulation also authorizes both the miner and the district director to develop additional medical evidence. Section 718.401 duplicates material in the cross-referenced regulations, 20 CFR §§ –725.405 and 725.406; the part 725 regulations have program-wide applicability. Consequently, no need exists for including this regulation in part 718.

20 CFR 718.402. Remove the first sentence of § 718.402 and add the remainder of this provision to proposed § 725.414(a)(3)(iii). Section 718.402 describes the consequences of a claimant's failure to cooperate in the development of medical evidence needed to adjudicate the claim. This provision duplicates the substance of proposed § 725.414(a)(3)(iii), which deals with a claimant's unreasonable refusal to submit to medical examinations and testing. Section 718.402 also penalizes the claimant who refuses to provide a complete health history or permit access to medical records. This aspect of the regulation will be added to proposed § 725.414. Given the overlapping purposes of the two regulations, § 718.402 should be removed from part 718 in favor of proposed § 725.414, which has program-wide applicability.

20 CFR 718.403. Remove 20 CFR 718.403 from part 718 and add to part 725. Section 718.403 codifies the burden of proof imposed on any party alleging any fact in support of its position under part 718. The parties to a claim, however, are required to prove a variety of facts under part 725 which also bear on entitlement issues, *e.g.,* status as a miner (§ 725.202); dependency and relationship (§§ 725.204–725.228); liability as a responsible operator (subpart G); and entitlement to medical benefits (subpart J). Part 725 does not contain a counterpart to § 718.403. Accordingly, a single provision generally allocating the parties' burdens of proof under the BLBA logically should be placed in part 725, the regulations with program-wide applicability. *See* proposed § 725.103.

20 CFR 718.404. Remove 20 CFR 718.404 from part 718 and move to part 725. Section 718.404(a) makes explicit a miner's obligation to inform the Department and the responsible operator, if any, if he resumes work in a coal mine or comparable and gainful work. A return to such work requires the termination of benefits unless the miner's award is based on complicated pneumoconiosis. *See* 20 CFR 725.504(c). Paragraph (b) reiterates the Department's authority to reopen a finally approved claim during the lifetime of the miner and develop medical evidence if the particular circumstances so warrant. Both provisions are more logically placed in part 725 as regulations of program-wide applicability. *See* proposed § 725.203 (c) and (d).

Appendix B to Part 718

Appendix B to Part 718, 2(ii). The technical requirements for the administration of pulmonary function studies should be amended to preclude taking the initial inspiration from the open air. The quality standards currently permit an individual performing a pulmonary function study to take the initial inspiration from either the open air or the testing machine. The proposed regulation eliminates this choice. Open air inspiration is not recorded on the spirogram, which documents the performance of the test. Consequently, the validity of such an initial inspiration cannot be independently verified by a reviewing physician. Because less than optimum inspiration will produce a ''false low'' result, such tests may yield erroneously abnormal values. The open-air inspiration option therefore must be eliminated in order to ensure that the validity of every pulmonary function study can be independently ascertained.

The Department does not propose to change Tables B1–B6 in Appendix B, which are used to evaluate the results of pulmonary function tests (see proposed § 718.204(b)(2)(i)). Accordingly, the tables will not be republished in either the proposed or final versions of this rule in the Federal Register. The tables will continue to be published as part of Appendix B to part 718 in the Code of Federal Regulations once this rule becomes final, however. Parties interested in reviewing the tables may consult earlier editions of the Code of Federal Regulations or the Federal Register in which the tables were originally promulgated, 45 FR 13699–13710, Feb. 29, 1980.

Appendix C to Part 718. Appendix C should be amended to specify that arterial blood gas studies should not be conducted during, or shortly after, a miner's acute respiratory illness. Such studies are likely to produce spurious values which are not indicative of the miner's true condition.

20 CFR Part 722—Criteria for Determining Whether State Workers' Compensation Laws Provide Adequate Coverage for Pneumoconiosis and Listing of Approved State Laws

Section 421 of the Black Lung Benefits Act requires the Secretary of Labor to publish in the Federal Register a list of all states whose workers' compensation laws provide ''adequate coverage'' for occupational pneumoconiosis. 30 U.S.C. 931(a). The purpose of this provision was to allow states to assume responsibility for providing compensation to former coal

miners who were totally disabled due to pneumoconiosis and to their dependent survivors in the event of the miner's death due to pneumoconiosis. *See Usery* v. *Turner Elkhorn Mining Co.,* 428 U.S. 1, 8–9 (1976). The Secretary's certification that a state law provides adequate coverage prevents any claim for benefits arising in that state from being adjudicated under the Black Lung Benefits Act. To date, no state law has been approved.

The Act provides that a state may be included on the Secretary's list only if its provisions governing benefit amounts, entitlement standards, statute of limitations, and prior and successor operator liability are ''substantially equivalent'' to those contained in the Act. 30 U.S.C. 931(b)(2). In addition, the Secretary may promulgate additional regulations to ensure adequate compensation for total disability or death due to pneumoconiosis. 30 U.S.C. 931(b)(2)(F). The Secretary first promulgated regulations under this authority on March 12, 1971, and amended those regulations on March 30, 1973 in light of changes to the Longshore and Harbor Workers' Compensation Act in 1972. 38 FR 8238, March 30, 1973. These regulations, codified at 20 CFR part 722, have not been amended since 1973. In light of the subsequent statutory changes made by the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Amendments of 1981, the current regulations are obsolete.

The Department has recently concluded a review of all of the regulations implementing the Act, and has determined that the continued publication of these criteria in the Code of Federal Regulations is no longer required. Accordingly, rather than amend the regulations to reflect the current law, the Department intends to simply delete the specific criteria and replace them with a general statement that in the future, upon application of any state, the Department will review the state's workers' compensation law in light of the current Act to determine whether the state law provides adequate coverage. Guided by the criteria set forth in 30 U.S.C. 931(b)(2), the Department will approve such a state law only if it guarantees at least the same compensation, to the same individuals, as is provided by the Act. The Act requires that if the Department approves any state laws, it publish a list of the affected states in the Federal Register, 30 U.S.C. 931(b)(1).

Finally, the revised regulations substitute the gender neutral term ''workers' compensation laws'' for the term ''workmen's compensation laws,'' used in the statute. No substantive alteration in the statutory term is intended.

20 CFR Part 725—Claims for Benefits Under Part C of Title IV of the Federal Mine Safety and Health Act, as Amended

Subpart A—General

20 CFR 725.1. Section 725.1 provides a broad overview of the various parts of the Black Lung Benefits Act (BLBA), the amendments thereto, and the incorporation of the Longshore and Harbor Workers' Compensation Act (LHWCA). The Department proposes to amend this regulation to include a comparable reference to the Social Security Act, 42 U.S.C. 301 *et seq.*, provisions of which are also incorporated into Parts A, B and C of the BLBA. The BLBA is actually three statutes in one. The Act itself is subchapter IV of the Mine Safety and Health Act, chapter 30 of the United States Code. Part C of the Act, which the Department administers, also incorporates many provisions of the LHWCA, 33 U.S.C. 901 *et seq.* Congress authorized the Department to vary the terms of the incorporated LHWCA provisions by regulation, and the Department has done so when the special requirements of the black lung benefits program dictated the variance. Congress also incorporated parts of the Social Security Act into Parts A and B of the BLBA. Congress once again authorized the Department to adopt and modify the Part B provisions ''to the extent appropriate'' for use in the administration of Part C. Accordingly, §725.1 should be amended to include a brief description of the Social Security Act incorporation comparable to the present discussion of the LHWCA incorporation.

20 CFR 725.2. For an explanation of the changes to paragraph (b), see the explanation of the changes to § 725.4. Paragraph (c) should be added to explain the applicability of these regulatory revisions to pending claims and to claims filed after the effective date of the revised regulations. The Department intends that the proposed revisions announced in this Notice will apply to the adjudication of all claims for benefits under the Black Lung Benefits Act pending with the Department on the date these revisions go into effect, to the extent that such application is consistent with the Department's authority under the Black Lung Benefits Act and with the efficient administration of the program. The Department considers a claim to be pending if the claim has not yet been finally denied, or less than one year has passed since the claim was finally denied. In addition, all of the proposed regulations will apply to any claim filed after the regulations become final.

The Supreme Court has held that a statutory grant of legislative rulemaking authority to an agency does not confer the power to issue retroactive rules unless Congress expressly provides such power. *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204, 208 (1988). The Black Lung Benefits Act does not contain such an express grant. Accordingly, the Department's ability to issue rules of retroactive application is circumscribed.

Determining whether a rule is one of retroactive application, however, is often difficult. In *Landgraf* v. *USI Film Products,* 114 S. Ct. 1483 (1994), the Court adopted the definition set forth by Justice Story in *Society for Propagation of the Gospel* v. *Wheeler,* 22 F.Cas. 756 (No. 13,156) (CCDNH 1814):

> [E]very statute, which takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective. * * *

114 S. Ct. at 1499. The Court observed, however, that ''[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law.'' *Ibid.* (citation omitted).

One example of an attempt to regulate retroactively was the Department of Health and Human Services regulation at issue in *Georgetown University Hospital.* In 1983, the U.S. District Court for the District of Columbia had invalidated a 1981 HHS regulation governing hospital reimbursement for failure to provide notice and an opportunity to comment. In 1984, HHS reissued the regulation following notice and comment, and attempted to make it retroactive to 1981. The Supreme Court invalidated the second regulation as an unauthorized attempt to promulgate a retroactive regulation. At the other end of the spectrum are procedural changes. As the Supreme Court noted in *Landgraf,* ''[c]hanges in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity.'' 114 S. Ct. at 1502.

For purposes of retroactivity, the revisions to the Department's regulations implementing the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, may be divided into two groups. The first, consisting of revisions to part 726, have no effect on the adjudication of

claims filed under the Act. Those revisions, which establish procedures for enforcing the general obligation of coal mine operators to secure the payment of benefits under the Act, will be made effective immediately upon publication of the final rule, and will govern all subsequent penalty assessments.

The Department also proposes to revise various provisions in part 726 that address the requirements imposed on coal mine operators who seek the Department's authority to self-insure their liability. These revisions merely clarify the Department's existing interpretation of the Act. Accordingly, these regulations may apply to the evaluation of past conduct. In *Pope* v. *Shalala,* 998 F.2d 473, 483 (7th Cir. 1993), the court held that ''[a] rule simply clarifying an unsettled or confusing area of the law * * * does not change the law, but restates what the law according to the agency is and has always been: 'It is no more retroactive in its operation than is a judicial determination construing and applying a statute to the case.' *Manhattan General Equip. Co.* v. *Commissioner,* 297 U.S. 129, 135 (1936).''

The second, and largest, group of revisions are those amending Parts 718 and 725, which govern the adjudication of claims for benefits filed by miners and their survivors, as well as the payment of benefits in approved claims. A number of the revisions alter the procedures to be used in adjudication, including those related to processing of claims by the district director, the adjudication of claims before the Office of Administrative Law Judges, responsible operator issues, and subsequent claims. These changes, however, significantly alter the parties' obligations and expectations, for example, by limiting evidence, creating presumptions, and establishing burdens of proof. Accordingly, despite the Department's authority under *Georgetown University Hospital* and *Landgraf* to issue procedural rules that take effect immediately, the Department proposes to apply the revised versions of the regulations governing those topics only to claims filed after the effective date of the amendments. Because the remaining revisions merely clarify the Department's interpretation of the current Act and regulations, the Department intends to apply them to all claims pending with the Department, and to the payment of all benefits that become due and payable, or that remain unpaid, after the effective date of these revisions.

20 CFR 725.4(d). In 1978, Congress required the Department of Labor to promulgate interim entitlement criteria that were ''no more restrictive'' than criteria used to adjudicate claims that had been filed with the Social Security Administration under Part B of the Black Lung Benefits Act. These interim criteria were to be used until the Department could develop permanent criteria. The interim part 727 regulations were published at 43 FR 36818, Aug. 18, 1978. Because the Department's permanent part 718 criteria took effect on April 1, 1980, *see* 20 CFR 718.2, the part 727 regulations apply only to claims filed before that date. The Department estimates that several hundred part 727 claims remain pending in various stages of adjudication. Because the parties to these claims are quite familiar with the standards for establishing eligibility under part 727, and no new claims will be adjudicated under these standards, the Department intends to discontinue the annual publication of part 727 in the Code of Federal Regulations. Those standards will remain in effect for all claims to which they apply. Parties interested in reviewing part 727 may consult earlier editions of the Code of Federal Regulations or the Federal Register in which the regulations were originally published.

20 CFR 725.101. The terms defined by § 725.101(a)(4) *et seq.* have been put in alphabetical order to assist the reader in finding the appropriate definitions. The explanations below refer to the renumbered paragraphs.

20 CFR 725.101(a)(6). Benefits. The regulation should be amended to make clear that the initial pulmonary evaluation obtained by the Department pursuant to 30 U.S.C. 923(b) is considered a ''benefit'' paid by the Trust Fund or the operator on the claimant's behalf. The clinical testing and medical examination required by § 413(b) of the BLBA confer a ''benefit'' on the miner to the extent that the Trust Fund pays for the miner's opportunity to substantiate his claim.

20 CFR 725.101(a)(13), Coal Preparation; (a)(19), Miner or Coal Miner. The regulation should be amended to reflect the Department's position that coke oven workers are not covered by the BLBA. The Department has long taken the position that the preparation activities undertaken at coke ovens are not covered by the BLBA. This position reflects Congress' understanding of the scope of coverage intended by the statutory definition of ''miner.'' 30 U.S.C. 902(d). *See* S.Rep. No. 209, 95th Cong., 1st Sess. 21 (May 16, 1977) (''Nor does [the definition] include such individuals not directly related to the production of coal such as coke oven workers.''); 123 Congressional Record 24,236 (1977) (Sen. Randolph: ''* * * coke oven workers are not included in the definition.''). *See also Fox* v. *Director, OWCP,* 889 F.2d 1037 (11th Cir. 1989); *Sexton* v. *Matthews,* 538 F.2d 88 (4th Cir. 1976). This clarifying language ensures that the definitions of ''coal preparation'' and ''miner or coal miner'' do not encompass activities involving the commercial production of coke, which is outside the extraction and transportation processes.

20 CFR 725.101(a)(16). *District Director.* The proposed change merely conforms the regulation to current administrative practice, and ensures that any action taken by, or in the name of, a district director shall be given full credit as the action of a deputy commissioner.

20 CFR 725.101(a)(17). Division or DCMWC. The proposed change specifies the agency within the Department which contains the Office of Workers' Compensation Programs and the Division of Coal Mine Workers' Compensation.

20 CFR 725.101(a)(31). Workers' Compensation Law. This definition should be amended to make clear that certain benefits paid from a state's general revenues are not workers' compensation payments for purposes of the BLBA. The BLBA requires the Department to offset a claimant's federal benefits by any benefits received from a state pursuant to a workers' compensation law for disability or death due to pneumoconiosis. 30 U.S.C. 932(g). Since the Act's inception, the Department has considered payments made to disabled miners by a state from general revenues to be excluded from benefits afforded by ''workers' compensation laws.'' Both the Third Circuit and the Benefits Review Board, however, have rejected the Department's position. *O'Brockta* v. *Eastern Associated Coal Co.,* 18 Black Lung Rep. 1–72 (1994), *aff'd sub nom. Director, OWCP* v. *Eastern Associated Coal Co.,* 54 F.3d 141 (3d Cir. 1995). The Board held that § 932(g) clearly refers to ''workers' compensation law'' without regard to the source of funding for the payments. The Third Circuit rejected this reasoning but agreed that the Department's position was wrong. The Court held that § 932(g) is ambiguous, but that the Department's policy impermissibly implies limitations on current § 725.101(a)(4) which are inconsistent with the unequivocal language of the regulation. The Court suggested that the Department amend

the regulation to codify its policy. The proposed regulation makes clear the Department's longstanding policy that payments made from a state's general revenues are not workers' compensation benefits subject to offset under the Act.

20 CFR 725.101(a)(32). The BLBA does not define a ''year'' for purposes of computing the length of a miner's occupational history. In 1978 and 1980, the Department promulgated regulations which adopted the current 125-day rule. 20 CFR 725.493(b), 718.301(b). The rationale for this policy decision is explained in detail in the comments accompanying the final regulations. 43 FR 36804, Aug. 18, 1978, § 725.493, *Discussion and changes (b);* 45 FR 13691, Feb. 29, 1980, § 718.301, *Discussion and changes (b).* The regulations are substantially the same, but not identical. The proposed § 725.101(a)(32) consolidates provisions of the two existing regulations into a definitional term with program-wide application.

In addition, the regulation codifies the Department's current position with respect to absences, such as vacation and sick leave, that are approved by the miner's employer. In such cases, where the employer/employee relationship is uninterrupted, a miner is credited with having worked during the period of the approved absence. Other absences, such as the time during a strike or layoff, are not counted as working days. Finally, the proposed section permits the adjudication officer to use the Office's methodology for computing the length of the miner's employment history as a fallback. *See* ''Coal Mine (BLBA) Procedure Manual,'' ch. 2–700 (1994). The Bureau of Labor Statistics (BLS) has compiled the average daily and annual wages for the coal mine industry. A table of this data appears in the Office's Manual. If the best available evidence consists of annual income statements, the amount of time the miner worked each year as a miner may be computed by dividing the reported income by the average daily income for that year. The miner may be credited with a year, or a fractional part of a year, based on the ratio of this data. If, however, the miner's annual income exceeded the average income for that year, he may not be credited with more than a year of employment for that income year.

20 CFR 725.103. Section 718.403 presently codifies the burden of proof imposed on any party alleging any fact in support of its position under part 718. The parties to a claim, however, are required to prove a variety of facts under part 725 which also bear on entitlement issues, e.g., status of a miner (§ 725.202); dependency and relationship (§§ 725.204–725.228); liability as a responsible operator (subpart G); and entitlement to medical benefits (subpart J). Part 725 does not contain a counterpart to § 718.403. Accordingly, a single provision generally allocating the parties' burdens of proof under the BLBA logically should be placed in part 725 since those regulations have program-wide applicability.

Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

20 CFR 725.202. The BLBA contains a broad definition of ''miner'' which the courts have liberally construed. *See Dowd* v. *Director, OWCP*, 846 F.2d 193 (3d Cir. 1988). In keeping with that liberal construction, this regulation should be amended to create a rebuttable presumption that any individual working at a coal mine or coal preparation facility is a miner. The presumption is grounded in common sense: the vast majority of persons working at a coal mine will ordinarily have duties related to the mining processes of coal extraction and/or preparation. This presumption can be rebutted by evidence that the individual is not actually performing work integral to the extraction or preparation of coal, or the individual's work involves only casual contact with the coal mine operation. The structure of the regulation should also be changed to distinguish special provisions relating to transportation and construction workers. Of special note is the fact that construction workers alone are relieved of the burden to prove that their work involves the extraction or preparation of coal; working at a coal mine site in construction activities which involve mine dust exposure is sufficient to make them miners. *See The Glem Company* v. *McKinney*, 33 F.3d 340 (4th Cir. 1994).

20 CFR 725.203. One of the elements of entitlement required by § 725.202 is that the miner file a claim. Section 725.203(a), as currently written, provides that all of the § 725.202 requirements must be satisfied for each month of entitlement. These criteria effectively mean that the first month in which the miner fulfills all the requirements for entitlement will never be earlier than the month in which he files an application for benefits. A miner, however, is entitled to benefits for all periods of compensable disability, including any period of disability occurring before the claim is filed. 20 CFR 725.503. To the extent that the cross-reference to § 725.202 improperly limits the miner's entitlement period (and conflicts with 20 CFR 725.503), the reference will be removed, and the language clarified to conform to § 725.503.

New paragraphs (c) and (d) incorporate material from 20 CFR 718.404, which has been deleted. Paragraph (c) makes explicit a miner's ineligibility for black lung disability benefits if the miner resumes his usual coal mine work or comparable and gainful work absent the presence of complicated pneumoconiosis. Paragraph (d) reiterates the Department's authority to reopen a finally approved claim during the lifetime of the miner and develop medical evidence if the particular circumstances warrant reopening. Both provisions are more logically placed in part 725 as regulations of program-wide applicability. *See* 20 CFR 725.2(b).

20 CFR 725.204, .214. Sections 725.204 and 725.214 should be amended to recognize the coexisting eligibility of both a qualified spouse and an individual who married the miner in ignorance of a legal impediment to that marriage. The BLBA incorporates § 416(h)(1) of the Social Security Act (SSA), which describes the requirements for establishing the marital relationship between the wage earner and the spouse for purposes of qualifying as a ''wife, husband, widow or widower.'' 42 U.S.C. 416(h)(1), as incorporated by 30 U.S.C. 902(a)(2), (e). The Department has implemented § 416(h)(1) in the current §§ 725.204 (for spouses) and 725.214 (for surviving spouses). Recent amendments to the SSA require corresponding changes in the regulations.

Section 416(h)(1) recognizes that both the ''legal'' and ''deemed'' spouses may be entitled to benefits. An individual qualifies as the miner's ''legal'' spouse by proving the existence of a valid marriage under state law. A ''deemed'' spouse, however, must demonstrate that he lived with the miner either at the time of application or the time of the miner's death, and:

> in good faith went through a marriage with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage * * *.

42 U.S.C. 416(h)(1)(B)(i). The SSA defines a ''legal impediment'' as

> only an impediment (I) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (II) resulting from a defect in the procedure followed in connection with such purported marriage.

42 U.S.C. 416(h)(1)(B)(iv).

Before 1990, § 416(h)(1)(B) contained a provision preventing a ''deemed''

spouse from receiving benefits if a ''legal'' spouse existed and was receiving benefits on the wage earner's account:

> The [deemed spouse] provisions shall not apply if (i) another person is or has been entitled to [old age and survivor's insurance] benefit[s] * * * on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) [the legal spouse] * * * of such insured individual under subparagraph (A) at the time such applicant files the application * * *.

42 U.S.C. 416(h)(1)(B) (1989). The Department used this version of § 416(h)(1) in promulgating the current regulatory criteria for proving a relationship between the miner and spouse or surviving spouse.

In 1990, Congress amended § 416(h)(1)(B) by deleting the bar on entitlement for a deemed spouse even if a legal spouse existed and was receiving benefits. Omnibus Budget Reconciliation Act, § 5119, 104 Stat. 1388–278 to 1388–280 (1990). The express purpose of the amendment was to allow payment of concurrent benefits to both the legal and the deemed spouses. *See* H. Rep. No. 101–964, 1990 U.S.C.C.A.N. 2649, 2650 (conference report). Congress intended that ''the existence of a legal spouse would no longer prevent a deemed spouse from receiving benefits on the worker's record or terminate the benefits of a deemed spouse who was already receiving benefits on the worker's record.'' *Id.* at 2650. Moreover, Congress expected that a deemed spouse would receive benefits ''on the same basis as if * * * she were a legal spouse * * *.'' *Id.* The Social Security Administration amended its disability regulation to reflect the statutory changes (see 20 CFR 404.346); it has not yet amended the part 410 regulations, which govern its administration of Part B of the BLBA. *See* 20 CFR part 410, subpart C (''Relationship and Dependency'').

The proposed changes to §§ 725.204 and 725.214 amend the dependent and surviving spouse relationship criteria to conform to changes in the SSA. Such changes are required for the regulations affecting surviving spouses, given the incorporation of the SSA statutory definitions of ''dependent'' and ''widow''. Moreover, Congress has previously evidenced the intent to harmonize the SSA and the BLBA statutory provisions which address marital status (*see* Explanation of proposed changes to § 725.212); eliminating the ''deemed'' spouse bar is consistent with this congressional policy.

20 CFR 725.209, .219, .221, .222. These provisions should reflect the age limit for a disabled dependent currently specified in 42 U.S.C. 402(d)(1)(B), as incorporated into the BLBA by 30 U.S.C. 902(g). Section 402(g)(ii) of the BLBA defines ''child'' to include an individual who is disabled by SSA standards, provided such disability ''began before the age specified in section 202(d)(1)(B)(ii) of the Social Security Act * * *.'' Congress has raised the age for the onset of disability for the SSA program from 18 to 22 since § 725.209 was promulgated. Because the BLBA specifically incorporates its disability age limit from the SSA, the regulation should be changed to reflect the change in the SSA. Finally, the parenthetical cross-reference to 20 CFR 404.320(c) in § 725.209(b)(1) is corrected. The SSA regulations which concern full-time student criteria are 20 CFR 404.367 through 404.369.

20 CFR 725.212. Proposed paragraph (b) reflects the Department's position that the BLBA and pertinent legislative history require the payment of full monthly survivor's benefits to each surviving spouse and surviving divorced spouse who satisfies the entitlement criteria, regardless of the existence of any other spouse who also qualifies for benefits.

Prior to 1992, the Department's policy regarding the allocation of benefits between (or among) multiple surviving spouses of the same miner, as stated in the ''Coal Mine (BLBA) Procedure Manual,'' limited each spouse to less than full monthly benefits:

> If more than one claimant is found entitled, no more than the maximum amount of benefits for the number of beneficiaries involved may be paid under Part C. (e.g., where a surviving spouse and a divorced spouse both qualify, no more than the claimant plus one dependent benefits may be paid). This maximum amount is divided equally between the eligible beneficiaries of equal status.

Ch. 2–900 para. 8(b) (February 1980). In 1992, the Department reconsidered this position and concluded that each surviving spouse who meets the criteria for eligibility is entitled to the payment of the full benefits due a surviving spouse. This change in position was the result of further reflection on pertinent provisions of the BLBA and their legislative history.

The BLBA's definition of ''widow'' must be considered in the context of the Social Security Act's (SSA) definition because SSA's definition is incorporated into the BLBA, and Congress has consistently attempted to harmonize the two provisions. Before 1965, the SSA awarded widow's benefits only to a surviving spouse. *See* Social Security Amendments of 1965, Pub. L. No. 89–97, § 308(b)(1), 79 Stat. 286 (1965). The legislative history to the 1965 amendment explicates the intended operation of the changed definition:

> Payment of a wife's or widow's benefit to a divorced woman would not reduce the benefit paid to any other person on the same social security account and such wife's or widow's benefit would not be reduced because of other benefits payable on the same account.

S. Rep. No. 404, 89th Cong., 1st Sess. (1965), *reprinted in* 1965 U.S.C.C. & A.N. 1943, 2047. *See* ''Social Security Program Operations Manual (POMS)'' RS 00615.682 (both surviving spouses and surviving divorced spouses awarded full [100 percent] benefits).

In 1972, Congress amended the BLBA's definition of a ''widow'' to permit the payment of benefits to a miner's surviving divorced spouse. That definition, as amended, now reads:

> Such term [widow] also includes a 'surviving divorced wife' as defined in section 216(d)(2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.

30 U.S.C. 902(e). The legislative history of the amendment indicates that Congress altered the definition of ''widow'' to make it comport with the SSA definition:

> The term 'widow' in section 402(e) is likewise redefined to conform to the Social Security Administration definition.

S. Rep. No. 743, 92nd Cong., 2d Sess. (1972) *reprinted in* 1972 U.S.C.C. & A.N. 2305, 2332. *See Wolfe Creek Collieries* v. *Robinson*, 872 F.2d 1264, 1266–67 (6th Cir. 1989). Consequently, by 1972 both statutes provided a full widow's benefit to a surviving spouse and a surviving divorced spouse. 42 U.S.C. 402(e).

Section 412 of the BLBA also supports the payment of full benefits to each qualified survivor. That provision states in pertinent part:

> In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Amendments of 1981, of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

30 U.S.C. 922(a)(2). A miner, as the primary beneficiary on a claim, is

clearly entitled to a full basic benefit. 30 U.S.C. 922(a)(1); 20 CFR 725.520. Upon the miner's death, the ''widow,'' as the primary beneficiary, must be compensated in like fashion. *Id.* Section 902(e) defines the term ''widow'' to include both a surviving spouse and a surviving divorced spouse. 30 U.S.C. 902(e). Nothing in §922 provides for an alternative payment amount if a miner is survived by two widows. Consequently, the plain language of the statutory payment provisions mandates that both spouses should receive a full (100 percent) basic benefit amount. 30 U.S.C. 922(a)(2). To utilize any other methodology would require payment to each ''widow'' at less than the statutorily prescribed ''rate the deceased miner would receive if he were totally disabled''. 30 U.S.C. 922(a)(2).

20 CFR 725.213. Section 725.213(b)(3) is no longer necessary in view of the changes made to §725.204 to confer equal status on the spouse and ''deemed spouse''. A new paragraph (c) clarifies administrative practice with respect to survivor beneficiaries who become ineligible for benefits, but later reestablish eligibility. The most common reason for losing eligibility (among surviving spouses) is remarriage; if the remarriage ends through death or divorce, the ex-beneficiary may apply for a return to entitlement. The individual need only notify the Office and provide such evidence as may be required to reestablish eligibility. The new paragraph also makes clear that the individual is not required to reprove the merits of entitlement.

20 CFR 725.215. Delete paragraph (g)(3)'s reference to ''section'' and replace with ''paragraph''. A miner's surviving spouse may meet the dependency requirement pursuant to paragraph (g) if the marriage lasted at least nine months. If the marriage lasted fewer than nine months, a spouse may nevertheless be deemed the miner's dependent if the miner dies in an accident or in the line of duty. The purpose of paragraph (g)(3) is to preclude a survivor's reliance on the exception to the nine-month marriage rule if the adjudication officer concludes that the miner would not have lived nine months in any event. Use of the technical word ''section'', however, makes the language of the entire regulation inapplicable. Consequently, the reference should be changed to confine paragraph (g)(3) to its proper context. This change is consistent with the structure and meaning of the Social Security Administration's parallel regulation for Part B beneficiaries, 20 CFR 410.360(b).

20 CFR 725.223. Section 725.223 should be changed to reflect the age limit for a disabled dependent currently specified in 42 U.S.C. 402(d)(1)(B), as incorporated into the BLBA by 30 U.S.C. 922(a)(5). A new paragraph (d) clarifies administrative practice with respect to sibling beneficiaries who become ineligible for benefits due to marriage, but later reestablish eligibility. *See* the Explanation accompanying proposed §725.209 for changing the onset date for a dependent beneficiary's disability. *See* the Explanation accompanying proposed §725.213(c) for explaining the procedures for the restoration of entitlement after termination due to marriage.

Subpart C—Filing of Claims

20 CFR 725.306(a). The proposed change is intended to ensure that another proposed change, in the definition of the term ''benefits,'' 20 CFR 725.101(a)(6), does not produce unintended consequences in cases where a claimant seeks to withdraw a claim. Currently, §725.306(a)(3) prohibits a claimant from withdrawing a claim if he has received benefits, defined as payments ''on account of disability or death due to pneumoconiosis,'' unless such benefits have been repaid. The Department has proposed amending the definition of the term ''benefits'' to include amounts paid from the Trust Fund to provide the claimant with a complete pulmonary evaluation as required by 30 U.S.C. 923(b). Section 725.306 must also be amended, however, to make clear that the Department will not require reimbursement of the amount spent on the claimant's complete pulmonary evaluation as a condition for withdrawing a claim. The proposed language is similar to language in 20 CFR 725.465(d), which provides an administrative law judge with the authority to dismiss claims for cause only if the Trust Fund is reimbursed for any payments made pursuant to 20 CFR 725.522.

20 CFR 725.309. The Department's current regulation governing the processing and adjudication of subsequent or additional claims for benefits has been a cause of much litigation. Subsequent claims for benefits, often misleadingly referred to as duplicate claims, are those applications filed by the same individual after final denial of a prior claim. Initially, the litigation dealt with procedural issues. For example, in *Lukman* v. *Director, OWCP*, 11 Black Lung Rep. (MB) 1–71 (Ben. Rev. Bd. 1988), *rev'd*, *Lukman* v. *Director, OWCP*, 896 F.2d 1248 (10th Cir. 1990), the Benefits Review Board held that a claimant was not entitled to a hearing before an administrative law judge on the issue of whether he had established a material change in conditions, a requirement under the current regulations for consideration of the merits of a subsequent claim.

After the Tenth Circuit reversed the Board's decision, subsequent claims litigation focused on substantive issues, particularly the type of evidence a claimant must submit to establish a ''material change in conditions,'' and thereby escape denial of the subsequent claim on the grounds of the prior denial. The appellate courts are currently divided on this issue. The Seventh Circuit has rejected the Department's interpretation of the regulation, holding that the claimant must establish that his condition is substantially worse than at the time of the prior denial in order to avoid another denial, or that ''even a slight worsening could be and was a material change in condition.'' *Sahara Coal Company* v. *Director, OWCP*, 946 F.2d 554, 558 (7th Cir. 1991). The Third, Fourth, and Sixth Circuits gave deference to the Department's interpretation, *Labelle Processing Co.* v. *Swarrow*, 72 F.3d 308 (3d Cir. 1995); *Lisa Lee Mines* v. *Director, OWCP*, 86 F.3d 1358 (4th Cir. 1996); *Sharondale Corporation* v. *Ross*, 42 F.3d 993 (6th Cir. 1994), and held that proof of a change in one of the necessary elements of entitlement, such as the existence of pneumoconiosis, demonstrates a material change in condition. The ALJ must thereafter weigh all of the evidence to determine whether the claimant is entitled to benefits. The Tenth Circuit recently fashioned yet another interpretation of the regulation. *Wyoming Fuel Co.* v. *Director OWCP*, ____ F.3d ____, No. 94–9576 (10th Cir. July 23, 1996).

This litigation is attributable, in substantial part, to the context in which the relevant language was drafted. First proposed on April 25, 1978 as part of an extensive revision of the regulations governing the processing and adjudication of claims under the Black Lung Benefits Act, §725.309 required that a subsequent claim for benefits be denied on the grounds of the prior denial. 43 FR 17743, Apr. 25, 1978. The Department received many comments objecting to the prohibition against filing a new claim by a miner ''whose condition has worsened or progressed to total disability.'' 43 FR 36785, Aug. 18, 1978. The Department agreed, and, in an effort to remove the prohibition, added a clause allowing such claims if ''the deputy commissioner determines that there has been a material change in

conditions.'' *Id.* The Department did not foresee that this wording would cause such confusion.

At the heart of the current litigation is considerable misunderstanding about the extent to which the common law concepts of *res judicata,* or claim preclusion, and collateral estoppel, or issue preclusion, apply to the adjudication of black lung benefits claims. The proposed regulation is intended to resolve both questions. Initially, the Department acknowledges that the principles of claim preclusion are applicable to claims under the Act. *Pittston Coal Group* v. *Sebben,* 488 U.S. 105, 122–23 (1988). That applicability, however, is limited in two important respects. First, § 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 922, as incorporated into the Black Lung Benefits Act by 30 U.S.C. 932(a), permits the reopening and readjudication of a denied claim within one year of the order denying benefits, based on a showing of either a mistake in a determination of fact or a change in conditions. This reopening provision, commonly called the right to modification, is a Congressionally mandated exception to the application of *res judicata.* Second, and more important for purposes of the Department's treatment of subsequent claims, claim preclusion bars only an attempt to relitigate a cause of action that was previously resolved; it has no effect on the litigation of a cause of action which did not exist at the time of the initial adjudication. *Lawlor* v. *National Screen Serv. Corp.,* 349 U.S. 322, 328 (1955); ''Restatement (Second) of Judgments'' § 24 cmt. f (1982).

Nowhere is the applicability of this second exception more readily understood than in the context of workers' compensation. ''It is almost too obvious for comment that *res judicata* does not apply if the issue is claimant's physical condition or degree of disability at two entirely different times, particularly in the case of occupational diseases.'' 3A Larson, ''The Law of Workmen's Compensation'' § 79.92(f) (1982). In light of the Department's longstanding belief in the progressive nature of pneumoconiosis (see Explanation accompanying § 718.201), the Department believes that the preclusive effect of a previous denial of benefits should be limited. Proposed paragraph (d)(5) reflects the most readily apparent application of claims preclusion. It provides that no benefits are payable, based on a subsequent claim, for the period of time which was at issue in the prior proceeding. The regulation thus gives full effect to § 22's one-year limitation for reopening prior claims based on an allegation of a mistake in a determination of fact or a change in conditions.

The Department's experience in administering the Black Lung Benefits Act suggests, however, that the long latency period which characterizes pneumoconiosis and the disease's progressive nature do provide cause for allowing a claimant to seek benefits by filing a new claim more than one year after the denial of a previous claim based on a change in conditions. Thus, where the evidence establishes a worsening in the miner's physical condition, the proposed regulation permits adjudication of a new cause of action based on that worsening. This adjudication will address the claimant's condition during a completely different, and later, time period.

The Department recognizes that securing proof of a change in the applicable conditions of entitlement may be difficult. As the Seventh Circuit recognized in *Sahara Coal,* ''[t]o require proof that [the claimant] was not in fact totally disabled as a result of black lung disease, or that the extent of his disease or disability was unclear, would complicate the proceeding unduly.'' 946 F.2d at 558. Although the Seventh Circuit recognized this difficulty, it nonetheless required the claimant to bear a burden of proof that the Department believes is too high: ''he should be required to go further and show that he had missed the disability threshold the first time so that even a slight worsening could be and was a material change in his condition.'' *Id.*

The proposed regulation addresses this evidentiary problem, but in a manner which recognizes the difficulty inherent in developing medical evidence documenting a claimant's medical condition at some time in the past. Paragraph (d)(3) thus creates a rebuttable presumption, based on a showing that the miner's physical condition has worsened. If the new evidence submitted by the parties establishes at least one of the applicable conditions of entitlement previously resolved against the miner, it is presumed that the miner's physical condition has changed since the denial of his earlier claim. For example, the miner may establish that his respiratory impairment is now totally disabling, or that he has now developed pneumoconiosis. Once invoked, the presumption may be rebutted if the party opposed to the claimant's entitlement demonstrates that the denial of the prior claim was erroneous as a matter of law.

The Department intends that an operator shall not be entitled to rebut the presumption by taking a position contrary to the position it adopted in the litigation of the prior claim. For example, where the operator argued in the prior claim that the miner was not totally disabled due to pneumoconiosis arising out of coal mine employment, it may not, in an attempt to rebut the presumption of a change in the miner's condition, argue that substantial evidence in the prior claim supported a benefit award.

If the presumption is properly rebutted, the claimant nevertheless will be entitled to benefits upon a showing that the miner's physical condition, albeit totally disabling earlier, has significantly deteriorated since the time of the prior denial. Under the Act, a totally disabling respiratory impairment is one which prevents the miner from performing his usual coal mine work. Where the miner's usual coal mine work required significant physical exertion, a relatively small respiratory impairment may be totally disabling. Accordingly, the miner's respiratory condition may continue to deteriorate even after it reaches the point where it would be considered totally disabling under the Act.

The operator or Fund may also use traditional principles of issue preclusion to rebut the presumption. Those principles prohibit the relitigation of issues where the party against whom the bar is asserted had a full and fair opportunity to litigate the issue in question, and resolution of the issue was necessary to the prior judgment. *Montana* v. *United States,* 440 U.S. 147, 153 (1979); ''Restatement (Second) of Judgments'' § 29 (1982). Thus, where the original claim was denied solely on the basis that the claimant was not a miner, and the claimant has not returned to work, relitigation of that issue will be barred. Because a claimant must establish that he worked as a miner in order to receive benefits, the subsequent claim must also be denied.

If the presumption is not rebutted, the fact-finder must consider all of the relevant evidence of record, including the old evidence, in order to determine whether the claimant is entitled to receive benefits. The regulation thus effectuates the position advanced by the Department and accepted by the Third Circuit in *Labelle Processing,* the Fourth Circuit in *Lisa Lee Mines,* and the Sixth Circuit in *Sharondale Corp.* Accordingly, paragraph (d)(1) authorizes the admission into the record of any evidence developed in connection with the earlier claim. To the extent that the earlier evidence remains relevant to an evaluation of the claimant's current

physical condition, it must be considered by the adjudication officer. In addition, both the claimant and the party opposing the claimant's entitlement will be able to submit two new pulmonary evaluations or consultative reports, in accordance with the limits set forth in proposed § 725.414.

Paragraph (d)(4) recognizes that, once a change in one of the applicable conditions has been established, the relitigation of issues previously decided is not precluded. The only exceptions are those issues to which the parties stipulated and those issues which were not contested pursuant to § 725.463. For example, assume that in a prior adjudication an administrative law judge found that the claimant was a miner but that he did not suffer from pneumoconiosis. The ALJ accordingly denied benefits, and the claimant did not appeal. In a subsequent claim, the claimant establishes that he now suffers from pneumoconiosis, and argues that the operator is precluded from relitigating his status as a miner. The claimant is incorrect. Because the operator was not aggrieved by the denial of benefits, it could not appeal the ALJ's decision to the Benefits Review Board to seek reversal of the finding that the claimant was a miner. The operator thus did not have a full and fair opportunity to litigate the claimant's status, and may not be bound by the prior finding. For the same reason, once a claimant establishes a change in an applicable condition of entitlement, such as the extent of disability, he is not precluded from relitigating any other condition of entitlement, such as the existence of pneumoconiosis.

Although the Department believes that parties must be allowed to relitigate issues decided against them in a prior claim as a matter of fairness, no such concerns underlie the treatment of uncontested issues (see § 725.463) and other stipulations into which the parties entered during the adjudication of the prior claim. Where a party's waiver of its right to litigate a particular issue represents a knowing relinquishment of that right, such waiver should be given the same force and effect in subsequent litigation of the same issue.

The proposed regulation also recognizes that a claimant whose claim has been denied may file a new application within one year of an earlier denial. Traditionally, such a filing has been considered a request for modification, *Consolidation Coal Co.* v. *Worrell*, 27 F.3d 227, 230 (6th Cir. 1994), and the proposed regulation codifies this practice. Treating a new application as a modification request is advantageous for several reasons. First, because it allows the earlier claim to be reopened, a modification request entitles the claimant to have his request adjudicated under the entitlement standards in effect at the time the original claim was filed. Second, if the claimant establishes a mistake in a determination of fact, modification entitles him to receive benefits from an earlier date, *i.e.*, either from the date on which the medical evidence establishes the onset of total disability due to pneumoconiosis, or, if the evidence does not establish that date, from the date the original application was filed. *Eifler* v. *Office of Workers' Compensation Programs*, 926 F.2d 663, 666 (7th Cir. 1991).

20 CFR 725.310. Paragraph (b) should be amended to reflect changes to the procedural regulations restricting the amount of evidence each party to a claim may submit. Proposed § 725.414 limits the parties to two pulmonary evaluations or consultative reports in the initial adjudication of the claim. This limitation would be easily avoided, however, if parties were free to submit whatever additional evidence they desired by filing a request for modification. Consequently, the proposed regulation places an additional restriction, of one pulmonary evaluation or consultative report, on the submission of evidence in modification proceedings. *See* explanation of changes § 725.414.

Proposed paragraph (c) attempts to reconcile a number of court of appeals cases which address the scope of the district director's authority to conduct modification proceedings under § 22 of the LHWCA, 33 U.S.C. 922, as incorporated by 30 U.S.C. 932(a). Four courts—the Seventh, Ninth, Tenth, and Eleventh Circuits—have held that a district director lacks the authority to modify a decision issued by an administrative law judge. *Director, OWCP* v. *Peabody Coal Co.*, 837 F.2d 295 (7th Cir. 1988); *Director, OWCP* v. *Palmer Coking Coal Co.*, 867 F.2d 552 (9th Cir. 1989); *Director, OWCP* v. *Kaiser Steel Corp.*, 860 F.2d 377 (10th Cir. 1988); *Director, OWCP* v. *Drummond Coal Co.*, 831 F.2d 240 (11th Cir. 1987). In all four cases, the district director had initiated modification proceedings in order to correct allegedly erroneous determinations imposing liability on the Black Lung Disability Trust Fund.

In contrast, the Fourth and Sixth Circuits have held that modification proceedings must be initiated before a district director. *Saginaw Mining Co.* v. *Mazzulli*, 818 F.2d 1278 (6th Cir. 1987); *Lee* v. *Consolidation Coal Co.*, 843 F.2d 159 (4th Cir. 1988). In both of these cases, claimants sought to modify denials of benefits by filing requests for modification. In its decision, the Sixth Circuit correctly compared the initial stages of modification proceedings to the initial stages of a new claims proceeding. 818 F.2d at 1282. During these stages the district director may resolve all of the relevant issues, provided he has the consent of the parties. Thus, the district director may issue a proposed decision and order pursuant to 20 CFR 725.418. If no party lodges a timely objection, the proposed decision and order will become effective and final. 20 CFR 725.419(d). Thus, where no party objects to the proposed action, and the modification proceedings were initiated by the claimant or the responsible operator, it is unnecessary as well as inefficient to refer the modification request for a hearing.

In reconciling the courts of appeals opinions, the proposed regulation distinguishes between cases in which the parties request modification, or in which the original adjudication of the claim did not proceed beyond the district director, and those in which the district director initiates modification proceedings *sua sponte* following an administrative law judge's order. In the first and second groups of cases, the district director may issue a proposed decision and order or deny the claim by reason of abandonment. Because under the proposed regulations a claimant or operator may not request a hearing until after issuance of a proposed decision and order, the second option contained in current paragraph (c)—forwarding the claim for a hearing—has been deleted. In cases in which the district director initiates modification proceedings after issuance of an ALJ's decision and order, the proposed regulation requires that the case be referred to the Office of Administrative Law Judges even if none of the parties requests a hearing. Although the Department views the proposed distinction as one with little significance, the proposed regulation is consistent with the four court of appeals decisions which require such a result.

Paragraph (c) has also been revised to ensure that any party that requests reconsideration receives a full and fair adjudication of its request. Thus, an administrative law judge may not deny modification on the grounds that the party requesting modification has not submitted any new evidence. *O'Keeffe* v. *Aerojet-General Shipyards, Inc.*, 404 U.S. 249, 256 (1971). In such a case, the administrative law judge is obligated to re-weigh all of the existing evidence of record to determine whether it establishes that the prior decision is

based on a mistake in a determination of fact.

Finally, proposed paragraph (d) addresses the effect of a modification decision on previously paid benefits. The Department believes that a distinction should be made between awards which are overturned on appeal and awards which are modified. Any payments made pursuant to an award which is overturned on appeal may be subject to recoupment. See 20 CFR part 725, subpart H. Such an award has never become final and its tentative nature is therefore apparent to all parties. In contrast, the proposed regulation prohibits the recoupment of benefit payments made pursuant to an award which is thereafter modified. In the Department's view, claimants whose awards have become final are entitled to a heightened expectation that they will be able to keep the monthly benefits that they receive.

20 CFR 725.311. Paragraph (c) of current § 725.311 has created considerable confusion regarding the due dates for replies and responses under the regulations in part 725. The Department does not believe that seven additional days should be added to the time periods within which to respond to major events in the claims process, such as the notification of a potentially liable operator, the notice of initial determination, and the proposed decision and order awarding benefits. Many of these time periods, none of which is less than 30 days, may be extended for good cause shown. Consequently, the Department does not believe that the 7-day mail rule is necessary, and proposes to remove paragraph (c). Additionally, current paragraph (d), which the Department proposes to redesignate as paragraph (c), is amended to add the birthday of Martin Luther King, Jr., as a legal holiday.

Proposed paragraph (d) addresses an issue which has created a split between the Fourth and Tenth Circuits. In *Dominion Coal Corp.* v. *Honaker,* 33 F.3d 401 (4th Cir. 1994), the Fourth Circuit held that where an administrative law judge's decision was not served by certified mail as required by the statute, the time period for appealing that decision commenced on the date that the aggrieved party received actual notice of the decision. The court held that ''[w]hen the record establishes actual notice, the purpose of the statutory certified mail requirement has been met.'' 33 F.3d at 404. In *Big Horn Coal Co.* v. *Director,* OWCP, 55 F.3d 545 (10th Cir. 1995), the Tenth Circuit reached a contrary conclusion. Although ''[a]llowing the 30-day period to start with actual notice would have the salutary effect of encouraging finality of administrative judgments when the only defect was the procedural one of failing to use certified mail in serving th[e] order,'' the court held that there was no provision in the statute or regulations which permitted it to reach such a result. 55 F.3d at 550. In order to resolve this split, and to advance the policy considerations cited by both courts, proposed paragraph (d) provides that, where an adjudication officer has failed to comply with a statutory or regulatory certified mail requirement, but the party has received the document, the period for filing any responsive pleading shall commence as of the date of receipt.

Subpart D—Adjudication Officers; Parties and Representatives

20 CFR 725.360. Technical changes to the cross references in paragraphs (a)(3) and (c) conform with revisions to §§ 725.401–.422.

20 CFR 725.362. The proposed amendment to paragraph (a) makes the regulation conform with the requirements of 5 U.S.C. 500(b), which allows an attorney to appear on behalf of a party without submitting an authorization signed by the party. The requirements for representation by any individual who is not an attorney in good standing with his state bar remain unchanged. In such circumstances, the Department requires an authorization signed by the party. Finally, the requirement that any written declaration or notice identify the case by OWCP number will allow OWCP to ensure proper and timely filing of the appearance.

20 CFR 725.367. The current regulation governing an operator's payment of a claimant's attorney fee is taken nearly verbatim from § 28 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 928, without recognizing significant differences in the procedure for adjudicating claims under the Black Lung Benefits Act. Accordingly, its interpretation has caused considerable confusion, particularly with respect to the date on which an operator's liability for attorney's fees is triggered. *See, e.g., Bethenergy Mines* v. *Director, OWCP,* 854 F.2d 632 (3d Cir. 1988). In addition, the regulation originally sought to shield the Trust Fund from the payment of attorney's fees. A series of court decisions, however, held that the fund assumes all of the obligations of an operator, including liability for the claimant's attorney's fees, in cases where no operator can be held liable for the payment of benefits. *Director, OWCP* v. *Black Diamond Coal Mining Co.,* 598 F.2d 945 (5th Cir. 1979); *Director, OWCP* v. *South East Coal Co.,* 598 F.2d 1046 (6th Cir. 1979); *Republic Steel Corp.* v. *U.S. Dept. of Labor,* 590 F.2d 77 (3d Cir. 1978).

The proposed regulation seeks to clarify the application of § 28 of the LHWCA to adjudication under the Black Lung Benefits Act. It also provides a non-exclusive list of specific instances in which an operator is required to pay attorney's fees and the dates on which the operator's liability commences. The proposed regulation also recognizes the Trust Fund's liability for attorney's fees, and makes it coextensive with that of a liable operator. Specifically, in proposing paragraph (a)(2), the Department intends to change the result of the decision of the Benefits Review Board in *Yokley* v. *Director, OWCP,* 3 Black Lung Rep. (MB) 1–230 (1981). There, in the absence of a regulation specifically addressing the fund's liability for attorney's fees, the Board held that the fund became liable for the payment of such fees when the district director failed to award benefits within 30 days of the date on which he learned that there was no potentially liable responsible operator. *Yokley,* 3 Black Lung Rep. at 1–239. The Department believes that the event triggering the fund's liability for attorney's fees should be identical to the event that triggers an operator's liability, *i.e.,* a denial of the claimant's right to compensation within the time limits provided by the regulations, which creates the adversarial relationship requiring employment of an attorney. *See Director, OWCP* v. *Bivens,* 757 F.2d 781, 787 (6th Cir. 1985).

Subpart E—Adjudication of Claims by the District Director

20 CFR 725.405. The proposed change in paragraph (b) recognizes the Department's current practice of refusing to provide a complete pulmonary evaluation if the district director concludes, based on the initial evidence submitted by the claimant, that the claimant never worked as a miner.

20 CFR 725.406. Section 413(b) of the Act, 30 U.S.C. 923(b), guarantees each miner the opportunity to have a complete pulmonary evaluation performed, at no expense to the miner, in order to establish his entitlement to benefits. Although the existing regulation allows a claimant to have this evaluation performed by his own physician, it does not address the consequences of that selection. The adequacy of the § 413(b) examination and resulting report have been

frequently litigated. For example, if the report does not address all of the elements of entitlement, the Department has been required to remedy the deficiency, *see, e.g., Cline* v. *Director, OWCP,* 917 F.2d 9, 11 (8th Cir. 1990), even if the physician who authored the report was one of the claimant's choosing. Given the Department's proposal to place limits on the amount of evidence submitted by the parties, and the importance of the § 413(b) examination, which forms the evidentiary basis for the district director's initial finding, the Department wishes to explain in greater detail the manner in which it will provide the claimant with a complete pulmonary evaluation.

The proposed regulation clarifies the consequences of a claimant's decision to select an alternate physician or facility to conduct his complete pulmonary evaluation. First, the claimant must undergo all of the testing necessary to produce an examination that meets the requirements of § 718.104. If the physician or facility selected by the claimant cannot perform all of the tests needed, the Department will arrange for the claimant to undergo the additional testing before the miner undergoes his examination.

Second, the Department will determine whether each component of the evaluation, including the chest X-ray, the pulmonary function study, and the blood gas study, is in substantial compliance with the regulatory quality standards. The Department reserves the right to have each such test reviewed by a medical consultant in order to assist in this determination. However, the Department will only guarantee substantial compliance with the quality standards if the testing and the resulting report are prepared by a Department-selected physician or facility. It has long been the Department's position that, with the exception of deficiencies attributable to poor effort on the part of the miner, the Department has an affirmative obligation to ensure that each test substantially complies with the part 718 quality standards, and that the physician provides a documented and reasoned medical opinion on each element of entitlement. For example, where the miner's blood gas study is non-conforming, or the physician fails to address the issue of total disability, or the district director does not find the physician's report credible, the Department must either seek additional information from the physician or provide the miner with a wholly new examination.

The proposed regulation retains this rule with respect to physicians and facilities selected by the Department. With respect to physicians and facilities selected by the miner, the regulation requires the district director, after determining whether the testing complies with the quality standards, to inform the miner and the physician or facility of any deficiencies in the report, and allow sufficient time to correct such deficiencies. If the deficiencies are not corrected, however, the district director is not obligated to take any further action. The district director retains the authority to order another examination by a physician or medical facility selected by the district director.

Third, proposed § 725.406 specifies that if the miner selects the physician, that report will count as one of the two reports which a claimant is entitled to submit under the proposed evidentiary limitations in § 725.414. If the Department selects the physician, the claimant may submit two other reports.

Finally, the regulation, in combination with changes to 20 CFR 725.101(a)(6), clarifies the mechanism by which the Department may seek recoupment of the cost of the § 413(b) examination from a coal mine operator that has been finally determined to be liable for the claimant's benefits. Although the current regulation states that the Department is entitled to reimbursement, it fails to refer specifically to the most appropriate method for recouping amounts owed the Trust Fund, 30 U.S.C. 934. Consequently, a clarification is in order.

20 CFR 725.407. Paragraphs (a) and (c) of the current § 725.407 have been moved to § 725.406. Paragraph (b), which allowed claimants to develop additional evidence prior to the initial finding, has been eliminated. Instead, the development by the parties of evidence relevant to the miner's entitlement will be governed by §§ 725.413–.414. For an explanation of the proposed text, see the explanation of changes to § 725.408.

20 CFR 725.408. The current § 725.408 has been eliminated. The sanctions it provides for a claimant's failure to submit to medical examinations are contained in proposed §§ 725.409 and 725.414. Proposed §§ 725.407 and 725.408 replace the current regulations found at 20 CFR 725.412 and 725.413, governing the notification of, and response by, potential responsible operators. The proposed changes are part of an effort to deal with difficulties that the Department has encountered in effectuating Congress's mandate that liability for black lung benefits be borne by individual coal mine operators to the maximum extent feasible. *See Old Ben Coal Co.* v. *Luker,* 826 F.2d 688, 693 (7th Cir. 1987). Past difficulties in naming potential responsible operators have included: (1) the practice among operators of filing ''blanket'' controversions, denying every element of the liability issue, which generally are not supported by any evidence and are later withdrawn in substantial part; and (2) the tardy submission of evidence relevant to operator liability, often only when the claim is pending before the Office of Administrative Law Judges. These late evidentiary submissions have increased the likelihood of an incorrect responsible operator determination by the district director and have led to greater Trust Fund liability under the Board's decision in *Crabtree* v. *Bethlehem Steel Corp.,* 7 Black Lung Rep. 1–354 (1984).

The proposed regulations create a new subclass of operators. Out of all of the miner's former employers, one or more operators may be designated as ''potentially liable operators.'' The potentially liable operator that most recently employed the claimant will generally be the responsible operator liable for the payment of benefits. The proposed regulation affords the district director considerable flexibility, however, in notifying potentially liable operators. If the miner was most recently employed for a substantial period of time by a fully insured operator, the district director need notify only that operator of its potential liability. If the miner's most recent employer had no insurance and appears to lack other assets, or employed the miner in a capacity which may not be considered coal mine employment, the district director may choose to notify more than one potentially liable operator. Moreover, the district director may notify such operators *seriatim;* after evaluating the response from the miner's most recent employer, or failing to receive any response, the district director may notify additional operators.

The district director's additional flexibility also imposes greater responsibility. Unlike the current version of § 725.412(c), the proposed standards do not allow a district director to name any additional operators after a case has been referred to the Office of Administrative Law Judges, in the absence of fraudulent concealment of the facts relevant to the identification of the responsible operator. Thus, the Department will essentially assume the risk of not notifying the ''correct'' responsible operator.

In order to offset this risk, the regulations require potentially liable operators to produce any exculpatory

documentary evidence while the case is still pending before the district director, and thus in sufficient time to allow the district director to notify additional operators. Each operator must either admit or deny its status as a potentially liable operator, and support its denial with specific evidence. It is hoped that this requirement will increase the Department's ability to correctly identify the responsible operator liable for the payment of benefits. For a discussion of the effects of the BLBA and the Administrative Procedure Act on the Department's ability to impose time limits on the parties' submission of this evidence, see the explanation of changes to § 725.414.

20 CFR 725.409. The proposed revisions add a new basis for denying a claim by reason of abandonment and clarify the procedures to be used in denying a claim by reason of abandonment. The Department has interpreted current § 725.409(a)(3) to include failure to appear at an informal conference, and the Fourth Circuit recently confirmed the use of that paragraph in *Wellmore Coal Co.* v. *Stiltner,* 81 F.3d 490, 497 (4th Cir. 1996). The proposed addition of paragraph (a)(4) will make that authority explicit. A corresponding change has been made to § 725.416(c), to provide similar sanctions against a responsible operator for its unexcused failure to appear.

The proposed changes also clarify the procedures for denying claims by reason of abandonment. Currently, the regulations allow the claimant to undertake a variety of actions in response to an initial notice that the claim will be abandoned. The proposed regulation at paragraph (b) allows the claimant only two options following the district director's initial letter: (1) correct the problem identified by the district director; or (2) allow the district director to deny the claim by reason of abandonment, and then request a hearing, which will be limited to the issue of whether the district director properly initiated abandonment proceedings.

20 CFR 725.410–413. The proposed regulations governing the district director's initial adjudication of the claim, §§ 725.410–.413, differ from the current regulations in several respects. In general, they provide for a two-track investigation, allowing the district director to make a preliminary determination of entitlement while concurrently seeking a coal mine operator that may be held liable for the payment of the claimant's benefits. It is anticipated that these two investigations will culminate in a single document, the initial finding. That document will contain a preliminary finding as to the claimant's eligibility, based on the complete pulmonary evaluation developed in accordance with § 413(b) of the Act, and another finding with respect to the potentially liable responsible operator. The operator will then be required to accept or contest both findings within 30 days of the initial finding's issuance.

The most important change in these proposed regulations involves the claimant's response to a district director's initial finding that the claimant is not eligible for benefits. Currently, the claimant is allowed 60 days within which to request a hearing or submit new evidence. If he submits new evidence, he is given an additional 60 days within which to request a hearing. Often, however, the Department receives communications from claimants which do not fit neatly into either option. The result has been the litigation of various procedural issues. *See, e.g., Adkins* v. *Director, OWCP,* 878 F.2d 151 (4th Cir. 1989); *Plesh* v. *Director, OWCP,* 71 F.3d 103 (3d Cir. 1995). The Department hopes to eliminate such litigation through the proposed amendment.

The proposed regulations therefore address the problems that the Department has encountered in applying the current regulations. They narrow the claimant's options following an initial finding of non-eligibility to a single choice, but expand the time period within which this option may be exercised. Within one year of an initial finding of non-entitlement, the claimant may request further adjudication of the claim, but he may not request a hearing at this point. If the claimant fails to take any action during the one-year period following an initial finding which denies the claim, the denial of the claim will be considered effective and final as of the date of the initial finding. The one-year period, which incorporates the modification period of 33 U.S.C. 922 into the initial processing of the claim, reflects the Department's experience in administering the program. Miners who truly feel that they are disabled will typically request further processing of their claim within one month of an initial denial. Others, perhaps less sure of whether their condition actually meets the Department's total disability due to pneumoconiosis criteria, may wait to determine whether their condition worsens. Such miners are entitled to take advantage of the one-year period in LHWCA § 22, as incorporated by 30 U.S.C. 932(a). The proposed regulation accommodates both types of claimants, by allowing any response within the one-year period to trigger further adjudication of the claim.

After receiving responses from both parties (or after expiration of the time within which a response could be filed), the district director will proceed in accordance with those responses. Where a claimant's eligibility and the identity of the liable party are uncontested, the district director will issue a proposed decision and order. In other cases, the district director will issue a schedule for the submission of evidence by the parties. For a discussion of the effects of the BLBA and the Administrative Procedure Act on the Department's ability to impose time limits on the parties' submission of evidence, see the explanation of changes to § 725.414.

20 CFR 725.414. Proposed paragraph 725.414(a) reflects the Department's determination that the disparity in financial resources available to claimants, as compared to coal mine operators, has created an adverse impact on the fair adjudication of claims. Limitations on the amount of medical evidence which the parties may proffer are therefore necessary in order to restore some measure of balance to the process of determining a claimant's entitlement. Accordingly, a new regulation is proposed which defines the amount, and type, of medical evidence which each party may proffer in support of its position. We are specifically seeking comment on the proposed evidentiary limitations in § 725.414. This regulation also will require the parties to submit their written medical evidence to the district director. Generally, once a claim is referred for hearing before an administrative law judge, the parties may only elicit oral testimony.

The Department now has more than 20 years of experience in processing and adjudicating black lung benefits claims, and more than thirteen years of experience in adjudicating claims under the current program regulations. This long history demonstrates claimants' present difficulty in establishing their entitlement. Part of that difficulty can be attributed to changes in medical criteria and eligibility standards imposed by Congress in 1981. Also important, however, are the obstacles claimants face when confronted by coal mine operators and their insurance carriers as adversaries. Such parties possess economic resources far superior to most claimants, which enable them to generate medical evidence in such volume that it overwhelms the evidence supporting entitlement. The proposed changes to the program regulations governing claims adjudication attempt

to make more equitable the evidentiary development in black lung claims.

When Congress amended the BLBA in 1978 to permit the reopening of many thousands of denied claims, it required the claimants' entitlement to be judged using liberal interim medical criteria (20 CFR part 727). 30 U.S.C. 902(f)(2). As a result, claims reopened by the amendments enjoyed a 46.0 percent approval rate at the district level. (Statistical data reported in ''OWCP FY94 Annual Report to Congress,'' Table B–1). Congress also required the Department, in conjunction with the National Institute for Occupational Safety and Health (NIOSH), to develop permanent ''criteria for all appropriate medical tests * * * which accurately reflect total disability in coal miners * * * .'' 30 U.S.C. 402(f)(1)(D). The Department thereafter promulgated the part 718 regulations; these criteria apply to all claims filed after March 31, 1980. For claims filed between the 1978 amendments and the effective date of the part 718 regulations, the Department still utilized the part 727 criteria. Consequently, the district level approval rate, at 34.0 percent, was generous. Once the more rigorous part 718 standards took effect, however, the approval rate dropped to 10.9 percent for all claims filed between April 1, 1980 and December 31, 1981, and adjudicated at the district level.

Congress again amended the BLBA to tighten eligibility requirements for claims filed after December 31, 1981. Statutory changes which reduced claims approvals included elimination of favorable entitlement presumptions and automatic survivor's entitlement upon the death of a miner whose claim had been awarded. *See* 20 CFR 725.1(a), (h). The district level approval rate for claims filed after December 1981 was 5.0 percent as of the end of the 1994 fiscal year. Claimants fared little better if they pursued their applications beyond the district level by requesting hearings before the Office of Administrative Law Judges; the approval rate for such claims during the same period rose only to 7.6 percent.

The dramatically lower approval rates reflect not only the statutory changes, but also the increasing percentage of claims in which coal mine operators or their insurers, rather than the Black Lung Disability Trust Fund, are potentially liable. Their superior economic resources simply permit evidentiary development which outweighs the evidence claimants can procure. The United States Court of Appeals for the Sixth Circuit has commented on this problem:

> This cumulative evidence inquiry also reveals certain policy flaws in the adjudication of claims that typically operate to disadvantage Black Lung Benefits Act claimants. First, experts hired exclusively by either party tend to obfuscate rather than facilitate a true evaluation of a claimant's case. Second, when one party is able to hire significantly more experts because it has infinitely more resources, the truth-seeking function of the administrative process is skewed and directly undermined. Third, hiring armies of experts often results in needless expense. If such a system continues unchecked, justice will not be served, while moneyed interests thrive.

Woodward v. *Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993). *See also* Timothy Cogan, ''Is the Doctor Hostile? Obstructive Impairments and the Hostility Rule in Federal Black Lung Claims,'' 97 W. Va. L. Rev. 1003, 1004 fn. 3 (1995). As a possible solution, the Sixth Circuit suggested that the administrative law judge prevail upon the parties to accept negotiated evidentiary limitations and share the cost of hiring physicians.

The Department believes that the concerns expressed by the Court in *Woodward* are valid. Rather than address those concerns through an *ad hoc* resort to each adjudicator's discretion, however, a ''bright-line'' rule of uniform application is preferable. Such a rule imposes a known standard of conduct on the parties from the outset, which enables them to plan their litigation strategies accordingly. The proposed regulation therefore limits each side to two complete pulmonary examinations and one ''interpretive'' review (x-ray rereadings, clinical test validations, etc.) of each of its opponent's diagnostic studies and examinations. This amount of evidence should be sufficient to enable each party to advance or defend its position while satisfying the demands of ''due process.'' The Commonwealth of Kentucky has imposed similar limitations on the evidence submitted in connection with claims for workers' compensation. Kentucky Revised Statutes Annotated §342.033 (Michie/Bobbs-Merrill 1993). Limiting evidence will also have the salutary effect of reducing the costs associated with litigating claims and the amount of repetitive evidence which often burdens the record without shedding light on the medical issues.

The proposed regulation also fundamentally restructures the claims adjudication process by focusing evidentiary development at the district director level. The regulation requires all parties to develop their documentary medical evidence and submit it to the district director for consideration. In general, once a claim is referred for a hearing before the Office of Administrative Law Judges, no further documentary medical evidence will be admitted into the record. Only if there are extraordinary circumstances or the pulmonary evaluation obtained by the Department is insufficient or incomplete may the Administrative Law Judge admit additional documentary medical evidence into the record. The Administrative Law Judge will conduct the hearing and permit the parties to elicit testimony from witnesses, including any physician whose report is in the record. The judge will base his decision on the evidentiary record developed by the district director and the hearing testimony.

The foregoing procedure departs from current practice by severely limiting the admission of new documentary medical evidence while a claim is pending before an Administrative Law Judge. Parties presently often reserve the active development of medical evidence until a claim is scheduled for hearing. Permitting additional evidentiary development before the Administrative Law Judge was logical when significant delays occurred between the district director's decision and the hearing before the Administrative Law Judge. Given the progressive nature of pneumoconiosis, additional evidence was usually necessary for the Administrative Law Judge to receive an accurate understanding of the miner's health. Such delays no longer occur in a statistically significant percentage of claims. Consequently, the practical need for permitting evidentiary development at the hearing stage has disappeared.

Litigation strategy, as well as delays, has also encouraged operators to defer active participation and evidentiary development until claims were referred for hearing. Over time, this practice has significantly eroded the ability of the Department to conduct a thorough and meaningful initial adjudication of each claim at the district level. Because delay is no longer a legitimate consideration, the proposed regulation requires full operator participation before the district director.

The Department believes that the fair, efficient and expeditious adjudication of claims is a desirable objective which can be promoted by limiting the amount of medical evidence developed and encouraging all parties to participate actively at the earliest stages of the process. The Secretary clearly has the statutory authority to issue regulations which achieve this goal. The BLBA provides that ''[t]he Secretary of Labor * * * [is] authorized to issue such regulations as [he] deems appropriate to

carry out the provisions of this title.'' 30 U.S.C. 936(a). The legislative history of this broad grant of authority ''establishes that Congress intended to provide the Secretary adequate flexibility to assure the payment of benefits to eligible persons.'' *Director, OWCP* v. *National Mines Corp.,* 554 F.2d 1267, 1274 (4th Cir. 1977) (footnote omitted). The Secretary has already issued several regulations (discussed below) which address the submission or exclusion of evidence. This proposed regulation involves the same matter, and is a permissible exercise of the Secretary's statutory authority.

Moreover, Part C of the BLBA assimilates various provisions of Part B of the BLBA and the Social Security Act by means of a circuitous series of incorporations by reference. The BLBA states that ''[t]he amendments made by the Black Lung Benefits Act of 1972, * * * to Part B of [title IV] shall, to the extent appropriate, also apply to part C of [title IV].'' 30 U.S.C. 940. Section 923(b), in turn, incorporates various provisions of the Social Security Act into Part B. The 1972 amendments revised § 923(b) to make § 405 of the Social Security Act, 42 U.S.C. 405, applicable to Part B. Consequently, § 940 makes § 405 of the Social Security Act applicable to Part C via § 923(b). Among the incorporated SSA provisions is § 405(a), which states as follows:

> The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

42 U.S.C. 405(a) (1995 supp.). Section 405(a) contains ''exceptionally broad'' authority to prescribe standards for ''proofs and evidence'' in disability claims under the SSA. *Heckler* v. *Campbell,* 461 U.S. 458, 466 (1983); *see also Schweiker* v. *Gray Panthers,* 453 U.S. 34, 43 (1981). Under the aegis of this authority, the Supreme Court has upheld the Social Security Administration's use of broad medico-vocational guidelines to determine whether a claimant is disabled; the guidelines provided an acceptable substitute for resolving classes of issues instead of requiring individualized findings in each case concerning the claimant's ability to perform work in the national economy. *Heckler,* 461 U.S. at 467. Pursuant to § 405(a), the SSA has also validly promulgated a regulation prescribing criteria for weighing medical reports from treating physicians (20 CFR 404.1527). *Schisler* v. *Sullivan,* 3 F.3d 563, 568 (2d Cir. 1993). The proposed regulation is designed to regulate the ''nature and extent of the proofs and evidence and the method of taking and furnishing'' such evidence for adjudicating black lung benefits claims. Its promulgation therefore comes within the authority conferred on the Secretary by Congress through the incorporation of 42 U.S.C. 405(a) into the BLBA.

Both individually and together, §§ 936(a) and 405(a) authorize the Secretary to regulate evidentiary development under the BLBA. Whether the proposed procedures represent a valid exercise of that authority depends on their consistency with the BLBA and the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (the APA). The BLBA is the organic statute; the regulation must therefore be consistent with its enabling authority. Hearings under the BLBA must be conducted in accordance with the APA. 33 U.S.C. 919(d), as incorporated by 30 U.S.C. 932(a); 20 CFR 725.452(a). Neither statute prohibits the Department from imposing reasonable limitations on evidence.

Section 923(b) of the BLBA provides that ''all relevant evidence shall be considered.'' 30 U.S.C. 923(b). Like § 405 of the Social Security Act, this provision applies to Part C via the incorporation mechanism of § 940; Congress added the ''all relevant evidence'' language to § 923 in the 1972 amendments. Section 940, however, contains an important qualifier: the enumerated Part B amendments apply only ''to the extent appropriate.'' This phrase confers on the Secretary the explicit authority to determine which aspects of Part B should be adopted, and to what extent. The proposed regulation represents the Secretary's judgment as to the appropriate extent to which ''all relevant evidence'' should be admitted for consideration by the factfinder. (The Department has not adopted all of the SSA provisions incorporated by the 1972 amendments and enumerated in § 923(b). For example, § 405(j) contains an elaborate and detailed procedure for certifying benefits payments to a representative payee rather than the beneficiary; the Department's regulations are less comprehensive than the statutory provisions. *Compare* 42 U.S.C. 405(j) *with* 20 CFR 725.510, 725.511. Furthermore, the Department has not promulgated regulations which implement the SSA attorney fee or criminal penalties provisions. *See* 42 U.S.C. 406, 408.)

Read literally and without regard to the remainder of the provision, the ''all relevant evidence'' language arguably requires the admission for consideration of any evidence which could be relevant to the adjudication of a claim. The phrase appears less than clear, however, when the remainder of § 923(b) is considered. A literal reading infringes on § 923(b)'s incorporation of broad agency authority from the Social Security Act to regulate ''the nature and extent of the proofs and evidence and the method of taking and furnishing the same,'' discussed earlier. Such a reading would proscribe the agency from implementing procedures which impose any evidentiary controls unrelated to the sole criterion of relevance.

Section 923(b) itself contains an important limitation on the consideration of potentially ''relevant'' evidence by the adjudicator. For claims filed before January 1, 1982, the Department is required to accept a positive x-ray reading which meets certain requirements. For any claim, § 923(b) requires the Department to accept the results of an autopsy as to the presence and stage of pneumoconiosis unless fraud or accuracy are implicated. Consequently, the Department is precluded from submitting (or, as the adjudicator, considering) relevant evidence which contradicts the x-rays or autopsies subject to § 923(b). Thus, the actual scope of the phrase ''all relevant evidence'' is unclear when it is considered in relation to other parts of § 923(b).

If a literal reading of a statutory provision's language does not provide an unambiguous explanation of its intended operation, then resort to its legislative history is warranted. *See Burlington No. R. Co.* v. *Okla. Tax Comm'n,* 481 U.S. 454, 461 (1987). Congress added the ''all relevant evidence'' language when it amended the BLBA in 1972. The amendment represented a reaction to the Social Security Administration's heavy reliance on negative x-rays in denying claims, and its failure to develop other evidence which might support entitlement. *See* S. Rep. No. 92–743, 92nd Cong., 2nd Sess., at pp. 13–16 (1972), reprinted in ''Legislative History of the Federal Coal Mine Health and Safety Act of 1969,'' Part II—Appendix, at pp. 1958–1961. ''Every available medical tool should be used to assist a miner in successfully pursuing his claim for benefits.'' *Id.* at 15. Thus, the historical context of the language demonstrates that it is a statutory exhortation for the agency to explore every avenue which may prove the claimant's entitlement. Given the policy behind the provision, its apparent breadth should not act as a guarantor for

the admission of any quantity of evidence an operator might obtain which refutes a claimant's entitlement.

Under the current program regulations, § 923(b) does not prohibit the exclusion of certain evidence despite its relevance. For example, an operator may not present evidence which conflicts with findings made by the district director if the operator fails to make certain responses in a timely manner. 20 CFR 725.413(b)(3) (response to notice of claim); 725.414(b) (response to initial finding). Any documentary evidence which is withheld from the district director must be excluded from all future proceedings unless submission is requested by another party or ''extraordinary circumstances'' exist. 20 CFR 725.414(e)(1), 725.456(d). Any party's failure to submit evidence within specified time frames, failure to provide proper notification of an expert witness' hearing appearance, or failure to appear at a hearing without permission, are also grounds for limiting or excluding evidence. 20 CFR 725.456(b)(2), 725.457(a), 725.461(b). None of these exclusionary regulations permits relevance to excuse the infraction.

Many of the foregoing procedures were ''intended to expedite the claims process, eliminate surprise, and require the parties to undertake a timely development of their positions.'' 43 FR 36798, Aug. 18, 1978, § 725.456, *Discussion and changes (a).* In promulgating these regulations in 1978, the Department concluded that ''[n]either the act, nor the Administrative Procedure Act, to the extent that it is incorporated, prohibits the Department from designing rules which diminish the element of surprise from black lung claims procedures.'' 43 FR 36794, Aug. 18, 1978, § 725.414, *Discussion and changes (a).* The proposed regulation also satisfies valid policy considerations by limiting evidentiary development in the interests of a fairer and more balanced adjudication process. It encourages the expeditious and timely development of the parties' positions by focusing much of that development at the district level. Consequently, the regulation promotes the same policy goals as some of the current regulations in excluding or limiting the admission of otherwise relevant evidence.

The proposed regulation also affects the conduct of formal hearings by administrative law judges, which are governed by the APA. 5 U.S.C. 554(a). Section 556(d) provides in pertinent part:

> * * * Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. * * * A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

5 U.S.C. 556(d). The proposed regulation obviously limits the literal language of § 556(d), which permits receipt of ''any * * * documentary evidence.'' The documentary evidence which the ALJ generally may receive under this proposal would consist of the record compiled and transmitted by the district director; that record itself would be limited in quantity to a certain amount of documentary medical evidence submitted by each party. To the extent that the regulation departs from § 556(d), the Department believes that the Secretary has the authority to promulgate regulations which vary the APA's hearing requirements.

Section 956 of the Mine Safety and Health Act states that, ''[e]xcept as otherwise provided in this chapter, the provisions of sections 551 to 559 * * * of Title 5 shall not apply to the making of any order, notice, or decision made pursuant to this chapter, or to any proceeding for the review thereof.'' 30 U.S.C. 956. ''This chapter'' is a reference to chapter 22 of Title 30, United States Code, which codifies the Mine Safety and Health Act. The BLBA is subchapter IV of that Act. Section 956 therefore exempts application of the APA to the BLBA unless ''otherwise provided in this chapter.''

Section 932(a) of the BLBA incorporates by negative reference § 919 of the LHWCA, which in turn requires hearings to be conducted in accordance with the APA. Section 932(a), however, also provides the Secretary with the authority to depart from the terms of the incorporated provisions of the LHWCA. Specifically, portions of the LHWCA apply to Part C of the BLBA ''except as otherwise provided * * * by regulations of the Secretary.'' 30 U.S.C. 932(a). Section 919 of the LHWCA is the vehicle by which the APA applies, since § 956 generally exempts title 30, United States Code, from the APA. By regulation, therefore, the Secretary can ''otherwise provide'' the extent to which the incorporated provision of the LHWCA makes the APA applicable. The proposed regulation provides the guidelines and limitations for developing evidence in connection with the adjudication of a claim for benefits before the administrative law judge. Consequently, to the extent the regulation departs from the APA, that departure is ''otherwise provided'' by part 725. The Department adopted this position in *Director, OWCP* v. *Greenwich Collieries, Inc.,* 114 S.Ct. 2251 (1994), as a basis for supporting the ''true doubt'' rule. The Court did not reach the merits of this argument because it held that the regulation at issue was too broad to overcome a presumption that the APA hearing procedures applied. 114 S.Ct. at 2254.

In any event, the proposed regulation is consistent with the objective behind the allowance for the receipt of ''any'' evidence. In ''The Attorney General's Manual on the Administrative Procedure Act'' at 76 (1947), reprinted in ''Federal Administrative Procedure Sourcebook'' 51, 125 (1985), the following discussion occurs:

> Under section [556(d)] it is clear that, as heretofore, the technical rules of evidence will not be applicable to administrative hearings. [Citation omitted.] Thus, it is stated that ''the mere admission of evidence is not to be taken as prejudicial error (there being no lay jury to be protected from improper influence) although irrelevant, immaterial, and unduly repetitious evidence is useless and is to be excluded as a matter of efficiency and good practice.'' [Citation omitted.]

This gloss suggests that § 556(d) cannot be read as a literal directive to admit all evidence any party may proffer unless the evidence is ''irrelevant, immaterial or unduly repetitious.'' Rather, the purpose of the admission/exclusion language is to eliminate technical evidentiary rules as grounds for assigning error to the liberal admission of evidence. A general policy favoring the admission of evidence over its exclusion on technical grounds does not thereby preclude an agency from determining in the first instance what evidence, and how much, may be admitted as ''relevant'' and ''material''. To interpret § 556(d) otherwise would effectively read out of the BLBA the broad authority contained in provisions like § 405(a) to regulate the evidence used to establish entitlement to benefits. The APA is modeled on the hearing procedures contained in § 205(b) of the Social Security Act, and ''the social security administrative procedure does not vary from that prescribed by the APA.'' *Richardson* v. *Perales,* 402 U.S. 389, 409 (1971), citing ''Final Report of the Attorney General's Committee on Administrative Procedure,'' contained in S. Doc. No. 8, 77th Cong., 1st Sess., 157 (1941).

Finally, no aspect of the proposed regulation impinges on any of the procedural rights afforded parties by § 556(d). ''The matter comes down to the question of the procedure's integrity

and fundamental fairness.'' *Richardson,* 402 U.S. at 410. The APA permits the submission of documentary evidence, but it does not prescribe the juncture in the process when that evidence must be developed. Consequently, requiring the parties to submit all medical evidence to the district director is consistent with the right to submit that evidence to the administrative law judge for *de novo* consideration. The regulation simply eliminates the bifurcated evidentiary development permitted by current practice.

The APA also affords the right to an oral hearing, the presentation of testimonial and rebuttal evidence, and the cross-examination of witnesses; the regulation preserves all of these rights.

Evidentiary limitations seem especially apt in the context of black lung claims litigation. The medical issues are clearly defined by statute and regulation, and limited in nature since they involve only the individual miner's condition. Each party should therefore be able to obtain a comprehensive review of the miner's respiratory condition which supports its position. As long as each party has the right to rebut the opposing party's case, to subpoena and cross-examine opposing medical witnesses, and present its case, upon request, to an administrative law judge, then the requirements of the APA and due process are satisfied.

As discussed above, the Black Lung Benefits Act vests the Secretary with broad authority to manage the adjudication of claims for black lung benefits. That management is particularly difficult, however, in cases which require adjudication of both the claimant's eligibility and the liability of one of the claimant's previous employers. The Department's goals are to: (1) provide a forum for the full and fair adjudication of both eligibility and liability; (2) ensure that potentially eligible claimants are put into interim pay status as quickly as possible; (3) limit the number of physically demanding and often invasive pulmonary evaluations that a claimant has to undergo in the evaluation of his entitlement; and (4) protect the Black Lung Disability Trust Fund by fulfilling Congress' intent that liability for black lung claims be borne by coal mine operators to the maximum extent feasible.

Reconciling these interests in cases involving multiple potentially liable responsible operators has not been easy. Such cases typically arise where there is a dispute over whether the miner's most recent employer: (a) is a coal mine operator; (b) employed the claimant as a miner; and (c) is financially capable of assuming liability. In *Crabtree* v. *Bethlehem Steel Corp.,* 7 Black Lung Rep. 1–354 (1984), the Benefits Review Board held that the Department was not entitled to a remand to name another responsible operator after the claimant had established his entitlement to benefits and the administrative law judge correctly dismissed the responsible operator initially designated by the Director. Such a remand, the Board held, would require the claimant to relitigate his entitlement. Instead, the Board instructed the Director to resolve the liability issue in a preliminary proceeding or proceed against all potential responsible operators at each stage of the adjudication. Although the Sixth Circuit has declined to apply *Crabtree* in a case in which the Director designated a new responsible operator before the claimant had to litigate his entitlement to benefits, *Director, OWCP* v. *Oglebay Norton Co.,* 877 F.2d 1300, 1304 (6th Cir. 1989), the Fourth Circuit has explicitly endorsed the Board's decision in the context where the claimant has already litigated and established his eligibility. *Director, OWCP* v. *Trace Fork Coal Co.,* 67 F.3d 503, 508 (4th Cir. 1995).

Absent statutory amendment, however, the Department cannot simply resolve a disputed responsible operator determination before adjudicating the claimant's entitlement. Even if an operator aggrieved by the Director's initial decision that if the responsible operator were able to litigate the issue before the Office of Administrative Law Judges and the Benefits Review Board, the federal courts of appeals will not hear appeals from liability decisions prior to adjudication of the merits of the claimant's entitlement. *Youghiogheny & Ohio Coal Co.* v. *Baker,* 815 F.2d 422, 424–5 (6th Cir. 1987).

In changing the current system, then, the Department has two basic choices: (a) name a single potentially liable responsible operator; or (b) name multiple responsible operators (either all of the miner's former employers or enough of them to ensure that one will likely be held liable). The risk of the first option falls solely on the Trust Fund. Since the district director has only one opportunity to designate a responsible operator, the Trust Fund assumes the risk that the district director's initial identification may be incorrect.

The second option, however, may have a considerable negative impact on claimants if each responsible operator is allowed to develop medical evidence with respect to the claimant's eligibility. Obviously, the claimant in such a case would be subject to multiple physical examinations. In addition, such a system would increase the chances that the claimant's eligibility will be decided based on the sheer mass of evidence which multiple operators are capable of developing. For example, in *Martinez* v. *Clayton Coal Co. et al.,* 10 Black Lung Rep. (MB) 1–24 (1987), the claimant faced three potentially liable responsible operators. The ALJ denied benefits and the claimant appealed, arguing that the ALJ erred in failing to resolve the liability issue prior to adjudicating the claimant's eligibility. The claimant also argued that the ALJ erred in admitting a medical opinion submitted by one of the three operators (presumably not the operator subsequently found liable for benefits). The Board rejected claimant's contention, holding that any potentially liable operator may submit evidence at the hearing bearing on the claimant's eligibility. If the Department were to apply this practice to all cases in which there was a legitimate liability dispute, it would widen the disparity in resources between the claimant and those with an interest in disproving the miner's eligibility.

Accordingly, the Department has selected a variant of this second method. Although the Department may have notified several potentially liable operators in a case pursuant to § 725.407, in most cases, the identity of the potential responsible operator will be clear. Thus, after the submission of responses to the district director's initial finding, the district director will dismiss all of the other potentially liable operators. In such cases, the potential risk to the Trust Fund of an incorrect responsible operator identification is small, and it is one that the Department is willing to assume, especially when weighed against the effect of multiple operator participation in the litigation of the claimant's eligibility.

In cases involving more difficult liability issues (*e.g.,* those involving successor operators, undercapitalized partnerships, atypical coal mine operators, etc.), however, the Department will continue to retain more than one potentially liable operator as parties to the case, in order to preserve its right to compel the payment of benefits by the responsible operator ultimately determined to be liable for benefit payments. To ensure that the claimant is not overwhelmed by operator-developed medical evidence, however, the proposed regulations limit all potentially liable operators to a cumulative total of two pulmonary evaluations or two consultative reports as an affirmative case. *See* discussion, above. Because all of the potentially

liable operators have an identical interest with respect to the eligibility issue, the Department does not believe that any unfairness will result from limiting the total evidence submitted. In effect, the responsible operator, as initially found by the district director, serves as ''lead counsel,'' developing a single response on behalf of those opposed to the claimant's entitlement. The regulations further provide an escape clause, allowing a potentially liable operator who is not the responsible operator to request permission to obtain its own examination upon a showing that the responsible operator is not fully litigating the case.

20 CFR 725.415, .418. The proposed changes complement the Department's efforts to strengthen the integrity of adjudication at the district director level. Previously, parties were entitled to request hearings before the Office of Administrative Law Judges at any point during the initial processing of the claim. *See Plesh* v. *Director, OWCP,* 71 F.3d 103, 111 (3d Cir. 1995). The proposed regulations remove that option; instead, in each case the district director will issue a proposed decision and order awarding or denying benefits. Only after such a decision has been issued may a party request that the case be referred to the Office of Administrative Law Judges for a formal hearing. In accordance with that change, the proposed regulations also remove the district director's authority to forward the case to the Office of Administrative Law Judges prior to issuing a proposed decision and order.

20 CFR 725.416. As the Fourth Circuit has recently recognized, ''informal conferences serve several useful purposes, all of which would be undermined if a party could refuse to participate.'' *Wellmore Coal Co.* v. *Stiltner,* 81 F.3d 490, 495–96 (1996). Those purposes include narrowing issues, achieving stipulations, and crystallizing positions. Consequently, the Department proposes to modify § 725.416 to clearly provide for the imposition of sanctions on any party that fails to appear at a scheduled informal conference and whose absence is not excused. A party's belief that the conference will serve no function does not justify the party's absence. The proposed regulation further puts all parties on notice that those attending the conference will be deemed to have authority to stipulate to issues and/or resolve the entire claim. The current regulations simply provide that those attending ''must have'' such authority.

20 CFR 725.417. Paragraph (b) of this regulation is revised to conform to the limitations on evidence established in proposed § 725.414.

20 CFR 725.421. The Department has determined that the maintenance of case files while a request for a hearing is pending is a function which the district offices should perform. Currently, once a request for hearing is received and the case is referred to the Office of Administrative Law Judges, the OWCP administrative file is sent to the national office of the Division of Coal Mine Workers' Compensation for Maintenance. The deletion of language in paragraph (a) indicates the Department's intention to alter current procedure.

20 CFR 725.423. The Department's current regulations allow many of the time limits applicable to the processing and adjudication of claims to be extended for good cause. The proposed regulations are intended to be similarly flexible. Proposed § 725.423 is intended to govern all such time periods, and to clarify when a party must request an extension. Two time periods are exempted from this general rule. No purpose would be served by including the one-year time limit for a claimant to respond to an initial finding of non-entitlement. Since the one-year period is long in any event and any response within that period is sufficient to trigger further adjudication of the claim, the Department sees no need to provide for an extension of that time.

In addition, the 30-day time period for responding to a proposed decision and order may not be extended. This time limit is jurisdictional, *see Freeman United Coal Mining Co.* v. *Benefits Review Board,* 942 F.2d 415, 422 (7th Cir. 1991), and is not subject to extension.

Subpart F—Hearings

20 CFR 725.451. A cross-reference to § 725.419 is included to emphasize that the hearing request must be timely in order to be honored.

20 CFR 725.452. A proposed paragraph (d) imposes on the administrative law judge the duty to inform parties in writing if he believes that a hearing is unnecessary, and afford a reasonable period for objections. A response by even one party requesting that an oral hearing be held in order to present testimonial evidence is sufficient to compel the hearing.

20 CFR 725.454. Proposed § 725.414(d) prohibits the introduction of any evidence after a claim is referred for a hearing except upon a showing of extraordinary circumstances or in the event a Department-obtained § 413(b) examination is not complete or fails to comply with the applicable quality standards. Section 725.454 should therefore be changed accordingly. Proposed § 725.414 imposes severe constraints upon the development of evidence at the hearing stage. For example, documentary medical evidence which has not been submitted to the district director cannot be made a part of the record before the administrative law judge except upon a showing of ''extraordinary circumstances''. Consequently, the authority to reopen the record for the receipt of additional evidence for ''good cause'' in the current regulation must be eliminated. The conditions under which an administrative law judge may receive additional documentary medical evidence are described in proposed § 725.456.

20 CFR 725.456. Proposed § 725.414 imposes significant constraints on the development of documentary evidence, and especially documentary medical evidence. The parties will be required to develop the documentary record at the district director level; no additional documentary evidence will be admitted at the hearing unless the proffering party establishes extraordinary circumstances or a Department-provided pulmonary evaluation is not complete or is of insufficient quality. Consequently, in most cases, the record which is transmitted to the administrative law judge pursuant to § 725.421 will be the record upon which the administrative law judge adjudicates the claim; the only additional evidence will be provided by hearing witnesses. Only if the administrative law judge concludes that extraordinary circumstances exist or that the record developed by the parties is incomplete or insufficient to decide the claim, may he remand the claim to the district director with instructions to obtain additional evidence on specific issues, or allow the parties to develop such additional evidence as is necessary.

The purpose of proposed §§ 725.414 and 725.456 is to force the parties to develop the documentary record at the district level, the earliest adjudicatory stage, and confine the hearing to the presentation of testimonial evidence. This procedure supplants the current system, which effectively bifurcates evidentiary development by permitting the parties to postpone obtaining evidence until the hearing. Currently, each party attempts to have the most recent medical opinions or tests admitted into the record, resulting in the last-minute submission of evidence. Consequently, the introduction of evidence often does not cease until after the hearing because the parties receive additional time in which to obtain

rebuttal evidence. The proposed procedure eliminates this form of maneuvering, and its attendant delays, by eliminating the incentive and opportunity to delay evidentiary development. The right to a hearing will become the right to request *de novo* review of the record by the administrative law judge, as supplemented by whatever testimony the parties present. Even the medical testimony will be limited to doctors who have authored reports which are part of the record.

The proposed regulation also provides some flexibility in permitting additional documentary evidence to be offered at the hearing stage. If ''extraordinary circumstances'' occur, then a party may be permitted to submit additional evidence. We are specifically seeking comment on the ''extraordinary circumstances'' provision of proposed § 725.456. We do not contemplate, for example, that the worsening of a miner's physical condition, no matter how severe, would establish the existence of extraordinary circumstances, so as to warrant supplementing the evidentiary record. Such a change is properly addressed through the modification procedures set forth at § 725.310 which allow the submission of an additional pulmonary evaluation or consultative report. As another example, however, extraordinary circumstances might be found in the following case. Suppose that a miner with an eighth grade education attempts, without success, to retain counsel at the district director level and can document that he contacted at least 20 attorneys in his attempt. Proceeding without counsel before the district director, he submits into evidence only one medical report from his treating physician which does not address all of the elements of entitlement, but merely concludes that the miner is totally disabled. After the case is referred to the Office of Administrative Law Judges, claimant is finally successful in retaining counsel who requests that the claimant's evidence be supplemented with an additional and more detailed report from his treating physician.

Similarly, a potentially liable operator that neglects to undertake the timely development of evidence while the case is pending before the district director may not take advantage of the ''extraordinary circumstances'' exception, whether or not that neglect may be considered excusable. *See Doss* v. *Director, OWCP*, 53 F.3d 654, 658 (4th Cir. 1995) (holding that a party which inadvertently withholds evidence developed before the district director does not meet the ''extraordinary circumstances'' exception of the current version of § 725.456(d)). To take another example, however, assume that a potentially liable operator diligently attempts to develop evidence in order to demonstrate it is not the operator that most recently employed the miner. Due to fraudulent concealment on the part of the miner's most recent employer, however, the potentially liable operator is unsuccessful in obtaining such evidence until after the claim is referred to the Office of Administrative Law Judges. In such a case, the evidence may be admissible under the ''extraordinary circumstances'' provision of the proposed rule.

In other instances, the evidence may simply be incomplete or inadequate to permit a proper adjudication of the claim. Ordinarily, a party who fails to develop its evidence fully simply loses. The main exception is the Department's obligation to provide each miner with a complete pulmonary examination. *See* 30 U.S.C. 923(b); 20 CFR 725.406. A claim cannot be denied if the Department has failed to obtain such an examination and the remaining evidence, if any, does not credibly address all the entitlement issues. In such cases, the proposed regulation retains the current regulation's procedure for authorizing the administrative law judge to remand the case for additional development or allow the parties additional time to develop the evidence. Other than these two narrow exceptions, the proposed regulation does not contemplate the admission of additional documentary evidence once the claim has been referred to the Office of Administrative Law Judges.

20 CFR 725.457. Proposed § 725.414(c) requires the parties to notify the district director of the names and addresses of any potential hearing witnesses who have not prepared documentary evidence in the record. Proposed paragraph (c) conforms § 725.457 to this procedure. Paragraph (c)(3) addresses the possibility that the administrative law judge may admit additional documentary evidence pursuant to § 725.456. In that event, the person who prepared the evidence will be permitted to testify even though he had not previously been identified as a potential witness at the district level. Proposed paragraph (d) addresses the scope of a medical witness' testimony. If the witness prepared documentary medical evidence, he is restricted to testifying to the contents of that document. Although paragraph (c)(2) permits a party to identify potential witnesses for the hearing who have not prepared documentary evidence, paragraph (d) makes clear that a physician cannot be a witness unless he prepares a report in evidence. A physician is permitted to testify only as to the clinical testing, examination results and diagnoses contained in his report. This limitation is intended to foreclose the use of a physician at the hearing to review the reports and testing of all the other physicians in evidence, and thereby exceed the number of consultative reviews permitted by the regulations.

20 CFR 725.458. The proposed new language is intended to clarify that any physician who testifies by deposition is subject to the same limitations on the scope of his testimony as any physician who testifies at the hearing before the administrative law judge. This limitation ensures that a party cannot use a deposition to elicit testimony which would otherwise be barred if procured at the hearing.

20 CFR 725.459. Current paragraph (a) imposes the liability for the cost of compelling a witness to appear at a hearing on the party who desires to cross-examine the witness. The first sentence of current paragraph (b), however, effectively excuses the claimant from bearing the cost of compelling a witness to appear for the claimant to cross-examine. The conflict is resolved by deleting the first sentence of paragraph (b). Regardless of the party's affiliation or status, the party who compels another party to produce a witness for purposes of cross-examination must bear the cost of the witness' appearance. Obviously, if the witness will appear in any event to testify on behalf of a party, exercising the right of cross-examination will not shift the liability for costs from the proponent of the witness to the other party.

The remainder of the regulation is restructured and consolidated. References to the Black Lung Disability Trust Fund are included in recognition of the Fund's liability for fees and costs when no operator is liable.

20 CFR 725.466. The reference to § 725.477 in paragraph (a) is a typographical error. This paragraph directs the mode of service for an order of dismissal. Section 725.477, however, concerns the form and content of a decision and order, not its service on the parties. Section 725.478 is the correct regulation for purposes of setting criteria for service of an order.

20 CFR 725.478. To date, the Department has interpreted § 725.478 to make the date an administrative law judge issues a decision the date that it is filed in the office of the district director for purpose of §19(e) of the

Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 919(e), as incorporated by 30 U.S.C. 932(a). This position is based on the same-day linkage between issuance of the decision and return of the official record to the DCMWC, at which time it is ''considered'' filed. Three courts of appeals and the Benefits Review Board, however, have rejected this interpretation. *Director, OWCP* v. *Seals,* 942 F.2d 986 (6th Cir. 1991); *Daugherty* v. *Director, OWCP,* 897 F.2d 740 (4th Cir. 1990); *Trent Coal, Inc.* v. *Day,* 739 F.2d 116 (3d Cir. 1984); *Harris* v. *NAACO Mining,* 12 Black Lung Rep. 1–115 (1989). These decisions interpret § 725.478 as merely indicating where the official record should be housed once the administrative law judge issues a decision. They also hold that the 30-day period for challenging a decision does not commence until the decision is actually filed with the district director. The Department's interpretation has been rejected as improperly shortening a statutorily prescribed time period for appeal. Although the Department does not agree with the judicial gloss put on § 725.478, the regulation is amended to conform to the caselaw by making explicit that DCMWC's actual receipt of the record triggers the running of the 30 days.

In addition, the last two sentences of this regulation require the district director to compute all benefits payable by an operator following the issuance of an administrative law judge's decision and order. Because the same computations must be performed following any effective order awarding benefits, whether by the district director, administrative law judge, Benefits Review Board, or court, this requirement will be moved to §725.502, contained in subpart H, ''Payment of Benefits.''

20 CFR 725.479. Proposed paragraph (d) is added to make clear that improper or defective service will not stay the commencement of the 30-day period for appeal or reconsideration if the party has actually received the decision. Actual receipt imposes on the party a duty to act which cannot be mitigated by the error(s) in serving the decision. *See generally Dominion Coal Co.* v. *Honaker,* 33 F.3d 401 (4th Cir. 1994).

20 CFR 725.480. Delete ''(a)'' because section 725.480 contains only one provision.

Subpart G—Responsible Coal Mine Operators

20 CFR 725.490. The regulations governing the obligations of coal mine operators to secure the payment of benefits have been moved to part 726, Black Lung Benefits; Requirements for Coal Mine Operator's Insurance. Subpart G henceforth will govern only the adjudication of issues of operator liability.

20 CFR 725.491–.495. The material in current §725.494 will be moved to §725.606. The material in current §725.495 will be moved to part 726. Sections 725.491–.495 will be amended to effectuate Congress's intent that coal mine operators bear liability to the maximum extent feasible. The Black Lung Benefits Act contains three substantive provisions relevant to the potential liability of individual coal mine operators. Section 3(d) of the Federal Mine Safety and Health Act, 30 U.S.C. 802(d), provides that the term '' 'operator' means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine.'' Section 422(b) of the Act, 30 U.S.C. 932(b), further provides that ''an employer, other than an operator of a coal mine'' shall be liable for benefits payable to ''any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction.'' Finally, §422(i), 30 U.S.C. 932(i), provides criteria for assessing liability against successor operators.

Beyond these general rules, however, the Department's authority to impose liability on coal mine operators is extraordinarily broad. Section 422(h), 30 U.S.C. 932(h), directs the Secretary to promulgate regulations to ''establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine or mines,'' and to ''establish standards for apportioning liability for benefits * * * among more than one operator, where such apportionment is appropriate.'' Since it began administering the black lung benefits program in 1973, the Department has consistently sought to impose liability on the operator that most recently employed the miner, provided certain other conditions are met. These other conditions currently include: (1) the operator employed the miner for at least one year; (2) at least one day of such employment took place after December 31, 1969; and (3) the operator is financially capable of assuming liability for the payment of the claimant's benefits. 20 CFR 725.493(a)(1), 725.492 (a)(3), (a)(4). These regulatory requirements for the imposition of liability have withstood constitutional scrutiny by a three-judge panel of the United States District Court for the District of Columbia and the Supreme Court. *National Independent Coal Operator's Association* v. *Brennan,* 372 F. Supp. 16 (D.D.C.), *aff'd,* 419 U.S. 955 (1974).

Although the Department does not intend to alter these fundamental requirements, some change is needed in order to address problems that have arisen in litigation. For example, and perhaps most importantly, the Fourth Circuit has recognized that ''[t]he Black Lung Benefits Act and its accompanying regulations do not specifically address who has the burden of proving the responsible operator issue.'' *Director, OWCP* v. *Trace Fork Coal Co.,* 67 F.3d 503, 507 (1995).

The proposed regulations are intended to clarify and amplify the Department's method of identifying responsible operators and assign appropriate burdens of proof. Sections 725.491 and 725.492 are derived from the specific statutory provisions defining the terms ''operator'' and ''successor operator,'' respectively. In effect, they identify the class of business entities that may be considered ''operators'' in any claim filed under the Act. The regulations construe the Act broadly, *see Donovan* v. *McKee,* 845 F.2d 70, 72 (4th Cir. 1988), in order both to recognize all of the various businesses which mine coal in the United States and to give full effect to Congress' intent that the coal mining industry bear liability for individual claims to the maximum extent feasible. S. Rep. 95–209, *reprinted in* Comm. on Education and Labor, House of Representatives, 96th Cong., ''Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977'' (Comm. Print) at 612.

Proposed paragraph (c) of § 725.491 broadly defines the term ''independent contractor.'' An independent contractor will incur liability for black lung benefits, however, only if one of its employees is engaged in a function covered by the Act at a covered situs for a cumulative period of at least one year. See proposed §§ 725.495(a)(1), 725.494(c). Although this one-year requirement will generally ensure that the independent contractor will have had more than *de minimis* contact with coal mining, there may be cases in which an independent contractor's contacts with mining have been limited. For example, a maintenance worker employed by an independent contractor who visited a coal mine once a week for five years to repair machinery integral to the extraction of coal would be considered to have been a miner for a cumulative period of more than one year under the Department's

regulations. *See* proposed § 725.101(a)(32). In such a case, the regulations require that the independent contractor that employed the miner be considered an operator for purposes of black lung liability.

The Department thus agrees with the decision of the District of Columbia Circuit in *Otis Elevator Co.* v. *Secretary of Labor,* 921 F.2d 1285 (D.C. Cir. 1990). In *Otis Elevator,* a case involving the mine safety provisions of the Federal Mine Safety and Health Act, the court held that the statutory definition of the term ''operator,'' 30 U.S.C. 802(d), was not limited to independent contractors with a continuing presence at a mine. The court noted that the statutory definition was clear and unambiguous, and contained no such requirement. The ''continuing presence'' test had been adopted by the Fourth Circuit in another FMSHA case, *Old Dominion Power Co.* v. *Donovan,* 772 F.2d 92 (4th Cir. 1985). To the extent that a black lung benefits claim presents this issue, the Department believes the ''continuing presence'' test should not be applied outside the Fourth Circuit.

Proposed § 725.492 largely tracks § 422(i) of the Act and provisions contained in current § 725.493. The proposed regulation is intended to clarify both the criteria for successor operator liability, and the priority for assigning liability in cases where there is more than one successor operator. As a general rule, the regulations impose liability on the operator that actually employed the miner most recently. Where that operator is no longer financially capable of assuming liability for the claimant's benefits, typically because the operator is no longer in existence and failed to purchase commercial insurance to secure the payment of benefits, liability follows the most recent purchaser of the employer's mining business. If neither the original employer nor any successor operator which bought the business can be held liable for benefits, the parent company of the original employer may be held liable. The proposed regulation also broadly defines the term ''acquisition'' to recognize any transfer of authority over a mine, no matter how it is effected. For example, the purchase of a coal mine operator's assets from a bankruptcy trustee, or the transfer of a coal mine from one member of a family to another, with or without consideration, will both be considered acquisitions for purposes of imposing successor operator liability.

The proposed regulations also define the entities which may engage the miner in an employment relationship. Only an operator that employed the miner for at least one year, and for at least one day after December 31, 1969, may be considered liable for that miner's benefits. Section 725.493 broadly defines the necessary relationship. It may be a traditional one, involving the payment of a wage or salary and actual day-to-day control over the work performed, or a deemed relationship, such as that involving a successor operator, lessor, or parent corporation.

Proposed § 725.494 uses the miner's employment relationships to define a subclass of operators called potentially liable operators, *i.e.,* those operators whose relationship with the miner was of sufficient duration and type to justify the imposition of liability against them, and whose financial capability allows them to assume such liability. All of the criteria for identifying a potentially liable operator are contained in the current regulations: proposed paragraphs (a), (b), (d), and (e) are found in current § 725.492; and proposed paragraph (c) is contained in current § 725.493.

Paragraph (e) has been altered to provide more specific standards for establishing an operator's financial capability to assume liability for the payment of a claimant's benefits. The financial capability criterion has always been of the utmost importance, but has been the subject of increasing litigation in recent years. *See, e.g., Director, OWCP* v. *Trace Fork Coal Co.,* 67 F.3d 503 (4th Cir. 1995). Like the current regulation, the proposed regulation recognizes three methods of establishing an operator's financial capability: (1) A commercial insurance policy covering the claim; (2) authorization to self-insure; and (3) the possession of assets sufficient to guarantee the payment of the claimant's benefits.

The proposed regulation makes only minor changes to the first two methods in order to guarantee that the commercial insurance or the security posted by a self-insured operator remain viable sources of benefit payments. Thus, where the operator purchased commercial insurance, the regulation requires that the insurance company must be solvent, or that a legally obligated successor must exist. Where the insurance company has been declared insolvent, and no successor (either another insurance company or a state guaranty association) is available to pay benefits, the operator's prior purchase of insurance is not sufficient to establish the operator's ability to assume liability. Instead, the operator itself must possess sufficient assets to secure the payment of benefits. Similarly, where the operator was authorized to self-insure, the operator itself must still be authorized to self-insure or the security posted by that operator must be sufficient to provide for the payment of benefits.

With respect to the third method, the current regulations contain a presumption that if an operator is in existence, it is presumed to be financially capable of assuming liability for benefits. On occasion, that presumption has required the assessment of liability against a coal mine operator that is in existence, but that, because of the small size of its assets, clearly cannot pay benefits to a miner, even where a financially capable operator is next in line to assume liability. In such a case, the award of benefits is effectively unenforceable against the operator, and the Trust Fund must assume liability.

The proposed regulation replaces the presumption with a more case-specific inquiry into the operator's actual financial status by tying a determination of financial capability based on the operator's assets to the requirements of proposed § 725.606. In the case of operators who are in violation of their statutory duty to secure the payment of benefits, § 725.606 requires a minimum deposit of $175,000 to secure the payment of benefits on a claim. In the case of coal mine construction or coal transportation employers, the regulation requires a more particularized assessment of the benefits payable in a given claim based on the life expectancies of the miner and his dependents.

The size of the pool of potentially liable operators in any given case will vary depending on the miner's employment history. If the miner spent the last thirty years working for a single coal company that either insured its liability under the Act or qualified as a self-insurer, that company will be designated the responsible operator. If the miner worked for a number of companies, some of which thereafter sold their coal mining business, the number of potentially liable operators will be larger.

Finally, § 725.495 concludes the identification process by setting forth criteria for determining which of the potentially liable operators will be the responsible operator. The proposed regulation also assigns burdens of proof to the respective parties to the claim, thereby addressing the problem the Fourth Circuit identified in *Trace Fork.* Proposed § 725.495 alters the current regulation (§ 725.493) in two important respects. First, it makes explicit OWCP's system for determining responsible operator liability. It provides that if more than one potentially liable

operator exists with respect to the miner's most recent employment, the miner's actual employer shall be primarily liable, followed, in order, by any potentially liable successor operator and any other operator that may be deemed to have employed the miner. Only if no potentially liable operator exists with respect to the miner's most recent employment does the regulation authorize looking to the miner's next most recent employment.

For example, assume that the miner was employed by Megalith Coal Company from 1968 through 1982, and then went to work for Bob's Steel Company (which operated its own coal mines) until 1985. At the time, Bob's was insured by Shaky Insurance Company. Bob's subsequently sold its mines to Bill's Coal Company and merged into Ace Steel Company. The regulation requires that the miner's most recent employer bear the liability if at all possible. The regulation would therefore prioritize liability as follows: (1) Bob's Steel Company (as insured by Shaky Insurance Company, provided the insurer is still solvent); (2) Bill's Coal Company; and (3) Ace Steel Company. If none of these companies has the financial capability to pay benefits, the regulation assigns liability to Megalith Coal Company.

Second, proposed § 725.495 allocates the parties' burdens of proof with respect to determining the responsible operator. Pursuant to paragraph (b), the Director bears the burden of establishing that the responsible operator named by the district director in the initial finding (the ''designated responsible operator'') meets all of the § 725.494 criteria for a potentially liable operator with the exception of financial capability, which is presumed. Where the operator failed to contest its designation as a potentially liable operator before the district director, see proposed § 725.408(a)(3), none of the § 725.494 requirements may be contested. Pursuant to paragraph (d) of proposed § 725.495, where the designated responsible operator is not the miner's most recent employer, the Director is required to place into the record a statement that OWCP has searched its insurance and self-insurance records, and has found no record that any more recent employer meets the conditions of paragraphs 725.494 (e)(1) or (e)(2).

Once the Director meets his burden, the burden shifts to the designated responsible operator. That operator must prove either that it does not have sufficient assets to secure its liability and therefore is not financially capable, or that a more recent employer meets all of the requirements for a potentially liable operator set forth in proposed § 725.494. As part of this burden, the designated responsible operator must demonstrate that the more recent employer, or its owners or officers, if appropriate, possesses assets sufficient to secure the payment of benefits in accordance with § 725.606. The Department must be able to reach those assets through the enforcement mechanisms provided by the Act. For example, proof that the owner of a sole proprietorship possesses assets that may not be divided, such as a jointly owned residence, will not meet the designated responsible operator's burden. If the designated responsible operator meets its burden, then the more recent employer, if it was notified of the claim pursuant to proposed § 725.407 and not thereafter dismissed, shall be considered the responsible operator. If the designated responsible operator meets its burden and the more recent employer is not a party to the claim, then liability will be borne by the Black Lung Disability Trust Fund.

Subpart H—Payment of Benefits

20 CFR 725.502, .522, .530. Determining the point in time at which benefits become due under the Black Lung Benefits Act is important for several purposes. For example, once an administrative law judge issues a decision and order awarding benefits against a responsible coal mine operator, the Trust Fund may pay benefits on an interim basis only after the operator fails to pay benefits that become due and payable. *See* 26 U.S.C. 9501(d)(1)(A)(ii). In addition, a beneficiary will be entitled to additional compensation, equal to twenty percent of any unpaid benefits, only if the operator fails to make payments within 10 days of the date on which they become due. *See* 20 CFR 725.607. Finally, the date on which benefits become due determines the starting point for computing any interest owed the beneficiary. *See* 20 CFR 725.608. The current regulations, however, offer little help in determining this critical date.

The proposed changes, which are consistent with OWCP's current practice, generally reflect law developed under the Longshore and Harbor Workers' Compensation Act. Under the Longshore Act, benefits become due when the compensation order becomes effective. *See Tidelands Marine Serv.* v. *Patterson,* 719 F.2d 126, 127 n.1 (5th Cir. 1983); *Lazarus* v. *Chevron USA, Inc.,* 958 F.2d 1297, 1299 (5th Cir. 1992). Section 21(a) of the LHWCA, 33 U.S.C. 921(a), as incorporated into the BLBA by 30 U.S.C. 932(a), provides that a compensation order issued under § 19 of the LHWCA, whether by a district director or an administrative law judge, *see* 20 CFR 702.315, .349, .350, becomes effective when it is filed in the office of the district director. The Secretary's black lung regulation at 20 CFR 725.479 uses the same language with respect to orders issued by administrative law judges. The regulations also allow a district director to issue a compensation order, but provide that such an order will become effective only if no party requests a hearing within 30 days. 20 CFR 725.419(d); *see Freeman United Coal Mining Co.* v. *Benefits Review Board,* 942 F.2d 415 (7th Cir. 1991). Proposed § 725.502(a)(2) will provide all parties with notice as to these crucial dates. Although appellate tribunals such as the Benefits Review Board and the courts of appeals typically direct the entry of an award on remand rather than enter an award themselves, the proposed regulation also addresses those rare instances in which the Board or court does issue such an award.

With one exception, the Department's experience in administering the Black Lung Benefits Act does not justify altering the Longshore Act procedures with respect to when benefits are payable. Thus, once an effective order is issued, an operator must immediately commence the payment of monthly benefits that become due thereafter in accordance with the terms of the order. Failure to pay these benefits within 10 days of the date they become due will subject the operator to liability for additional compensation.

The exception to Longshore Act practice concerns retroactive benefits payable by an operator after an effective order is issued. Such benefits are typically payable in two cases: (1) in a case in which the claimant was receiving interim benefit payments from the Trust Fund, where the claimant is entitled to benefits for periods prior to the initial determination of the claimant's eligibility; and (2) where the claimant was not receiving any interim benefit payments prior to the effective order because the district director had initially determined that the claimant was not entitled to benefits.

Because the calculation of retroactive benefits often involves the consideration of factors that are not apparent in the record or the decision, such as the dates of previous interim payments by the Trust Fund, the Department believes that such a calculation is best performed by the district director. Under the current regulations, such calculations are made within 30 days of the date of the effective award, and the proposed

regulation at § 725.502(b)(2) codifies that time period.

For example, an administrative law judge may issue an order on August 15, 1996, awarding benefits as of August, 1994. This decision is effective when correctly filed and served, and the operator must commence monthly benefit payments within 10 days of the next date upon which monthly benefits become due, *i.e.*, it must pay benefits due for the month of August by September 10, 1996. If the operator fails to make timely payment, it will incur liability for twenty percent additional compensation. Retroactive benefits, however, covering the period from August, 1994 through July, 1996, will not be due until the district director completes the computation of these amounts and notifies the parties, notification which will be completed within 30 days of August 15, 1996.

Currently, some operators and insurers pay monthly benefits following the issuance of an effective award, but few pay retroactive benefits while an appeal is pending. By clarifying the respective obligations of the district director and the operator in a case in which an award is issued, and by providing claimants with notice of the dates on which benefit payments may be expected and the consequences of an operator's failing to make those payments, the Department hopes to increase operator compliance with effective awards.

20 CFR 725.503. As currently written, § 725.503 does not provide any guidance for determining when benefits should commence if the claimant prevails in modification proceedings. A denied claim may be modified to an award if the claimant establishes either a factual mistake in the decision denying the claim, or a change in the miner's condition since that denial. 33 U.S.C. 922, as incorporated by 30 U.S.C. 932(a); as implemented by 20 CFR 725.310. *See generally O'Keeffe* v. *Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 255–256 (1971); *Banks* v. *Chicago Grain Trimmers Assn., Inc.*, 390 U.S. 459, 465 (1968). A ''mistake'' determination requires the adjudicator to consider whether the original decision is premised on some significant factual error resulting in an improper denial of the claim. In order to prove a change in condition, the claimant must prove that his condition has deteriorated to the point of compensable disability since the prior denial of the claim; this inquiry effectively acknowledges the correctness of the earlier decision, and requires the claimant to proffer new evidence.

The differences in the two grounds for modification necessarily require different means for determining the commencement date for benefits.

> A change in condition—a worsening of the applicant's black lung disease to the point where it is now totally disabling—entitles him to benefits from the date of the change. The correction of a mistake of fact, showing that he had totally disabling black lung disease at the time of the original hearing, entitles him to benefits from the date—which might be long before that hearing—on which he became totally disabled.

Eifler v. *Office of Workers' Compensation Programs*, 926 F.2d 663, 666 (7th Cir. 1991).

Proposed paragraph (d) implements the alternative modification grounds characterized by *Eifler*. If the basis for modifying the denial of benefits to an award is a mistake in that denial, a determination of the commencement date uses the same rules as apply to claims. The adjudicator must consider whether a miner (paragraph (b)) or a survivor (paragraph (c)) filed the claim, and weigh the evidence accordingly. If, however, the claimant has established a change in condition, a different method must be used. The Department has concluded that the most reasonable alternative is to use the earliest credible evidence supportive of an element of entitlement previously resolved against the claimant (or left unresolved), provided such evidence was obtained since the denial of the claim. Such evidence supports both the award and a finding of the date from which benefits are payable if the adjudicator has considered and rejected any later evidence refuting entitlement. *Cf. Rochester & Pittsburgh Coal Co.* v. *Krecota*, 868 F.2d 600, 603 (3d Cir. 1989) (holding that administrative law judge erroneously awarded benefits from 1977 filing date when all medical evidence until 1985 was negative).

Proposed § 725.503 is also amended to reduce the number of provisions dealing with part 727 awards. Section 727.302 provides the criteria for determining when benefits are payable under part 727, which makes most of the current references to part 727 in § 725.503 unnecessary. 20 CFR 727.302. The only exception is for ''transition claims,'' filed between July 1, 1973, and December 31, 1973, under § 415 of the BLBA, 30 U.S.C. 925. Section 727.302(e), which governs the onset date for such claims, refers to § 725.503 for the applicable standards. Thus, proposed § 725.503(e) is necessary to supply applicable standards. No benefits on a § 415 claim can be awarded for any period of eligibility occurring prior to January 1, 1974. 20 CFR 727.303(a). Consequently, a cross-reference to § 727.303 is a necessary qualifier to making onset date determinations under § 725.503 for § 415 claims.

20 CFR 725.537. Proposed § 725.212(b) codifies the Department's position that full survivor's benefits must be paid to each surviving spouse or surviving divorced spouse who establishes eligibility. In order to eliminate any potential inconsistency between the proposed regulation and current § 725.537, the latter must be amended to cross-reference the new § 725.212(b).

20 CFR 725.547. The Black Lung Benefits Act incorporates by reference certain provisions of the Social Security Act which require a claimant who has received benefits to which he is not entitled (an ''overpayment'') to reimburse the benefits unless certain defined exceptions apply. 30 U.S.C. 923(b), 940, incorporating 42 U.S.C. 404(b). The claimant is entitled to waiver of the overpayment recovery if he can demonstrate that permitting recovery would ''defeat the purpose of the Act'' or ''be against equity and good conscience.'' Only those individuals who were not ''at fault'' in creating the overpayments are eligible for waiver.

Section 725.547(a) currently limits the availability of waiver to those individuals who received the overpayments from the Black Lung Disability Trust Fund. A claimant who received an overpayment from a responsible operator or an insurance carrier may not seek waiver. The Department has concluded that the waiver provisions should be available to all claimants. Deleting the second sentence of paragraph (a) will afford any individual who has received an overpayment the opportunity to establish that he is without fault in creating the overpayment, that he lacks the financial resources to repay the overpayment (''defeat the purpose of title IV of the Act'') or that special circumstances exist which demand release from liability (''be against equity and good conscience''). *See* 20 CFR 725.542–725.543.

The Department recognizes that incorporated provisions from the Longshore and Harbor Workers' Compensation Act (LHWCA) permit recoupment only by withholding future benefits. *See* 33 U.S.C. 914(j), 922, as incorporated by 30 U.S.C. 932(a); *Ceres Gulf* v. *Cooper*, 957 F.2d 1199, 1206–07 (5th Cir. 1992); *Stevedoring Services of American, Inc.* v. *Eggert*, 953 F.2d 552, 557 (9th Cir. 1992). If no future benefits are due, then the overpayment cannot be recovered under that statutory

scheme. The Department has concluded, however, that the LHWCA provisions should not be generally applied to black lung overpayments. The statutory authority incorporated from the Social Security Act imposes an affirmative duty on the Department to recover overpayments unless waiver is appropriate: ''Whenever the Secretary finds that more * * * than the correct amount of payment has been made to any person * * *, proper adjustment or recovery shall be made * * *'' 42 U.S.C. 404(a)(1). Since 1973, the Department has promulgated regulations consistent with the SSA provisions. *See* 38 FR 26042 *et seq.,* Sept. 17, 1973; 20 CFR 725.523, 725.524 (1978) (identical to present 725.542, 725.543). Those courts which have reviewed the Department's position have upheld its authority to collect overpayments even when no future benefits are due. *Napier* v. *Director, OWCP,* 999 F.2d 1032 (6th Cir. 1993); *McConnell* v. *Director, OWCP,* 993 F.2d 1454 (10th Cir. 1993); *compare Bracher* v. *Director, OWCP,* 14 F.3d 1157, 1160–61 (7th Cir. 1994) (acknowledging difference between SSA and LHWCA statutory schemes and the Secretary's authority to promulgate regulations which vary incorporated provisions from LHWCA). Departing from the current procedures obviously would result in adverse financial consequences for the debt-laden Trust Fund. Moreover, the current procedures ensure that recovery is made only from those individuals who were either at fault in creating the overpayment or possess the financial resources to repay the benefits. For these reasons, the Department has adopted the LHWCA limitations on overpayment recovery only for overpayments which occur as a result of modification proceedings. *See* 33 U.S.C. 922, as incorporated by 30 U.S.C. 932(a); 20 CFR 725.310(d). *See* explanation of changes to § 725.310.

Subpart I—Enforcement of Liability; Reports

20 CFR 725.606. The current regulation at § 725.494 implements § 422(b) of the Act, 30 U.S.C. 932(b), which provides that coal mine construction and transportation employers are not required to comply with the general requirement that coal mine operators secure their potential liability under the BLBA. Section 422(b) further provides, however, that the Secretary may require a coal mine construction or transportation employer to ''secure a bond or otherwise guarantee the payment'' of benefits to an employee that the Secretary has determined to be eligible for benefits. The current regulation at § 725.606 implements § 14(i) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 914(i), which generally gives the district director authority to require the deposit of money with the United States Treasurer whenever he deems it advisable.

The proposed changes consolidate the two current regulations into a single one dealing generally with post-award security. The new regulation will be located in subpart I, ''Enforcement of Liability; Reports.'' The new regulation eliminates paragraph (a) of § 725.494, which simply repeats the security requirement of the Act and refers to 20 CFR part 726. Because this provision is discussed in considerable detail in part 726, no useful purpose is served by repeating it in part 725. The remainder of § 725.494 is integrated into § 725.606. The latter section now establishes a clear duty on the part of otherwise unsecured operators to secure individual claims following issuance of an effective award of benefits. The new regulation also provides a mechanism for enforcing the duty to secure these benefit payments. Finally, there is currently no mechanism by which the United States Treasurer can hold deposits that are to be used to pay monthly benefits. Accordingly, the Department has altered the incorporated Longshore Act provision to provide authority to require a deposit of negotiable securities with a Federal Reserve Bank. *See* 30 U.S.C. 932(a) (authorizing the Department to depart from incorporated Longshore Act provisions in order to facilitate the administration of the Black Lung Benefits Act).

The new regulation distinguishes between the obligations of coal mine operators that were required to secure the payment of benefits under the Act and failed to meet that obligation, and those coal mine construction and transportation employers that were not required to secure. The former are required to deposit at least $175,000 (the current average value of a claim) for each approved claim. This amount may be increased if OWCP believes that additional security is required because, for example, the miner is relatively young, or has a disabled child. In cases in which the miner's age and the number of his dependents would not justify the entire $175,000, that money will provide additional security for claims filed by other employees of the unsecured operator. On the other hand, because coal mine construction and transportation employers have not violated the Act's security requirement, they are entitled to a more precise calculation of their potential liability for the approved claim, and may not be required to secure other claims not yet awarded.

Consideration was given to imposing a mandatory duty on uninsured operators and coal mine construction or transportation employers to secure benefit payments immediately following the issuance of an effective award of benefits, without awaiting a specific directive from the district director. Section 725.494 currently provides that a coal mine construction or transportation employer ''which may be liable for the payment of benefits under this part or Part 727 of this subchapter *shall* take such action as may be appropriate to guarantee the discharge of such liability.'' Determining the amount of security required in the case of a coal mine construction or transportation employer, however, requires an individualized calculation by OWCP. A coal mine construction or transportation employer cannot be expected to perform such a calculation without assistance. Accordingly, the regulation requires that OWCP request such an employer to secure the payment of benefits before an order can be issued. Such a request will also give the liable operator or other employer an opportunity to demonstrate its compliance with the security requirement.

The regulation places the initial burden on OWCP. Once an effective award is issued, the district office (which will receive a copy of all such awards) will contact the Responsible Operator section of OWCP's Branch of Standards, Regulations, and Procedures, to determine whether the liable party has secured its obligations. If it has not, the district director will inform the operator of its obligation to secure the claim. If the operator fails to comply, the district director may direct the deposit of appropriate securities or, if the claim was awarded by an administrative law judge, the Benefits Review Board, or a court of appeals, request the appropriate Regional Solicitor's office to file a motion with the administrative law judge. This system will encourage district offices to investigate an operator's existing security, request the posting of security in appropriate cases, and to take whatever steps are necessary to require the posting of such security, as quickly as possible.

Paragraph (g) represents the Department's interpretation of the interplay between § 432(b), which excuses coal mine construction and transportation employers from the Act's general security requirement, and

§ 433(d), which imposes personal liability for benefits on the president, secretary, and treasurer of an incorporated operator that fails to secure the payment of benefits. Paragraph (g) makes clear that the provisions of § 433(d) will apply to incorporated coal mine construction and transportation employers if they fail to comply with an order requiring post-award security.

20 CFR 725.608. The proposed changes are intended to simplify the regulation, and to allow all parties to a claim to ascertain their obligations and rights with respect to the payment of interest. In general, the purpose of interest is ''to ensure that an injured party is fully compensated for its loss.'' *City of Milwaukee* v. *Cement Division, National Gypsum Co.,* 115 S. Ct. 2091, 2095 (1995). The Black Lung Benefits Amendments of 1981 amended the Act to provide that an operator that withholds the payment of retroactive benefits pending review of an initial determination of eligibility shall begin to accrue liability for interest 30 days after the initial determination. 30 U.S.C. 932(d). The initial determination serves as the first notice to an operator that it may have incurred a potential obligation to pay benefits, and the statute and regulations recognize that the computation of interest from an earlier point in time may not be equitable. *See Stapleton* v. *Westmoreland Coal Co.,* 785 F.2d 424, 438 n. 12 (4th Cir. 1986) (*en banc*), *rev'd on other grounds sub. nom. Mullins Coal Co.* v. *Director, OWCP,* 484 U.S. 135 (1987). Proposed paragraph (a)(3) applies the same rule governing liability for interest to medical benefits, an issue which the present regulation does not address.

Paragraph (b) of the current regulation is unchanged. As the courts have recognized, the language of this provision is broad enough to entitle the Department to interest on any benefits paid from the Trust Fund, including both monthly disability benefits and medical treatment expenses. *Reich* v. *Youghiogheny & Ohio Coal Co.,* 66 F.3d 111, 117 (6th Cir. 1995).

In proposed paragraph (c), the Department recognizes that delays in the payment of attorney's fees under the Act have contributed to the unwillingness of attorneys in many areas of the country to accept black lung benefits cases. Under an incorporated provision of the Longshore and Harbor Workers' Compensation Act, attorneys may receive compensation only if they are successful, and only after the award of the claimant's benefits becomes final. 33 U.S.C. 928, as incorporated by 30 U.S.C. 932(a). Because an award of benefits may not become final until years after the attorney's fee application has been approved by the adjudication officer, the value of the fee that the attorney ultimately receives will be reduced by intervening inflation. Although the BLDTF may not pay interest, *see* 26 U.S.C. 9501(d), the Department believes that awarding interest on fee awards in responsible operator cases, the majority of cases currently litigated, will encourage attorneys to represent black lung claimants by reducing the cost of adjudicatory delays. This position is also consistent with Supreme Court precedent, *Missouri* v. *Jenkins,* 491 U.S. 274 (1989).

20 CFR 725.609. Several of the Department's recent enforcement cases have involved responsible operators or insurers that became financially incapable of paying benefits after having fully litigated the merits of the claimant's entitlement. As a result, although the final award is directed against one entity, the Department must seek to enforce the award against another. The Act currently provides ample authority for such enforcement. *See, e.g.,* 30 U.S.C. 932(i). In *Donovan* v. *McKee,* 845 F.2d 70, 72 (4th Cir. 1988), the Fourth Circuit refused to sanction ''a license for operators to avoid benefit payments by effecting convenient changes of the business form under which coal mining operations are conducted. There is no warrant in the statutory language or purpose for allowing operators to resort to such shell game maneuvers to avoid liability for paying black lung benefits.'' Obviously, requiring the Department and the award beneficiary to obtain a new order in accordance with the claims procedure outlined in part 725 would allow such operators to delay indefinitely the enforcement of their obligations by undergoing frequent changes in identity. In addition, such an approach would have the unfortunate result of requiring claimants to relitigate their entitlement to benefits.

Even if the change in the operator's identity is wholly unrelated to a desire to avoid liability for black lung benefits, the Act should be construed to effectuate Congress's stated intent to impose liability for benefits payable under Part C of the Act on individual coal mine operators. In recognizing the expansive scope of the Act's provisions relating to the industry's liability, and the broad authority vested in the Department to carry out the provisions of the Act, *see* 30 U.S.C. 932(a), (h), 936(a), the proposed regulation simply codifies the Department's existing interpretation of the Act with respect to the enforcement of benefits.

Paragraph (a) recognizes that the owners of sole proprietorships and the principals in partnerships are directly liable for the debts incurred by their companies. Moreover, as the Fourth Circuit noted in *McKee,* such individuals are ''unquestionably operators.'' 845 F.2d at 72.

Paragraph (b) implements § 423(d) of the Act, 30 U.S.C. 933(d). That statutory section provides that where an operator is a corporation that has failed to secure its liability for benefits under the Act, the president, secretary, and treasurer of such corporation ''shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.'' Although such officers do not meet the definition of the term ''operator'' (§ 725.491), they may be held liable for the payment of benefits once the corporation has been determined to be the responsible operator. Paragraph (b) further recognizes the ongoing nature of the duty imposed on the named corporate officers by § 423. For example, § 423(a) provides that an operator is responsible for ''insuring and keeping insured the payment of such benefits.'' The Department's proposed civil money penalty regulations (20 CFR part 726, subpart D) recognize a similar ongoing duty with respect to self-insured operators (*see* proposed § 726.302(b)). Thus, any person who becomes a corporate officer of the responsible operator after the miner ceases his employment may be held personally liable for the payment of the miner's benefits. The regulation allows such a corporate officer to limit his personal liability by ensuring that the corporation posts security for the claim under § 725.606.

Paragraph (c) implements the Act's successor operator provisions in cases where the prior operator becomes unable to pay an award of benefits. 30 U.S.C. 932(i). In such cases, the Act imposes liability on any operator that may be considered a ''successor operator.'' For example, where one operator merges into another, the Department or any beneficiary of an award should be able to quickly and summarily enforce the pre-existing obligations of the first operator against the second. The regulation recognizes that the liability of successor operators in the enforcement context should be limited to those claims of which they have constructive notice at the time of the event which gave rise to the successor liability. For example, if one

company purchased the coal mining business of another on January 1, 1990, it will be deemed to have notice of all claims filed against the seller as of that date. If the seller subsequently becomes unable to pay any benefits due in those claims, those obligations may be enforced directly against the successor operator. Any claims filed after the date of sale may be enforced against the successor only if the successor is provided with an opportunity to litigate the miner's entitlement to benefits in the claims process set forth in Subparts E and F of this part.

Paragraph (d) deals with companies which mine coal through subsidiaries, joint ventures, or other business entities which they own or control. Such companies may be considered operators under the Act (*see* proposed § 725.491), and must ensure the payment of benefits by, and thus assume the risk of any failure on the part of, such subsidiaries, joint ventures, or other business entities. For example, a parent company may not avoid its existing liability by dissolving or liquidating a subsidiary company. Any pre-existing obligations of such subsidiary may be enforced against such parent company without further resort to the claims process.

Finally, paragraph (e) is a catch-all provision designed to put all parties on notice that the Department can take full advantage of any other applicable federal or state law. For example, the Department has encountered a number of cases in which the responsible operator has gone out of business and its insurer has been declared insolvent by the state in which it was established. In such a case, the Department and the award beneficiary may collect from a state insurance guaranty association where state law requires such an association to assume the insurer's liabilities.

20 CFR 725.620. Paragraph (a) must be amended to conform with revisions to § 725.495 and part 726. Section 725.495 is being amended and its contents moved to a more appropriate location, subpart D of part 726, the regulations governing enforcement of the obligation to insure and the assessment of a penalty for failure to secure benefit payments. Thus, § 725.620(a) must contain a cross-reference to the new location of the relevant material.

20 CFR 725.621. In accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, § 31001(s), 110 Stat. 1358), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), the maximum penalty amount for failing to file a report required by the Secretary's regulations, *see* 30 USC § 942(b), must be increased by ten percent with respect to violations that take place after these proposed regulations become effective.

Subpart J—Medical Benefits and Vocational Rehabilitation

20 CFR 725.701. Section 725.701 should be amended to codify the presumption of coverage created by the United States Court of Appeals for the Fourth Circuit in *Doris Coal Co.* v. *Director, OWCP*, 938 F.2d 492 (4th Cir. 1991). In *Doris Coal Co.*, the Fourth Circuit recognized that the broad definition of pneumoconiosis necessarily brought within its ambit most pulmonary disorders for which a miner might receive treatment. The Court therefore concluded that ''when a miner receives treatment for a pulmonary disorder, a presumption arises that the disorder was caused or at least aggravated by the miner's pneumoconiosis.'' 938 F.2d at 496. The Department endorses this approach, and accordingly amends § 725.701 to codify it. Although the decision does not describe the means of rebutting the presumption, the proposed regulation requires evidence which completely severs the presumed nexus between the pulmonary disorder and the miner's pneumoconiosis. The proposed regulation also prohibits use of evidence which challenges the miner's underlying entitlement to benefits as a means of showing that the treatment cannot be compensable. A final award of benefits establishing that the miner is totally disabled due to pneumoconiosis arising out of coal mine employment precludes reliance on any medical evidence that is inconsistent with that award. The proper forum for such evidence is modification (see § 725.310).

20 CFR 725.706. The historical rise in treatment costs warrants raising the no-approval dollar amount in paragraph (b) from $100.00 to $300.00.

20 CFR Part 726—Black Lung Benefits; Requirements for Coal Mine Operators' Insurance

Subpart A—General

20 CFR 726.2. Paragraph (e) is added to recognize the addition of subpart D of part 726, governing the assessment of civil money penalties.

20 CFR 726.8. Proposed § 726.8 is intended to define certain terms that are used in part 726. The terms ''employ'' and ''employment'' are important not only to the Department's enforcement of the Act's civil money penalty provisions, but also to the liability of insurance carriers and sureties. Thus, both the required insurance endorsement, set forth at § 726.203, and the standard surety bond form, use the term ''employment.'' Paragraph (d), which is identical to proposed paragraph 725.493(a)(1), codifies the Department's position that these terms should be given the broadest possible interpretation.

Subpart B—Authorization of Self-Insurers

20 CFR 726.101, .104, .105, .109, .110, .111. The Department's existing self-insurance regulations do not contain a list of the factors that the Department currently considers in setting the amount of security required of an operator seeking authorization to self-insure its benefit obligations. The formula set forth in § 726.101(b)(4) was intended to be used only in 1974. *See* current 20 CFR 726.105. The revisions to § 726.101(b)(4) eliminate the 22-year old formula in favor of a non-exclusive list of factors, now set forth in § 726.105. These factors are a more accurate reflection of the Department's current method of setting a security amount. Language referring to the formula in § 726.101 has been deleted from § 726.105. In addition, § 726.104 has been revised to recognize two forms of security (letters of credit and tax-exempt trusts) that the Department did not allow in 1974, when these regulations were last amended, but that it does allow now. Paragraph (b)(4) reflects the Department's decision to allow self-insurers to use letters of credit only in combination with another form of security. Sections 726.101, 726.109, 726.110 and 726.111 have been revised to remove specific references to the earlier forms of security and to substitute more general references.

20 CFR 726.106. The reference in paragraph (c) to ''31 CFR 203.7 and 203.8'' is incorrect. The regulation is revised to reference ''31 CFR Part 225,'' which contains the appropriate regulations governing deposits with the United States.

20 CFR 726.114. A new paragraph (c) has been added to codify the Department's position that coal mine operators authorized to self-insure their benefit liability under 30 U.S.C. 933(a) continue to be responsible for maintaining adequate security even after they have ceased mining coal. *See* the explanation to §§ 726.300–.320, below. Paragraph (b) is revised to eliminate the specific reference to the forms of security previously accepted by the Department in favor of a more general reference. *See* discussion of § 726.104, above.

Subpart D—Civil Money Penalties

20 CFR 726.300–.320. Section 423 of the Black Lung Benefits Act requires each coal mine operator to secure its liability for benefits by qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or by insuring and keeping insured the payment of such benefits with a licensed workers' compensation insurer. 30 U.S.C. 933(a). Section 423 also provides that each coal mine operator failing to meet its insurance obligation shall be subject to a civil money penalty of up to $1,000 per day. 30 U.S.C. 933(d)(1). In accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, § 31001(s), 110 Stat. 1358), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), the maximum penalty amount must be increased by ten percent with respect to violations that take place after these proposed regulations become effective.

The proposed regulations are designed to enhance administration of the civil money penalty program. The Department intends to minimize the burden that uninsured operators place on those operators in compliance with the Act's requirements and on the Black Lung Disability Trust Fund. For example, in a case where the miner's most recent employer was not insured, potential liability for benefits will typically fall on an earlier employer which secured its benefits liability. This situation places an additional burden on an operator fully in compliance with the Act's insurance requirements. *See Director, OWCP* v. *Trace Fork Coal Co.*, 67 F.3d 503, 507 (4th Cir. 1995). Similarly, if no operator may be held liable for the payment of a miner's benefits, the Trust Fund must assume liability, 26 U.S.C. 9501(d)(1)(B), placing an additional financial burden on the indebted Fund.

Currently, the Department's procedural and substantive criteria for administering the Act's penalty provision are contained in a single regulation, 20 CFR 725.495, proposed in April, 1978 and promulgated, without comment, in August, 1978. The proposed changes, which significantly alter the existing regulation, are in accordance with the 1979 recommendations of the Administrative Conference of the United States, 1 CFR 305.79–3. In particular, the new regulations are intended to accomplish three goals: (1) establish criteria to be used in assessing penalties against coal mine operators; (2) provide affected parties with notice of those criteria; and (3) streamline the assessment process.

The current regulation provides only that an administrative law judge should impose ''the maximum penalty allowed'' in the absence of ''mitigating'' circumstances. 20 CFR 725.495(d). The regulation, however, does not define mitigating circumstances. By allowing each administrative law judge to determine penalty amounts in this manner, the regulation encourages subjective and inconsistent application of the statutory penalty. In *Kleppe* v. *Delta Mining, Inc.*, 423 U.S. 403 (1976), the Supreme Court noted that the Interior Department had only recently developed formulas to be used in determining penalty amounts under the Federal Mine Safety and Health Act. The Court noted that ''[u]se of the current regulations is preferable to the *ad hoc* consideration given the [statutory] criteria in this case.'' 413 U.S. at 409 n.2.

The proposed regulations address this problem by presenting a graduated series of possible penalties based on a set of enumerated criteria. The regulations adjust the penalty based on an operator's size, its prior notice of the Act's insurance requirements, and the operator's action, or lack thereof, following notification of the insurance requirements. By publishing these regulations, the Department establishes penalty criteria and provides the public with notice of those criteria for the first time.

The proposed regulations also make two procedural changes designed to streamline the penalty assessment process. Unlike the current regulation, which requires the Office of Workers' Compensation Programs to refer any case to the Office of Administrative Law Judges, whether contested or not, the proposed regulations allow the Department's initial proposed penalty to become final if no party requests a hearing. This proposal recognizes the wisdom and applicability of the Supreme Court's observation in *National Independent Coal Operators' Association* v. *Kleppe*, 423 U.S. 388, 399 (1976), which also arose under the Federal Mine Health and Safety Act. In that decision, the Court observed that ''[e]ffective enforcement of the Act would be weakened if the Secretary were required to make findings of fact for every penalty assessment including those cases in which the mine operator did not request a hearing and thereby indicated no disagreement with the Secretary's proposed determination.'' In addition, the proposed regulations provide for discretionary ''appellate'' review of administrative law judge decisions by the Secretary of Labor at the request of any party. Upon receipt of a timely petition for review, the Secretary will determine whether review is warranted. This change is designed to encourage the consistent application of the criteria used to assess a penalty. It is hoped that a uniform body of penalty decisions will result from allowing the Secretary of Labor to review the decisions of administrative law judges.

Substantively, the new regulations add a definition of the time period within which coal mine operators must comply with the security requirement. The proposed regulation, § 726.302(b), distinguishes between operators that purchase commercial insurance to secure their liability and those that self-insure. The obligations of the former are extinguished when they cease mining coal, while the latter group must continue to secure the payment of benefits. This distinction is based on important differences in the type of insurance coverage secured by each group.

Under the Act, commercial insurance issued to cover black lung liability has no upper monetary limit; in exchange for a premium, the carrier agrees to assume liability for all claims arising out of employment during the period covered by the premium. Thus, an operator that has purchased insurance for the duration of its operation of a mine does not leave behind any unsecured liability when it ceases coal mining.

In contrast, the Department typically does not require self-insured operators to post bonds or other security with a face value that would cover all of the operator's expected black lung liability. Indeed, requiring security for the full amount of expected benefits might well impose costs that many otherwise low-risk operators could not bear. Rather, the Department has been willing to rely in part on a company's size as a partial guarantor of future benefit payments. Accordingly, depending on the operator's assets, the Department usually requires security to cover only from three to fifteen years of the operator's payments on claims currently in award status.

This requirement, however, has left the Department vulnerable in several recent bankruptcies involving large self-insured operators, such as the LTV Corporation and CF&I Fabricators. In both cases, the companies had ceased mining coal several years before filing for bankruptcy protection, and had not purchased bonds that reflected their post-mining claims experience. The proposed regulations attempt to remedy this problem by requiring self-insured operators to continue to secure the

payment of benefits to their employees even after the operator has ceased mining coal. A new paragraph (c) has been added to § 726.114 to provide notice of this duty to operators seeking authorization to self-insure their liabilities.

Finally, the proposed regulations will be moved from part 725, which governs the processing, adjudication, payment, and enforcement of claims for benefits under the Act, to part 726, which deals exclusively with issues of insurance and self-insurance. This move is intended to centralize the regulations implementing § 423 of the Act. The Department also hopes to eliminate any potential confusion about the applicability of certain incorporated provisions of the Longshore and Harbor Workers' Compensation Act. These provisions simply do not apply to penalty assessments.

20 CFR Part 727—Review of Pending and Denied Claims under the Black Lung Benefits Reform Act of 1977

In 1978, Congress required the Department of Labor to promulgate interim entitlement criteria that were ''no more restrictive'' than criteria used to adjudicate claims that had been filed with the Social Security Administration under Part B of the Black Lung Benefits Act. These interim criteria were to be used until the Department could develop permanent criteria. The part 727 interim regulations were published at 43 FR 36818, Aug. 18, 1978. Because the Department's permanent part 718 criteria took effect on April 1, 1980, *see* 20 CFR 718.2, the part 727 regulations only apply to claims filed before that date. The Department estimates that several hundred part 727 claims remain pending in various stages of adjudication. Because the parties to these claims are quite familiar with the standards for establishing eligibility under part 727, and no new claims will be adjudicated under these standards, the Department intends to discontinue the annual publication of part 727 in the Code of Federal Regulations. Those standards will remain in effect for all claims to which they apply. Parties interested in reviewing part 727 may consult earlier editions of the Code of Federal Regulations or the Federal Register in which the regulations were originally published.

Drafting Information

This document was prepared under the direction and supervision of Bernard Anderson, Assistant Secretary of Labor for Employment Standards.

The principal authors of this document are Rae Ellen James, Deputy Associate Solicitor; Richard Seid, Counsel for Administrative Litigation and Legal Advice; and Michael Denney, Counsel for Enforcement, Black Lung Benefits Division, Office of the Solicitor, U.S. Department of Labor. Personnel from the Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, assisted in the preparation of the document.

Executive Order 12866

The Department believes that the proposed regulatory changes will not have a significant economic impact upon the coal industry or significantly affect the approval rate for black lung claims. The proposed changes do not pose novel legal or policy issues within the meaning of the Executive Order since most of the proposed changes are codifications of appellate decisions or procedural in nature. The proposed changes are intended to encourage faster, fairer and cheaper benefit determinations as well as make it easier to enforce employers' and insurers' responsibilities to pay benefits. They are part of the Reinvention initiatives supported by the National Performance Review and have been reviewed by the Office of Management and Budget for consistency with its objectives.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

Paperwork Reduction Act

The proposed changes would establish no new record keeping requirements. Moreover, they seek to reduce the volume of medical examination and consultants' reports which are currently created solely for the purpose of litigation by limiting the amount of such medical evidence which will be admissible in black lung proceedings.

Regulatory Flexibility Act, as Amended

The American coal industry has produced a billion tons of coal (anthracite, bituminous and lignite) each year since 1990. The industry's output is worth approximately $20 billion per year, with the precise total varying depending on market conditions. Major segments of the industry are highly mechanized and very capital intensive, especially surface mining operations and underground operations using long wall mining technology. More traditional segments of the industry which still rely on the older continuous miner technology are somewhat more labor intensive. Overall, however, labor costs in the industry equal less than one fourth of the value of its product output. Employment in the coal industry has been steadily declining as a result of increased mechanization. It peaked at three-quarters of a million men and boys in 1918 when total production reached nearly 700 million tons. That production record stood until the Second World War, when new highs were reached with a workforce which had declined by 250,000.

The 1995 workforce in the industry was only 97,380 according to the Mine Safety and Health Administration (MSHA). Bureau of Labor Statistics data reflects an average hourly pay rate in the coal industry for production or non-supervisory workers in 1995 of $18.44. Assuming full year round employment, but no overtime, the annual per employee wage costs would be $38,355 ($18.44 per hour times 2080 hours). Projecting that figure to the 1995 workforce yields an annual labor cost of approximately $3.7 billion.

Employers engaged in the extraction and preparation of coal are required by the Black Lung Benefits Act to ''secure the payment'' of any benefits to former employees for which they are found liable. They may either qualify with the Department of Labor as self-insurers or purchase insurance to satisfy that statutory obligation.

Self-insurer status is only granted to companies with a net worth of at least $10 million and at least three years' operating experience in the industry. Approximately ten percent of the companies now active in the industry are authorized self-insurers or subsidiaries of a corporate parent which is an authorized self-insurer which has guaranteed their liabilities under the Act. The remaining companies in the industry are dependent upon insurance to meet their obligations. This is normally done by purchasing a Federal Black Lung rider as an attachment to their state workers' compensation insurance policy. Premium rates for this insurance are established by the individual states and not by the Federal Government.

The Division of Coal Mine Workers' Compensation has published in its Annual Reports occupational disease insurance rates for eleven major coal producing states for the largest group of covered workers—underground bituminous coal miners—since the

1970's. These rates are assessed per $100 of payroll. Because of the offset provisions, combined state and Federal occupational disease coverage rates were initially published. However, beginning with the 1986 report, the state and Federal rates are now shown separately, for those states which calculate them separately.

From 1986 through 1994 (the last year for which data has been published), the average Federal black lung insurance rates have been virtually constant for the nine states for which comparable data is available throughout the period. In 1986, the average rate was $4.23 per $100 of payroll; for 1994 it was $4.33, an increase of only 2.4%. During that period, Federal coverage rates increased in four states (Alabama, Illinois, Kentucky and Tennessee), declined in three states (Colorado, Indiana and Utah) and remained unchanged in two states (Virginia and West Virginia). When a weighted average rate is calculated based on the number of underground miners in each state, the rate becomes $3.65 per $100 of payroll.

Assuming a maximum impact scenario, the total coal industry cost for complying with the Act's insurance requirements would currently be $135 million ($3.7 billion of payroll times $3.65 per $100 of payroll). In fact, it is significantly less. Most larger employers opt for self-insurance not only because it provides direct control over claims made against them by their former employees but also because it is less expensive than the purchase of commercial coverage. Also, some job classifications, especially in surface mining, carry a lower premium rate than that which is applicable to underground bituminous miners. To produce an economic impact on the coal industry of $100 million per year or more, these insurance costs would have to increase by over 70%. Insurance rates are based largely on a combination of historical experience and actuarial projections of future liabilities.

The current insurance rates are based on the experience with eligibility criteria as they have existed since the 1981 Amendments to the Act became effective on January 1, 1982. Under those criteria only 7.5% of the persons who have applied for benefits have been awarded them. A 70% increase in approvals would be required to carry that approval rate up to 13%. However, there is nothing in the proposed regulatory changes which alters those eligibility criteria. Most of the changes reflect a codification of appellate decisions. Many of those decisions involve liberalizing constructions of the Act and regulations; however, the single most important decision reflected is one by the Supreme Court striking down the ''true doubt'' rule. This decision requires the claimant to prove each element of his case by a preponderance of the evidence and prohibits giving the claimant the benefit of the doubt when the evidence is evenly balanced for and against entitlement. Although these changes are expected to simplify, expedite and make more uniform the results of the claims development and decision processes, they are unlikely to significantly alter case outcomes.

The major changes proposed are procedural ones intended to level the playing field between the individual claimant and the employer or insurer by placing limits upon the amount of evidence which each party can submit. The shift from a focus on the quantity of evidence to the quality of the evidence is a significant one in terms of addressing past perceptions of unfairness in the present system.

However, the employer or insurer, who could previously overwhelm the miner by the quantity of consultant reports and x-ray re-readings it could submit because of its greater financial resources, will still have an inherent advantage through possession of superior access to the best credentialed medical experts in the field. Even the new regulation which codifies the circumstances under which controlling weight can be given to the opinion of the miner's treating physician is unlikely to alter outcomes in very many cases. Few general practitioners in rural coal field areas are likely to meet the combination of duration of treatment, specialty qualifications and ability to produce a reasoned narrative relating their conclusions to the objective medical data required to invoke this special status.

The Department projects that the approval rate will rise, but only from 7.5% to 8% or 9%. This increase in the approval rate by 20% or less would justify an increase in the premium rate of less than 75 cents per $100 of payroll for underground bituminous miners or, using the maximum impact calculations provided above, no more than $28 million industrywide per year. In fact, insurance rates may increase slightly more than this amount initially because actuarial projections used in the insurance ratemaking process tend to err on the high side in projecting possible future liabilities. A temporary increase in the number of claims filings will probably also occur in the first year after promulgation of the regulations. However, once a significant body of experience has been gained under the revised regulations, the rates will stabilize at the appropriate level. In no event does the Department anticipate an increase of as much as $40 million per year, even during the initial period prior to establishing a new base of experience under the revised procedures.

Approximately eighty percent of all coal mined in the United States is purchased by utilities for use in the generation of electricity. Over one-half of all electricity generated in the United States is produced by coal-burning plants. Approximately ten percent of all coal mined in the United States is exported.

The remaining ten percent of coal mined is consumed domestically for a variety of uses, including steelmaking, heating, *etc.* An increase of approximately $40 million per year in the costs of a $20 billion industry equates to only two-tenths of one percent, or four cents per ton of coal produced. It would not significantly adversely impact coal's competitive position vis-a-vis other fuel sources, such as petroleum, natural gas, or nuclear power.

This analysis has not attempted to apply definitions of small entities in the coal mining industry which have been developed by other agencies, such as MSHA or the Small Business Administration (SBA) for other purposes for two basic reasons. First, data on the number of miners employed or total annual volume of business done by individual companies is not routinely gathered by the Division of Coal Mine Workers' Compensation because it is not directly relevant to the administration of the Black Lung Benefits Act for employers who are covered by insurance. The second and more relevant reason is that the entities active in the industry are divided into the two classes of those eligible to self-insure and those which are not.

Because of the high threshold requirement of a net worth of $10 million, plus three years' operating experience in the industry, to qualify for the privilege of self-insurance, all entities which MSHA would classify as ''small mines'' are included in the commercially insured category, except those which are subsidiaries of qualified self-insurers. The SBA definition of a coal mining company as a small business if it has fewer than 500 employees is not particularly helpful. A highly mechanized and capitalized mining company, especially in the Western surface mining industry, may well qualify as a self-insurer because of its net worth and experience even though it has many fewer than 500 employees. It is nonetheless true that it is generally the smaller entities in the

industry which are dependent upon commercial insurance coverage to meet their obligations under the Act.

The point of this analysis, however, is that all entities subject to the insurance requirement will be equally affected by any changes in insurance rates. Therefore, their relative competitive position vis-a-vis one another or vis-a-vis those companies eligible to self-insure will not be adversely impacted by any changes which may result from the implementation of these regulatory proposals. In summary, the Department estimates that the proposed changes in the regulations will impose a *maximum* cost on firms of less than one percent of payroll or two-tenths of one percent of total revenue industrywide. Small firms are not expected to be disproportionately affected by these changes. However, the Department welcomes comments on this economic analysis, especially concerning the impact of the proposed changes on small entities and self-insured employers. Comments are also solicited on the projected change in the approval rate and any other factors which may be relevant which are not currently included in the analysis. Our current assessment that the proposed regulations will have no more than an annual $40 million impact on the industry may be affected by the comments received.

Therefore, the Assistant Secretary hereby certifies that implementation of these proposed changes will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 20 CFR Parts 718, 722, 725, 726 and 727.

Black lung benefits, Lung disease, Miners, Mines, Reporting and recordkeeping requirements, Workers' Compensation, X-rays.

Signed at Washington, D.C., this 27th day of December, 1996.

Robert B. Reich,

Secretary of Labor.

Gene Karp,

Acting Assistant Secretary for Employment Standards.

For the reasons set forth in the preamble, 20 CFR Chapter VI is proposed to be amended as follows:

1. The authority citation for part 718 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq., 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

2. Part 718 is proposed to be amended by removing subpart E, revising subparts A through D, revising Appendices A and C, and revising the text of Appendix B (the tables, B1 through B6, in Appendix B remain unchanged):

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

Subpart A—General

Sec.
718.1 Statutory provisions.
718.2 Applicability of this part.
718.3 Scope and intent of this part.
718.4 Definitions and use of terms.

Subpart B—Criteria for the Development of Medical Evidence

718.101 General.
718.102 Chest roentgenograms (X-rays).
718.103 Pulmonary function tests.
718.104 Report of physical examinations.
718.105 Arterial blood-gas studies.
718.106 Autopsy; biopsy.
718.107 Other medical evidence.

Subpart C—Determining Entitlement to Benefits

718.201 Definition of pneumoconiosis.
718.202 Determining the existence of pneumoconiosis.
718.203 Establishing relationship of pneumoconiosis to coal mine employment.
718.204 Total disability and disability causation defined; criteria for determining total disability and total disability due to pneumoconiosis.
718.205 Death due to pneumoconiosis.
718.206 Effect of findings by persons or agencies.

Subpart D—Presumptions Applicable to Eligibility Determinations

718.301 Establishing length of employment as a miner.
718.302 Relationship of pneumoconiosis to coal mine employment.
718.303 Death from a respirable disease.
718.304 Irrebuttable presumption of total disability or death due to pneumoconiosis.
718.305 Presumption of pneumoconiosis.
718.306 Presumption of entitlement applicable to certain death claims.
Appendix A to Part 718–Standards for Administration and Interpretation of Chest Roentgenograms (X-rays)
Appendix B to Part 718–Standards for Administration and Interpretation of Pulmonary Function Tests. Tables B1, B2, B3, B4, B5, B6
Appendix C to Part 718–Blood Gas Tables

Subpart A—General

§ 718.1 Statutory Provisions.

(a) Under title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Federal Mine Safety and Health Amendments Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Amendments of 1981, and the Black Lung Benefits Revenue Act of 1981, benefits are provided to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally or partially disabled by pneumoconiosis. However, unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on or after January 1, 1982, only when the miner's death was due to pneumoconiosis, except where the survivor's entitlement is established pursuant to § 718.306 of this part on a claim filed prior to June 30, 1982. Before the enactment of the Black Lung Benefits Reform Act of 1977, the authority for establishing standards of eligibility for miners and their survivors was placed with the Secretary of Health, Education, and Welfare. These standards were set forth by the Secretary of Health, Education, and Welfare in subpart D of part 410 of this title, and adopted by the Secretary of Labor for application to all claims filed with the Secretary of Labor (see 20 CFR 718.2, 1978). Amendments made to section 402(f) of the Act by the Black Lung Benefits Reform Act of 1977 authorize the Secretary of Labor to establish criteria for determining total or partial disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under part C of title IV of the Act. Section 402(f) of the Act further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act authorizes the Secretary of Labor to establish criteria for the techniques to be used to take chest roentgenograms (X-rays) in connection with a claim for benefits under the Act.

(b) The Black Lung Benefits Reform Act of 1977 provided that with respect to a claim filed prior to April 1, 1980, or reviewed under section 435 of the Act, the standards to be applied in the adjudication of such claim shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, with the Social Security Administration, whether or not the final disposition of the claim occurs after March 31, 1980. All such claims shall be reviewed under the criteria set forth in part 727 of this title (see 20 CFR 725.4(d)).

§718.2 Applicability of this part.

This part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and part 725 of this subchapter. If a claim subject to the provisions of section 435 of the Act and subpart C of part 727 of this subchapter (see 20 CFR 725.4(d)) cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

§718.3 Scope and intent of this part.

(a) This part sets forth the standards to be applied in determining whether a coal miner is or was totally, or in the case of a claim subject to §718.306 partially, disabled due to pneumoconiosis or died due to pneumoconiosis. It also specifies the procedures and requirements to be followed in conducting medical examinations and in administering various tests relevant to such determinations.

(b) This part is designed to interpret the presumptions contained in section 411(c) of the Act, evidentiary standards and criteria contained in section 413(b) of the Act and definitional requirements and standards contained in section 402(f) of the Act within a coherent framework for the adjudication of claims. It is intended that these enumerated provisions of the Act be construed as provided in this part.

§718.4 Definitions and use of terms.

Except as is otherwise provided by this part, the definitions and usages of terms contained in §725.101 of subpart A of part 725 of this title shall be applicable to this part.

Subpart B—Criteria for the Development of Medical Evidence

§718.101 General.

(a) The Office of Workers' Compensation Programs (hereinafter OWCP or the Office) shall develop the medical evidence necessary for a determination with respect to each claimant's entitlement to benefits. Each miner who files a claim for benefits under the Act shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation including, but not limited to, a chest roentgenogram (X-ray), physical examination, pulmonary function tests and a blood-gas study.

(b) The standards for the administration of clinical tests and examinations contained in this subpart shall apply to all evidence developed by any party in connection with a claim governed by this part (see §§725.406(b), 725.414(a), 725.456(d)). These standards shall also apply to claims governed by part 727 (see 20 CFR 725.4(d)), but only for clinical tests or examinations conducted after March 31, 1980. Any clinical test or examination subject to these standards shall be in substantial compliance with the applicable standard in order to constitute evidence of the fact for which it is proffered. Unless otherwise provided, any evidence which is not in substantial compliance with the applicable standard is insufficient to establish the fact for which it is proffered.

§718.102 Chest roentgenograms (X-rays).

(a) A chest roentgenogram (X-ray) shall be of suitable quality for proper classification of pneumoconiosis and shall conform to the standards for administration and interpretation of chest X-rays as described in Appendix A to this part.

(b) A chest X-ray to establish the existence of pneumoconiosis shall be classified as Category 1, 2, 3, A, B, or C, according to the International Labour Organization Union Internationale Contra Cancer/Cincinnati (1971) International Classification of Radiographs of the Pneumoconioses (ILO–U/C 1971), or subsequent revisions thereof. A chest X-ray classified as Category Z under the ILO Classification (1958) or Short Form (1968) shall be reclassified as Category O or Category 1 as appropriate, and only the latter accepted as evidence of pneumoconiosis. A chest X-ray classified under any of the foregoing classifications as Category O, including sub-categories 0—, 0/0, or 0/1 under the UICC/Cincinnati (1968) Classification or the ILO–U/C 1971 Classification does not constitute evidence of pneumoconiosis.

(c) A description and interpretation of the findings in terms of the classifications described in paragraph (b) of this section shall be submitted by the examining physician along with the film. The report shall specify the name and qualifications of the person who took the film and the name and qualifications of the physician interpreting the film. If the physician interpreting the film is a Board-certified or Board-eligible radiologist or a certified ''B'' reader (see §718.202), he or she shall so indicate. The report shall further specify that the film was interpreted in compliance with this paragraph.

(d) The original film on which the X-ray report is based shall be supplied to the Office, unless prohibited by law, in which event the report shall be considered as evidence only if the original film is otherwise available to the Office and other parties. Where the chest X-ray of a deceased miner has been lost, destroyed or is otherwise unavailable, a report of a chest X-ray submitted by any party shall be considered in connection with the claim.

(e) No chest X-ray shall constitute evidence of the presence or absence of pneumoconiosis unless it is conducted and reported in accordance with the requirements of this section and Appendix A. In the absence of evidence to the contrary, compliance with the requirements of Appendix A shall be presumed. In the case of a deceased miner where the only available X-ray does not substantially comply with this subpart, such X-ray shall be considered and shall be accorded appropriate weight in light of all relevant evidence if it is of sufficient quality for determining the presence or absence of pneumoconiosis and such X-ray was interpreted by a Board-certified or Board-eligible radiologist or a certified ''B'' reader (see §718.202).

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(Pub. L. No. 96–511)

§718.103 Pulmonary function tests.

(a) Any report of pulmonary function tests submitted in connection with a claim for benefits shall record the results of the forced expiratory volume in one second (FEV1) and either the forced vital capacity (FVC) or the maximum voluntary ventilation (MVV) or both. If the MVV is reported, the results of such test shall be obtained independently rather than calculated from the results of the FEV1.

(b) All pulmonary function test results submitted in connection with a claim for benefits shall be accompanied by three tracings of each test performed, unless the results of two tracings of the MVV are within 5% of each other, in which case two tracings for that test shall be sufficient. Pulmonary function test results submitted in connection with a claim for benefits shall also include a statement signed by the physician or technician conducting the test setting forth the following:

(1) Date and time of test;

(2) Name, DOL claim number, age, height, and weight of claimant at the time of the test;

(3) Name of technician;

(4) Name and signature of physician supervising the test;

(5) Claimant's ability to understand the instructions, ability to follow directions and degree of cooperation in performing the tests. If the claimant is unable to complete the test, the person executing the report shall set forth the reasons for such failure;

(6) Paper speed of the instrument used;

(7) Name of the instrument used;

(8) Whether a bronchodilator was administered. If a bronchodilator is administered, the physician's report must detail values obtained both before and after administration of the bronchodilator and explain the significance of the results obtained; and

(9) That the requirements of paragraphs (b) and (c) of this section have been complied with.

(c) No results of a pulmonary function study shall constitute evidence of the presence or absence of a respiratory or pulmonary impairment unless it is conducted and reported in accordance with the requirements of this section and Appendix B to this part. In the absence of evidence to the contrary, compliance with the requirements of Appendix B shall be presumed. In the case of a deceased miner, special consideration shall be given to noncomplying tests if, in the opinion of the adjudication officer, the only available tests demonstrate technically valid results obtained with good cooperation of the miner.

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(Pub. L. No. 96–511)

§718.104 Report of physical examinations.

(a) A report of any physical examination conducted in connection with a claim shall be prepared on a medical report form supplied by the Office or in a manner containing substantially the same information. Any such report shall include the following information and test results:

(1) The miner's medical and employment history;

(2) All manifestations of chronic respiratory disease;

(3) Any pertinent findings not specifically listed on the form;

(4) If heart disease secondary to lung disease is found, all symptoms and significant findings;

(5) The results of a chest X-ray conducted and interpreted as required by §718.102; and

(6) The results of a pulmonary function test conducted and reported as required by §718.103.

(b) In addition to the requirements of paragraph (a), a report of physical examination may be based on any other procedures such as electrocardiogram, blood-gas studies conducted and reported as required by §718.105, and other blood analyses which, in the physician's opinion, aid in his or her evaluation of the miner.

(c) In the case of a deceased miner, a report prepared by a physician who is unavailable, which fails to meet the criteria of paragraph (a), may be given appropriate consideration and weight by the adjudicator in light of all relevant evidence provided no report which does comply with this section is available.

(d) *Treating physician.* The medical opinion of a miner's treating physician may be entitled to controlling weight in determining whether the miner is, or was, totally disabled by pneumoconiosis or died due to pneumoconiosis. The adjudication officer shall take into consideration the following factors in weighing the opinion of a treating physician:

(1) *Nature of relationship.* The opinion of a physician who has treated the miner for respiratory or pulmonary conditions is entitled to more weight than a physician who has treated the miner for non-respiratory conditions;

(2) *Duration of relationship.* The length of the treatment relationship demonstrates whether the physician has observed the miner long enough to obtain a superior understanding of his or her condition;

(3) *Frequency of treatment.* The frequency of physician-patient visits demonstrates whether the physician has observed the miner often enough to obtain a superior understanding of his or her condition; and

(4) *Extent of treatment.* The types of testing and examinations conducted during the treatment relationship demonstrate whether the physician has obtained superior and relevant information concerning the miner's condition.

(5) Whether controlling weight is given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.

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§718.105 Arterial blood-gas studies.

(a) Blood-gas studies are performed to detect an impairment in the process of alveolar gas exchange. This defect will manifest itself primarily as a fall in arterial oxygen tension either at rest or during exercise. No blood-gas study shall be performed if medically contraindicated.

(b) A blood-gas study shall initially be administered at rest and in a sitting position. If the results of the blood-gas test at rest do not satisfy the requirements of Appendix C to this part, an exercise blood-gas test shall be offered to the miner unless medically contraindicated. If an exercise blood-gas test is administered, blood shall be drawn during exercise.

(c) Any report of a blood-gas study submitted in connection with a claim shall specify:

(1) Date and time of test;

(2) Altitude and barometric pressure at which the test was conducted;

(3) Name and DOL claim number of the claimant;

(4) Name of technician;

(5) Name and signature of physician supervising the study;

(6) The recorded values for pCO2, pO2, and pH, which have been collected simultaneously (specify values at rest and, if performed, during exercise);

(7) Duration and type of exercise;

(8) Pulse rate at the time the blood sample was drawn;

(9) Time between drawing of sample and analysis of sample; and

(10) Whether equipment was calibrated before and after each test.

(d) If one or more blood-gas studies producing results which meet the appropriate table in Appendix C is administered during a hospitalization which ends in the miner's death, then any such study must be accompanied by a physician's report establishing that the test results were produced by a chronic respiratory or pulmonary condition related to coal mine dust exposure, and not by a disease unrelated to such exposure. Failure to produce such a report will prevent reliance on the blood-gas study as evidence that the miner was totally disabled at death.

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§718.106 Autopsy; biopsy.

(a) A report of an autopsy or biopsy submitted in connection with a claim shall include a detailed gross macroscopic and microscopic description of the lungs or visualized portion of a lung. If a surgical procedure has been performed to obtain a portion of a lung, the evidence shall include a copy of the surgical note and the pathology report of the gross and microscopic examination of the surgical specimen. If an autopsy has been performed, a complete copy of the autopsy report shall be submitted to the Office.

(b) In the case of a miner who died prior to March 31, 1980, an autopsy or

biopsy report shall be considered even when the report does not substantially comply with the requirements of this section. A noncomplying report concerning a miner who died prior to March 31, 1980, shall be accorded the appropriate weight in light of all relevant evidence.

§ 718.107 Other medical evidence.

(a) The results of any medically acceptable test or procedure reported by a physician and not addressed in this subpart, which tends to demonstrate the presence or absence of pneumoconiosis, the sequelae of pneumoconiosis or a respiratory impairment, may be submitted in connection with a claim and shall be given appropriate consideration.

(b) The party submitting the test or procedure pursuant to this section bears the burden to demonstrate that the test or procedure is medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits.

Subpart C—Determining Entitlement to Benefits

§ 718.201 Definition of pneumoconiosis.

(a) For the purpose of the Act, ''pneumoconiosis'' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or ''clinical,'' pneumoconiosis and statutory, or ''legal,'' pneumoconiosis.

(1) *Clinical pneumoconiosis.* ''Clinical pneumoconiosis'' consists of those diseases, recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

(2) *Legal pneumoconiosis.* ''Legal pneumoconiosis'' includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.

(b) For purposes of this section, a disease ''arising out of coal mine employment'' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

(c) For purposes of this definition, ''pneumoconiosis'' is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.

§ 718.202 Determining the existence of pneumoconiosis.

(a) A finding of the existence of pneumoconiosis may be made as follows:

(1) A chest X-ray conducted and classified in accordance with § 718.102 may form the basis for a finding of the existence of pneumoconiosis. Except as otherwise provided in this section, where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration shall be given to the radiological qualifications of the physicians interpreting such X-rays.

(i) In all claims filed before January 1, 1982, where there is other evidence of pulmonary or respiratory impairment, a Board-certified or Board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the Office if the X-ray is in compliance with the requirements of § 718.102 and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence that the claim has been fraudulently represented. However, these limitations shall not apply to any claim filed on or after January 1, 1982.

(ii) The following definitions shall apply when making a finding in accordance with this paragraph.

(A) The term *other evidence* means medical tests such as blood-gas studies, pulmonary function studies or physical examinations or medical histories which establish the presence of a chronic pulmonary, respiratory or cardio-pulmonary condition, and in the case of a deceased miner, in the absence of medical evidence to the contrary, affidavits of persons with knowledge of the miner's physical condition.

(B) *Pulmonary or respiratory impairment* means inability of the human respiratory apparatus to perform in a normal manner one or more of the three components of respiration, namely, ventilation, perfusion and diffusion.

(C) *Board-certified* means certification in radiology or diagnostic roentgenology by the American Board of Radiology, Inc. or the American Osteopathic Association.

(D) *Board-eligible* means the successful completion of a formal accredited residency program in radiology or diagnostic roentgenology.

(E) *Certified 'B' reader* or *'B' reader* means a physician who has demonstrated proficiency in evaluating chest roentgenograms for roentgenographic quality and in the use of the ILO–U/C classification for interpreting chest roentgenograms for pneumoconiosis and other diseases by taking and passing a specially designed proficiency examination given on behalf of or by the Appalachian Laboratory for Occupational Safety and Health. See 42 CFR 37.51(b)(2).

(F) *Qualified radiologic technologist or technician* means an individual who is either certified as a registered technologist by the American Registry of Radiologic Technologists or licensed as a radiologic technologist by a state licensing board.

(2) A biopsy or autopsy conducted and reported in compliance with § 718.106 may be the basis for a finding of the existence of pneumoconiosis. A finding in an autopsy or biopsy of anthracotic pigmentation, however, shall not be sufficient, by itself, to establish the existence of pneumoconiosis. A report of autopsy shall be accepted unless there is evidence that the report is not accurate or that the claim has been fraudulently represented.

(3) If the presumptions described in §§ 718.304, 718.305 or 718.306 are applicable, it shall be presumed that the miner is or was suffering from pneumoconiosis.

(4) A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative X-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in § 718.201. Any such finding shall be based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding shall be supported by a reasoned medical opinion.

(b) No claim for benefits shall be denied solely on the basis of a negative chest X-ray.

(c) A determination of the existence of pneumoconiosis shall not be made solely on the basis of a living miner's statements or testimony. Nor shall such a determination be made upon a claim involving a deceased miner filed on or after January 1, 1982, solely based upon the affidavit(s) (or equivalent sworn testimony) of the claimant and/or his or

her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

§ 718.203 Establishing relationship of pneumoconiosis to coal mine employment.

(a) In order for a claimant to be found eligible for benefits under the Act, it must be determined that the miner's pneumoconiosis arose at least in part out of coal mine employment. The provisions in this section set forth the criteria to be applied in making such a determination.

(b) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.

(c) If a miner who is suffering or suffered from pneumoconiosis was employed less than ten years in the nation's coal mines, it shall be determined that such pneumoconiosis arose out of that employment only if competent evidence establishes such a relationship.

§ 718.204 Total disability and disability causation defined; criteria for determining total disability and total disability due to pneumoconiosis.

(a) *General*. Benefits are provided under the Act for or on behalf of miners who are totally disabled due to pneumoconiosis, or who were totally disabled due to pneumoconiosis at the time of death. For purposes of this section, any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis. If, however, a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis.

(b)(1) *Total disability defined*. A miner shall be considered totally disabled if the irrebuttable presumption described in § 718.304 applies. If that presumption does not apply, a miner shall be considered totally disabled if the miner has a pulmonary or respiratory impairment which, standing alone, prevents or prevented the miner:

(i) From performing his or her usual coal mine work; and

(ii) From engaging in gainful employment in the immediate area of his or her residence requiring the skills or abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity over a substantial period of time.

(2) *Medical criteria*. In the absence of contrary probative evidence, evidence which meets the standards of either paragraphs (b)(2) (i), (ii), (iii), or (iv) of this section shall establish a miner's total disability:

(i) Pulmonary function tests showing values equal to or less than those listed in Table B1 (Males) or Table B2 (Females) in Appendix B to this part for an individual of the miner's age, sex, and height for the FEV1 test; if, in addition, such tests also reveal the values specified in either paragraph (b)(2)(i) (A) or (B) or (C) of this section:

(A) Values equal to or less than those listed in Table B3 (Males) or Table B4 (Females) in Appendix B of this part, for an individual of the miner's age, sex, and height for the FVC test, or

(B) Values equal to or less than those listed in Table B5 (Males) or Table B6 (Females) in Appendix B to this part, for an individual of the miner's age, sex, and height for the MVV test, or

(C) A percentage of 55 or less when the results of the FEV1 test are divided by the results of the FVC test (FEV1/FVC equal to or less than 55%), or

(ii) Arterial blood-gas tests show the values listed in Appendix C to this part, or

(iii) The miner has pneumoconiosis and has been shown by the medical evidence to be suffering from cor pulmonale with right-sided congestive heart failure, or

(iv) A physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents or prevented the miner from engaging in employment as described in paragraph (b)(1) of this section.

(c)(1) *Total disability due to pneumoconiosis defined*. A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in § 718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a ''substantially contributing cause'' of the miner's disability if it:

(i) Has an adverse effect on the miner's respiratory or pulmonary condition; or

(ii) Worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

(2) Except as provided in § 718.305 and paragraph (b)(2)(iii) of this section, proof that the miner suffers or suffered from a totally disabling respiratory or pulmonary impairment as defined in paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iv) and (d) of this section shall not, by itself, be sufficient to establish that the miner's impairment is or was due to pneumoconiosis. Except as provided in paragraph (d), the cause or causes of a miner's total disability shall be established by means of a physician's documented and reasoned medical report.

(d) *Lay evidence*. In establishing total disability, lay evidence may be used in the following cases:

(1) In a case involving a deceased miner in which the claim was filed prior to January 1, 1982, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total (or under § 718.306 partial) disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition.

(2) In a case involving a survivor's claim filed on or after January 1, 1982, but prior to June 30, 1982, which is subject to § 718.306, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total or partial disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition; however, such a determination shall not be based solely upon the affidavits or testimony of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

(3) In a case involving a deceased miner whose claim was filed on or after January 1, 1982, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition; however, such a determination shall not be based solely upon the affidavits or testimony of any person who would be eligible for benefits (including augmented benefits) if the claim were approved.

(4) Statements made before death by a deceased miner about his or her physical condition are relevant and shall be considered in making a

determination as to whether the miner was totally disabled at the time of death.

(5) In the case of a living miner's claim, a finding of total disability due to pneumoconiosis shall not be made solely on the miner's statements or testimony.

(e) In determining total disability to perform usual coal mine work, the following shall apply in evaluating the miner's employment activities:

(1) In the case of a deceased miner, employment in a mine at the time of death shall not be conclusive evidence that the miner was not totally disabled. To disprove total disability, it must be shown that at the time the miner died, there were no changed circumstances of employment indicative of his or her reduced ability to perform his or her usual coal mine work.

(2) In the case of a living miner, proof of current employment in a coal mine shall not be conclusive evidence that the miner is not totally disabled unless it can be shown that there are no changed circumstances of employment indicative of his or her reduced ability to perform his or her usual coal mine work.

(3) Changed circumstances of employment indicative of a miner's reduced ability to perform his or her usual coal mine work may include but are not limited to:

(i) The miner's reduced ability to perform his or her customary duties without help; or

(ii) The miner's reduced ability to perform his or her customary duties at his or her usual levels of rapidity, continuity or efficiency; or

(iii) The miner's transfer by request or assignment to less vigorous duties or to duties in a less dusty part of the mine.

§ 718.205 Death due to pneumoconiosis.

(a) Benefits are provided to eligible survivors of a miner whose death was due to pneumoconiosis. In order to receive benefits, the claimant must prove that:

(1) The miner had pneumoconiosis (see § 718.202);

(2) The miner's pneumoconiosis arose out of coal mine employment (see § 718.203); and

(3) The miner's death was due to pneumoconiosis as provided by this section.

(b) For the purpose of adjudicating survivors' claims filed prior to January 1, 1982, death will be considered due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or

(2) Where death was due to multiple causes including pneumoconiosis and it is not medically feasible to distinguish which disease caused death or the extent to which pneumoconiosis contributed to the cause of death, or

(3) Where the presumption set forth at § 718.304 is applicable, or

(4) Where either of the presumptions set forth at § 718.303 or § 718.305 is applicable and has not been rebutted.

(5) Where the cause of death is significantly related to or aggravated by pneumoconiosis.

(c) For the purpose of adjudicating survivors' claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at § 718.304 is applicable.

(4) However, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(5) Pneumoconiosis is a ''substantially contributing cause'' of a miner's death if it hastens the miner's death.

(d) To minimize the hardships to potentially entitled survivors due to the disruption of benefits upon the miner's death, survivors' claims filed on or after January 1, 1982, shall be adjudicated on an expedited basis in accordance with the following procedures. The initial burden is upon the claimant, with the assistance of the district director, to develop evidence which meets the requirements of paragraph (c) of this section. Where the initial medical evidence appears to establish that death was due to pneumoconiosis, the survivor will receive benefits unless the weight of the evidence as subsequently developed by the Department or the responsible operator establishes that the miner's death was not due to pneumoconiosis as defined in paragraph (c). However, no such benefits shall be found payable before the party responsible for the payment of such benefits shall have had a reasonable opportunity for the development of rebuttal evidence. See § 725.414 concerning the operator's opportunity to develop evidence prior to an initial determination.

§ 718.206 Effect of findings by persons or agencies.

Decisions, statements, reports, opinions, or the like, of agencies, organizations, physicians or other individuals, about the existence, cause, and extent of a miner's disability, or the cause of a miner's death, are admissible. If properly submitted, such evidence shall be considered and given the weight to which it is entitled as evidence under all the facts before the adjudication officer in the claim.

Subpart D—Presumptions Applicable to Eligibility Determinations

§ 718.301 Establishing length of employment as a miner.

The presumptions set forth in §§ 718.302, 718.303, 718.305 and 718.306 apply only if a miner worked in one or more coal mines for the number of years required to invoke the presumption. The length of the miner's coal mine work history must be computed as provided by 20 CFR 725.101(a)(32).

§ 718.302 Relationship of pneumoconiosis to coal mine employment.

If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment. (See § 718.203.)

§ 718.303 Death from a respirable disease.

(a)(1) If a deceased miner was employed for ten or more years in one or more coal mines and died from a respirable disease, there shall be a rebuttable presumption that his or her death was due to pneumoconiosis.

(2) Under this presumption, death shall be found due to a respirable disease in any case in which the evidence establishes that death was due to multiple causes, including a respirable disease, and it is not medically feasible to distinguish which disease caused death or the extent to which the respirable disease contributed to the cause of death.

(b) The presumption of paragraph (a) of this section may be rebutted by a showing that the deceased miner did not have pneumoconiosis, that his or her death was not due to pneumoconiosis or that pneumoconiosis did not contribute to his or her death.

(c) This section is not applicable to any claim filed on or after January 1, 1982.

§ 718.304 Irrebuttable presumption of total disability or death due to pneumoconiosis.

There is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis, that a miner's death was due to pneumoconiosis or that a miner was totally disabled due to pneumoconiosis at the time of death, if such miner is suffering or suffered from a chronic dust disease of the lung which:

(a) When diagnosed by chest X-ray (see § 718.202 concerning the standards for X-rays and the effect of interpretations of X-rays by physicians) yields one or more large opacities (greater than 1 centimeter in diameter) and would be classified in Category A, B, or C in:

(1) The ILO–U/C International Classification of Radiographs of the Pneumoconioses, 1971, or subsequent revisions thereto; or

(2) The International Classification of the Radiographs of the Pneumoconioses of the International Labour Office, Extended Classification (1968) (which may be referred to as the ''ILO Classification (1968)''); or

(3) The Classification of the Pneumoconioses of the Union Internationale Contra Cancer/Cincinnati (1968) (which may be referred to as the ''UICC/Cincinnati (1968) Classification''); or

(b) When diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) When diagnosed by means other than those specified in paragraphs (a) and (b) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (a) or (b) of this section had diagnosis been made as therein described: *Provided, however,* That any diagnosis made under this paragraph shall accord with acceptable medical procedures.

§ 718.305 Presumption of pneumoconiosis.

(a) If a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest X-ray submitted in connection with such miner's or his or her survivor's claim and it is interpreted as negative with respect to the requirements of § 718.304, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that such miner's death was due to pneumoconiosis, or that at the time of death such miner was totally disabled by pneumoconiosis. In the case of a living miner's claim, a spouse's affidavit or testimony may not be used by itself to establish the applicability of the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where it is determined that conditions of the miner's employment in a coal mine were substantially similar to conditions in an underground mine. The presumption may be rebutted only by establishing that the miner does not, or did not, have pneumoconiosis, or that his or her respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(b) In the case of a deceased miner, where there is no medical or other relevant evidence, affidavits of persons having knowledge of the miner's condition shall be considered to be sufficient to establish the existence of a totally disabling respiratory or pulmonary impairment for purposes of this section.

(c) The determination of the existence of a totally disabling respiratory or pulmonary impairment, for purposes of applying the presumption described in this section, shall be made in accordance with § 718.204.

(d) Where the cause of death or total disability did not arise in whole or in part out of dust exposure in the miner's coal mine employment or the evidence establishes that the miner does not or did not have pneumoconiosis, the presumption will be considered rebutted. However, in no case shall the presumption be considered rebutted on the basis of evidence demonstrating the existence of a totally disabling obstructive respiratory or pulmonary disease of unknown origin.

(e) This section is not applicable to any claim filed on or after January 1, 1982.

§ 718.306 Presumption of entitlement applicable to certain death claims.

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner whose claims have been filed prior to June 30, 1982, shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request, furnish such evidence as is available with respect to the health of the miner at the time of death, and the nature and duration of the miner's coal mine employment.

(b) For the purpose of this section, a miner will be considered to have been ''partially disabled'' if he or she had reduced ability to engage in work as defined in § 718.204(b).

(c) In order to rebut this presumption the evidence must demonstrate that the miner's ability to perform work as defined in § 718.204(b) was not reduced at the time of his or her death or that the miner did not have pneumoconiosis.

(d) None of the following items, by itself, shall be sufficient to rebut the presumption:

(1) Evidence that a deceased miner was employed in a coal mine at the time of death;

(2) Evidence pertaining to a deceased miner's level of earnings prior to death;

(3) A chest X-ray interpreted as negative for the existence of pneumoconiosis;

(4) A death certificate which makes no mention of pneumoconiosis.

Appendix A to Part 718–Standards for Administration and Interpretation of Chest Roentgenograms (X-rays)

The following standards are established in accordance with sections 402(f)(1)(D) and 413(b) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health. These standards are promulgated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting X-rays and that the best available medical evidence will be submitted in connection with a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be assigned to the physician's report of an X-ray.

(1) Every chest roentgenogram shall be a single postero-anterior projection at full inspiration on a 14 by 17 inch film. Additional chest films or views shall be obtained if they are necessary for clarification and classification. The film and cassette shall be capable of being positioned both vertically and horizontally so that the chest roentgenogram will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then a projection with minimum loss of costophrenic angle shall be made.

(2) Miners shall be disrobed from the waist up at the time the roentgenogram is given. The facility shall provide a dressing area and, for those miners who wish to use one, the facility shall provide a clean gown. Facilities shall be heated to a comfortable temperature.

(3) Roentgenograms shall be made only with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm source (focal spot).

(4) Except as provided in paragraph (5), roentgenograms shall be made with units having generators which comply with the following: (a) the generators of existing roentgenographic units acquired by the examining facility prior to July 27, 1973, shall have a minimum rating of 200 mA at

100 kVp; (b) generators of units acquired subsequent to that date shall have a minimum rating of 300 mA at 125 kVp.

Note: A generator with a rating of 150 kVp is recommended.

(5) Roentgenograms made with battery-powered mobile or portable equipment shall be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or 200 mA at 110 kVp at 60 Hz.

(6) Capacitor discharge, and field emission units may be used.

(7) Roentgenograms shall be given only with equipment having a beam-limiting device which does not cause large unexposed boundaries. The use of such a device shall be discernible from an examination of the roentgenogram.

(8) To insure high quality chest roentgenograms:

(i) The maximum exposure time shall not exceed 1/20 of a second except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chest over 28 cm postero-anterior, the exposure may be increased to not more than 1/10 of a second;

(ii) The source or focal spot to film distance shall be at least 6 feet;

(iii) Only medium-speed film and medium-speed intensifying screens shall be used;

(iv) Film-screen contact shall be maintained and verified at 6-month or shorter intervals;

(v) Intensifying screens shall be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(vi) All intensifying screens in a cassette shall be of the same type and made by the same manufacturer;

(vii) When using over 90 kV, a suitable grid or other means of reducing scattered radiation shall be used;

(viii) The geometry of the radiographic system shall insure that the central axis (ray) of the primary beam is perpendicular to the plane of the film surface and impinges on the center of the film.

(9) Radiographic processing:

(i) Either automatic or manual film processing is acceptable. A constant time-temperature technique shall be meticulously employed for manual processing.

(ii) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality roentgenogram, a suitable filter or purification system shall be used.

(10) Before the miner is advised that the examination is concluded, the roentgenogram shall be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard roentgenogram, another shall be made immediately.

(11) An electric power supply shall be used which complies with the voltage, current, and regulation specified by the manufacturer of the machine.

(12) A densitometric test object may be required on each roentgenogram for an objective evaluation of film quality at the discretion of the Department of Labor.

(13) Each roentgenogram made hereunder shall be permanently and legibly marked with the name and address of the facility at which it is made, the miner's DOL claim number, the date of the roentgenogram, and left and right side of film. No other identifying markings shall be recorded on the roentgenogram.

Appendix B to Part 718—Standards for Administration and Interpretation of Pulmonary Function Tests

Tables B1, B2, B3, B4, B5, B6

The following standards are established in accordance with section 402(f)(1)(D) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health (NIOSH). These standards are promulgated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting ventilatory function tests and that the best available medical evidence will be submitted in support of a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be given to the results of the ventilatory function tests.

(1) Instruments to be used for the administration of pulmonary function tests shall be approved by NIOSH and shall conform to the following criteria:

(i) The instrument shall be accurate within +/−50 ml or within +/−3 percent of reading, whichever is greater.

(ii) The instrument shall be capable of measuring vital capacity from 0 to 7 liters BTPS.

(iii) The instrument shall have a low inertia and offer low resistance to airflow such that the resistance to airflow at 12 liters per second must be less than 1.5 cm H2O/liter/sec.

(iv) The zero time point for the purpose of timing the FEV1 shall be determined by extrapolating the steepest portion of the volume-time curve back to the maximal inspiration volume or by an equivalent method.

(v) Instruments incorporating measurements of airflow to determine volume shall conform to the same volume accuracy stated in subparagraph (1)(i) of this Appendix B when presented with flow rates from at least 0 to 12 liters per second.

(vi) The instrument or user of the instrument must have a means of correcting volumes to body temperature saturated with water vapor (BTPS) under conditions of varying ambient spirometer temperatures and barometric pressures.

(vii) The instrument used shall provide a tracing of either flow versus volume or volume versus time during the entire forced expiration and volume versus time during the MVV maneuver. A tracing is necessary to determine whether the patient has performed the test properly. The tracing must be of sufficient size that hand measurements may be made within the requirement of subparagraph (1)(i) of this Appendix B. If a paper record is made it must have a paper speed of at least 2 cm/sec and a volume sensitivity of at least 10.0 mm of chart per liter of volume. The recorder tracing must display the entire FVC maneuver at a constant speed for at least 10 seconds after the onset of exhalation. This constant speed must be reached prior to the onset of exhalation.

(viii) The instrument shall be capable of accumulating volume for a minimum of 10 seconds after the onset of exhalation.

(ix) The forced expiratory volume in 1 sec (FEV1) measurement shall comply with the accuracy requirements stated in subparagraph (1)(i) of this Appendix B. That is, they shall be accurately measured to within ± 50 ml or with ± 3 percent of reading, whichever is greater.

(x) The instrument must be capable of being calibrated in the field with respect to the FEV1. This calibration of the FEV1 may be done either directly or indirectly through volume and time base measurements. The volume calibration source shall provide a volume displacement of at least 3 liters and shall be accurate to within ± 30 ml.

(xi) For measuring maximum voluntary ventilation (MVV) the instrument shall have a response which is flat within ± 10 percent up to 4 Hz at flow rates up to 12 liters per second over the volume range. The time for exhaled volume integration or recording shall be no less than 12 sec. and no more than 15 sec. The indicated time shall be accurate to within ± 3 percent.

A recording of the spirometer tracing is required, and the volume sensitivity shall be such that 10 mm or more deflection corresponds to 1 liter volume.

(2) The administration of pulmonary function tests shall conform to the following criteria:

(i) Tests shall not be performed during or soon after an acute respiratory illness.

(ii) For the FEV1 and FVC, use of a nose clip is required. The procedures shall be explained in simple terms to the patient who shall be instructed to loosen any tight clothing and stand in front of the apparatus. The subject may sit, or stand, but care should be taken on repeat testing that the same position be used. Particular attention shall be given to insure that the chin is slightly elevated with the neck slightly extended. The patient shall be instructed to make a full inspiration from the spirometer, using a normal breathing pattern and then blow into the apparatus, without interruption, as hard, fast, and completely as possible. At least three forced expirations shall be carried out. During the maneuvers, the patient shall be observed for compliance with instructions. The expirations shall be checked visually for reproducibility from the flow-volume or volume-time tracings. The effort shall be judged unacceptable when the patient:

(A) Has not reached full inspiration preceding the forced expiration; or

(B) Has not used maximal effort during the entire forced expiration; or

(C) Has not continued the expiration for at least 5 sec. or until an obvious plateau in the volume-time curve has occurred; or

(D) Has coughed or closed his glottis; or

(E) Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.); or

(F) Has an unsatisfactory start of expiration, one characterized by excessive

hesitation (or false starts), and therefore not allowing back extrapolation of time 0 (extrapolated volume on the volume-time tracing must be less than 10 percent of the FVC); or

(G) Has an excessive variability between the three acceptable curves. The variation between the two largest FEV1's of the three acceptable tracings should not exceed 5 percent of the largest FEV1 or 100 ml, whichever is greater.

(iii) For the MVV, the subject shall be instructed before beginning the test that he or she will be asked to breathe as deeply and as rapidly as possible for approximately 15 seconds.

The test shall be performed with the subject in the standing position, if possible. Care shall be taken on repeat testing that the same position be used. The subject shall breathe normally into the mouthpiece of the apparatus for 10 to 15 seconds to become accustomed to the system. The subject shall then be instructed to breathe as deeply and as rapidly as possible, and shall be continually encouraged during the remainder of the maneuver. Subject shall continue the maneuver for 15 seconds. At least 5 minutes of rest shall be allowed between maneuvers. At least three MVV's shall be carried out. (But see § 718.103(b).) During the maneuvers the patient shall be observed for compliance with instructions. The effort shall be judged unacceptable when the patient:

(A) Has not maintained consistent effort for at least 12 to 15 seconds; or

(B) Has coughed or closed his glottis; or

(C) Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.); or

(D) Has an excessive variability between the three acceptable curves. The variation between the two largest MVV's of the three satisfactory tracings shall not exceed 10 percent.

(iv) A calibration check shall be performed on the instrument each day before use, using a volume source of at least three liters, accurate to within ±1 percent of full scale. The room air in the syringe is introduced into the spirometer once with a flow rate of approximately 0.5 liters per second (six seconds emptying time with a 3-liter syringe) and once with a higher flow rate of approximately 3.0 liters per second (one second emptying time with a 3-liter syringe). The volume measured by the spirometer shall be between 2.90 and 3.10 liters for both trials. Accuracy of the time measurement used in determining the FEV1 shall be checked using the manufacturer's stated procedure and shall be within ±3 percent of actual. The procedure described herein shall be performed as well as any other procedures suggested by the manufacturer of the spirometer being used.

(v)(A) The first step in evaluating a spirogram for the FEV1 shall be to determine whether or not the patient has performed the test properly or as described in (2)(ii) above. From the three satisfactory tracings, the forced expiratory volume in one second (FEV1) shall be measured and recorded. The largest observed FEV1 shall be used in the analysis, corrected to BTPS.

(B) Only MVV maneuvers which demonstrate consistent effort for at least 12 seconds shall be considered acceptable. The largest accumulated volume for a 12 second period corrected to BTPS and multiplied by five is to be reported as the MVV.

* * * * *

Appendix C to Part 718—Blood-Gas Tables

The following tables set forth the values to be applied in determining whether total disability may be established in accordance with §§ 718.204(b)(2)(ii) and 718.305(a) and (c). The values contained in the tables are indicative of impairment only. They do not establish a degree of disability except as provided in §§ 718.204(b)(2)(ii) and 718.305 (a) and (c) of this subchapter, nor do they establish standards for determining normal alveolar gas exchange values for any particular individual. Tests shall not be performed during or soon after an acute respiratory or cardiac illness.

A miner who meets the following medical specifications shall be found to be totally disabled, in the absence of rebutting evidence, if the values specified in one of the following tables are met:

(1) For arterial blood-gas studies performed at test sites up to 2,999 feet above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	75
26	74
27	73
28	72
29	71
30	70
31	69
32	68
33	67
34	66
35	65
36	64
37	63
38	62
39	61
40–49	60
Above 50	(1)

(1) Any value.

(2) For arterial blood-gas studies performed at test sites 3,000 to 5,999 feet above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	70
26	69
27	68
28	67
29	66
30	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40–49	55
Above 50	(2)

(2) Any value.

(3) For arterial blood-gas studies performed at test sites 6,000 feet or more above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	65
26	64
27	63
28	62
29	61
30	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40–49	50
Above 50	(3)

(3) Any value.

3. Part 722 is proposed to be revised as follows.

PART 722—CRITERIA FOR DETERMINING WHETHER STATE WORKERS' COMPENSATION LAWS PROVIDE ADEQUATE COVERAGE FOR PNEUMOCONIOSIS AND LISTING OF APPROVED STATE LAWS

Sec.
722.1 Purpose.
722.2 Definitions.
722.3 General criteria; inclusion in and removal from the Secretary's list.
722.4 The Secretary's list.

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 921, 932, 936; 33 U.S.C. 901 et seq., Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

§ 722.1 Purpose.

Section 421 of the Black Lung Benefits Act provides that a claim for benefits based on the total disability or death of a coal miner due to pneumoconiosis must be filed under a State workers' compensation law where such law provides adequate coverage for pneumoconiosis. A State workers' compensation law may be deemed to provide adequate coverage only when it is included on a list of such laws maintained by the Secretary. The purpose of this part is to set forth the

procedures and criteria for inclusion on that list, and to provide that list.

§ 722.2 Definitions.

(a) The definitions and use of terms contained in subpart A of part 725 of this title shall be applicable to this part.

(b) For purposes of this part, the following definitions apply:

(1) *State agency* means, with respect to any State, the agency, department or officer designated by the workers' compensation law of the State to administer such law. In any case in which more than one agency participates in the administration of a State workers' compensation law, the Governor of the State may designate which of the agencies shall be the State agency for purposes of this part.

(2) *The Secretary's list* means the list published by the Secretary of Labor in the Federal Register (see § 722.4) containing the names of those States which have in effect a workers' compensation law which provides adequate coverage for death or total disability due to pneumoconiosis.

§ 722.3 General criteria; inclusion in and removal from the Secretary's list.

(a) The Governor of any State or any duly authorized State agency may, at any time, request that the Secretary include such State's workers' compensation law on his list of those State workers' compensation laws providing adequate coverage for total disability or death due to pneumoconiosis. Each such request shall include a copy of the State workers' compensation law and any other pertinent State laws, a copy of any regulations, either proposed or promulgated, implementing such laws; and a copy of any administrative or court decision interpreting such laws or regulations, or, if such decisions are published in a readily available report, a citation to such decision.

(b) Upon receipt of a request that a State be included on the Secretary's list, the Secretary shall include the State on the list if he finds that the State's workers' compensation law guarantees the payment of monthly and medical benefits to all persons who would be entitled to such benefits under the Black Lung Benefits Act at the time of the request, at a rate no less than that provided by the Black Lung Benefits Act. The criteria used by the Secretary in making such determination shall include, but shall not be limited to, the criteria set forth in section 421(b)(2) of the Act.

(c) The Secretary may require each State included on the list to submit reports detailing the extent to which the State's workers' compensation laws, as reflected by statute, regulation, or administrative or court decision, continues to meet the requirements of paragraph (b) of this section. If the Secretary concludes that the State's workers' compensation law does not provide adequate coverage at any time, either because of changes to the State workers' compensation law or the Black Lung Benefits Act, he shall remove the State from the Secretary's list after providing the State with notice of such removal and an opportunity to be heard.

§ 722.4 The Secretary's list.

(a) The Secretary has determined that publication of the Secretary's list in the Code of Federal Regulations is appropriate. Accordingly, in addition to its publication in the Federal Register as required by section 421 of the Black Lung Benefits Act, the list shall also appear in paragraph (b) of this section.

(b) Upon review of all requests filed with the Secretary under section 421 of the Black Lung Benefits Act and this part, and examination of the workers' compensation laws of the States making such requests, the Secretary has determined that the workers' compensation law of each of the following listed States, for the period from the date shown in the list until such date as the Secretary may make a contrary determination, provides adequate coverage for pneumoconiosis.

State	*Period commencing*
None	

4. Part 725 is proposed to be revised as follows:

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

Subpart A—General

Sec.
725.1 Statutory provisions.
725.2 Purpose and applicability of this part.
725.3 Contents of this part.
725.4 Applicability of other parts in this title.
725.101 Definitions and use of terms.
725.102 Disclosure of program information.
725.103 Burden of proof.

Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

725.201 Who is entitled to benefits; contents of this subpart.

Conditions and Duration of Entitlement: Miner

725.202 Miner defined; conditions of entitlement, miner.
725.203 Duration and cessation of entitlement, miner.

Conditions and Duration of Entitlement: Miner's Dependents (Augmented Benefits)

725.204 Determination of relationship; spouse.
725.205 Determination of dependency; spouse.
725.206 Determination of relationship; divorced spouse.
725.207 Determination of dependency; divorced spouse.
725.208 Determination of relationship; child.
725.209 Determination of dependency; child.
725.210 Duration of augmented benefits.
725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.

Conditions and Duration of Entitlement: Miner's Survivors

725.212 Conditions of entitlement; surviving spouse or surviving divorced spouse.
725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.
725.214 Determination of relationship; surviving spouse.
725.215 Determination of dependency; surviving spouse.
725.216 Determination of relationship; surviving divorced spouse.
725.217 Determination of dependency; surviving divorced spouse.
725.218 Conditions of entitlement; child.
725.219 Duration of entitlement; child.
725.220 Determination of relationship; child.
725.221 Determination of dependency; child.
725.222 Conditions of entitlement; parent, brother or sister.
725.223 Duration of entitlement; parent, brother or sister.
725.224 Determination of relationship; parent, brother or sister.
725.225 Determination of dependency; parent, brother or sister.
725.226 ''Good cause'' for delayed filing of proof of support.
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725.306 Withdrawal of a claim.
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725.308 Time limits for filing claims.
725.309 Additional claims; effect of a prior denial of benefits.
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725.351 Powers of adjudication officers.
725.352 Disqualification of adjudication officer.
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725.362 Representation of parties.
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725.403 Requirement to file under State workers' compensation law—section 415 claims.
725.404 Development of evidence—general.
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725.406 Medical examinations and tests.
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Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 921, 932, 936; 33 U.S.C. 901 et seq., 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

Subpart A—General

§ 725.1 Statutory provisions.

(a) *General.* Title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of a miner who dies due to pneumoconiosis. For claims filed prior to January 1, 1982, certain survivors could receive benefits if the miner was totally (or for claims filed prior to June 30, 1982, in accordance with section 411(c)(5) of the Act, partially) disabled due to pneumoconiosis, or if the miner died due to pneumoconiosis.

(b) *Part B.* Part B of title IV of the Act provided that all claims filed between December 30, 1969, and June 30, 1973, are to be filed with, processed, and paid by the Secretary of Health, Education, and Welfare through the Social Security Administration; claims filed by the survivor of a miner before January 1, 1974, or within 6 months of the miner's death if death occurred before January 1, 1974, and claims filed by the survivor of a miner who was receiving benefits under part B of title IV of the Act at the time of death, if filed within 6 months of the miner's death, are also adjudicated and paid by the Social Security Administration.

(c) *Section 415.* Claims filed by a miner between July 1 and December 31, 1973, are adjudicated and paid under section 415. Section 415 provides that a claim filed between the appropriate dates shall be filed with and adjudicated by the Secretary of Labor under certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.). A claim approved under section 415 is paid under part B of title IV of the Act for periods of eligibility occurring between July 1 and December 31, 1973, by the Secretary of Labor and for periods of eligibility thereafter, is paid by a coal mine operator which is determined liable for the claim or the Black Lung Disability Trust Fund if no operator is identified or if the miner's last coal mine employment terminated prior to January 1, 1970. An operator which may be found liable for a section 415 claim is notified of the claim and allowed to participate fully in the adjudication of such claim. A claim filed under section 415 is for all purposes considered as if it were a part C claim (see paragraph (d) of this section) and the provisions of part C of title IV of the Act are fully applicable to a section 415 claim except as is otherwise provided in section 415.

(d) *Part C.* Claims filed by a miner or survivor on or after January 1, 1974, are filed, adjudicated, and paid under the provisions of part C of title IV of the Act. Part C requires that a claim filed on or after January 1, 1974, shall be filed under an applicable approved State workers' compensation law, or if no such law has been approved by the Secretary of Labor, the claim may be filed with the Secretary of Labor under section 422 of the Act. Claims filed with the Secretary of Labor under part C are processed and adjudicated by the Secretary and paid by a coal mine operator. If the miner's last coal mine employment terminated before January 1, 1970, or if no responsible operator can be identified, benefits are paid by the Black Lung Disability Trust Fund. Claims adjudicated under part C are subject to certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act.

(e) *Section 435.* Section 435 of the Act affords each person who filed a claim for benefits under part B, section 415, or part C, and whose claim had been denied or was still pending as of March 1, 1978, the effective date of the Black Lung Benefits Reform Act of 1977, the right to have his or her claim reviewed on the basis of the 1977 amendments to the Act, and under certain circumstances to submit new evidence in support of the claim.

(f) *Changes made by the Black Lung Benefits Reform Act of 1977.* In addition to those changes which are reflected in paragraphs (a) through (e) of this section, the Black Lung Benefits Reform Act of 1977 contains a number of significant amendments to the Act's standards for determining eligibility for benefits. Among these are:

(1) A provision which clarifies the definition of ''pneumoconiosis'' to include any ''chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment'';

(2) A provision which defines ''miner'' to include any person who works or has worked in or around a coal mine or coal preparation facility, and in coal mine construction or coal transportation under certain circumstances;

(3) A provision which limits the denial of a claim solely on the basis of employment in a coal mine;

(4) A provision which authorizes the Secretary of Labor to establish standards and develop criteria for determining total disability or death due to pneumoconiosis with respect to a part C claim;

(5) A new presumption which requires the payment of benefits to the survivors of a miner who was employed for 25 or more years in the mines under certain conditions;

(6) Provisions relating to the treatment to be accorded a survivor's affidavit, certain X-ray interpretations, and certain autopsy reports in the development of a claim; and

(7) Other clarifying, procedural, and technical amendments.

(g) *Changes made by the Black Lung Benefits Revenue Act of 1977.* The Black Lung Benefits Revenue Act of 1977 established the Black Lung Disability Trust Fund which is financed by a specified tax imposed upon each ton of coal (except lignite) produced and sold or used in the United States after March 31, 1978. The Secretary of the Treasury is the managing trustee of the fund and benefits are paid from the fund upon the direction of the Secretary of Labor. The fund was made liable for the payment of all claims approved under section 415, part C and section 435 of the Act for all periods of eligibility occurring on or after January 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability can not be assessed against a coal mine operator due to bankruptcy, insolvency, or the like. The fund was also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and to seek reimbursement from such operator. The purpose of the fund and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contained other provisions relating to the fund and authorized a coal mine operator to establish its own trust fund for the payment of certain claims.

(h) *Changes made by the Black Lung Benefits Amendments of 1981.* In addition to the change reflected in paragraph (a) of this section, the Black Lung Benefits Amendments of 1981 made a number of significant changes in the Act's standards for determining eligibility for benefits and concerning the payment of such benefits. The following changes are all applicable to claims filed on or after January 1, 1982:

(1) The Secretary of Labor may re-read any X-ray submitted in support of a claim and may rely upon a second opinion concerning such an X-ray as a

means of auditing the validity of the claim;

(2) The rebuttable presumption that the death of a miner with ten or more years employment in the coal mines, who died of a respirable disease, was due to pneumoconiosis is no longer applicable;

(3) The rebuttable presumption that the total disability of a miner with fifteen or more years employment in the coal mines, who has demonstrated a totally disabling respiratory or pulmonary impairment, is due to pneumoconiosis is no longer applicable;

(4) In the case of deceased miners, where no medical or other relevant evidence is available, only affidavits from persons not eligible to receive benefits as a result of the adjudication of the claim will be considered sufficient to establish entitlement to benefits;

(5) Unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on and after January 1, 1982, only when the miner's death was due to pneumoconiosis;

(6) Benefits payable under this part are subject to an offset on account of excess earnings by the miner; and

(7) Other technical amendments.

(i) *Changes made by the Black Lung Benefits Revenue Act of 1981.* The Black Lung Benefits Revenue Act of 1981 temporarily doubles the amount of the tax upon coal until the fund shall have repaid all advances received from the United States Treasury and the interest on all such advances. The fund is also made liable for the payment of certain claims previously denied under the 1972 version of the Act and subsequently approved under section 435 and for the reimbursement of operators and insurers for benefits previously paid by them on such claims. With respect to claims filed on or after January 1, 1982, the fund's authorization for the payment of interim benefits is limited to the payment of prospective benefits only. These changes also define the rates of interest to be paid to and by the fund.

(j) *Longshoremen's Act provisions.* The adjudication of claims filed under sections 415, 422 and 435 of the Act is governed by various procedural and other provisions contained in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended from time to time, which are incorporated within the Act by sections 415 and 422. The incorporated LHWCA provisions are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time definite of traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the Department's experience in processing black lung claims since July 1, 1973, and all such changes are specified in this part or part 727 of this subchapter (see § 725.4(d)). No other departure from the incorporated provisions of the LHWCA is intended.

(k) *Social Security Act provisions.* Section 402 of the Act incorporates certain definitional provisions from the Social Security Act, 42 U.S.C. 301 et seq. Section 430 provides that the 1972, 1977 and 1981 amendments to part B of the Act shall also apply to part C ''to the extent appropriate.'' Sections 412 and 413 incorporate various provisions of the Social Security Act into part B of the Act. To the extent appropriate, these provisions also apply to part C. In certain cases, the Department has varied the terms of the Social Security Act provisions to accommodate the unique needs of the black lung benefits program. Parts of the Longshore and Harbor Workers' Compensation Act are also incorporated into part C. Where the incorporated provisions of the two acts are inconsistent, the Department has exercised its broad regulatory powers to choose the extent to which incorporation is appropriate.

§ 725.2 Purpose and applicability of this part.

(a) It is the purpose of this part to set forth the procedures to be followed and standards to be applied in the filing, processing, adjudication, and payment of claims filed under part C of title IV of the Act.

(b) This part is applicable to all claims filed under part C of title IV of the Act on or after August 18, 1978 and shall also be applicable to claims that were pending on August 18, 1978.

(c) The provisions of this part reflect revisions that became effective on [the effective date of the final rule]. This part is applicable to all claims filed, and all benefits payments made, after [the effective date of the final rule]. With the exception of the following sections, this part shall also be applicable to the adjudication of claims that were pending on [the effective date of the final rule]: §§ 725.309, 725.310, 725.360, 725.406, 725.407, 725.408, 725.410, 725.411, 725.412, 725.413, 725.414, 725.415, 725.417, 725.418, 725.423, 725.454, 725.456, 725.457, 725.459, 725.491, 725.492, 725.493, 725.494, 725.495, 725.547. The version of those sections set forth in 20 CFR, parts 500 to end, edition revised as of April 1, 1996, are applicable to the adjudications of claims that were pending on [the effective date of the final rule]. For purposes of construing the provisions of this section, a claim shall be considered pending on [the effective date of the final rule] if it was not finally denied more than one year prior to that date.

§ 725.3 Contents of this part.

(a) This subpart describes the statutory provisions which relate to claims considered under this part, the purpose and scope of this part, definitions and usages of terms applicable to this part, and matters relating to the availability of information collected by the Department of Labor in connection with the processing of claims.

(b) Subpart B contains criteria for determining who may be found entitled to benefits under this part and other provisions relating to the conditions and duration of eligibility of a particular individual.

(c) Subpart C describes the procedures to be followed and action to be taken in connection with the filing of a claim under this part.

(d) Subpart D sets forth the duties and powers of the persons designated by the Secretary of Labor to adjudicate claims and provisions relating to the rights of parties and representatives of parties.

(e) Subpart E contains the procedures for developing evidence and adjudicating entitlement and liability issues by the district director.

(f) Subpart F describes the procedures to be followed if a hearing before the Office of Administrative Law Judges is required.

(g) Subpart G contains provisions governing the identification of a coal mine operator which may be liable for the payment of a claim.

(h) Subpart H contains provisions governing the payment of benefits with respect to an approved claim.

(i) Subpart I describes the statutory mechanisms provided for the enforcement of a coal mine operator's liability, sets forth the penalties which may be applied in the case of a defaulting coal mine operator, and describes the obligation of coal

operators and their insurance carriers to file certain reports.

(j) Subpart J describes the right of certain beneficiaries to receive medical treatment benefits and vocational rehabilitation under the Act.

§ 725.4 Applicability of other parts in this title.

(a) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is or was totally disabled due to pneumoconiosis, or whether a miner died due to pneumoconiosis, shall be applicable to the determination of claims under this part. Claims filed after March 31, 1980, are subject to part 718 as promulgated by the Secretary in accordance with section 402(f)(1) of the Act on February 29, 1980 (see § 725.2(c)). The criteria contained in subpart C of part 727 of this subchapter are applicable in determining claims filed prior to April 1, 1980, under this part, and such criteria shall be applicable at all times with respect to claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

(b) *Parts 715, 717, and 720.* Pertinent and significant provisions of Parts 715, 717, and 720 of this subchapter (formerly contained in 20 CFR, parts 500 to end, edition revised as of April 1, 1978), which established the procedures for the filing, processing, and payment of claims filed under section 415 of the Act, are included within this part as appropriate.

(c) *Part 726.* Part 726 of this subchapter, which sets forth the obligations imposed upon a coal operator to insure or self-insure its liability for the payment of benefits to certain eligible claimants, is applicable to this part as appropriate.

(d) *Part 727.* Part 727 of this subchapter, which governs the review, adjudication and payment of pending and denied claims under section 435 of the Act, is applicable with respect to such claims. The criteria contained in subpart C of part 727 for determining a claimant's eligibility for benefits are applicable under this part with respect to all claims filed before April 1, 1980, and to all claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977. Because the part 727 regulations affect an increasingly smaller number of claims, however, the Department has discontinued publication of the criteria in the Code of Federal Regulations. The part 727 criteria may be found at 43 FR 36818, Aug. 18, 1978 or 20 CFR, parts 500 to end, edition revised as of April 1, 1996.

(e) *Part 410.* Part 410 of this title, which sets forth provisions relating to a claim for black lung benefits under part B of title IV of the Act, is inapplicable to this part except as is provided in this part, or in part 718 of this subchapter.

§ 725.101 Definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) The *Act* means the Federal Coal Mine Health and Safety Act, Public Law 91–173, 83 Stat. 742, 30 U.S.C. 801–960, as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981, and the Black Lung Benefits Amendments of 1981.

(2) The *Longshoremen's Act* or *LHWCA* means the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, c. 509, 44 Stat. 1424, 33 U.S.C. 901–950, as amended from time to time.

(3) The *Social Security Act* means the Social Security Act, Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C. 301–431, as amended from time to time.

(4) *Administrative law judge* means a person qualified under 5 U.S.C. 3105 to conduct hearings and adjudicate claims for benefits filed pursuant to section 415 and part C of the Act. Until March 1, 1979, it shall also mean an individual appointed to conduct such hearings and adjudicate such claims under Public Law 94–504.

(5) *Beneficiary* means a miner or any surviving spouse, divorced spouse, child, parent, brother or sister, who is entitled to benefits under either section 415 or part C of title IV of the Act.

(6) *Benefits* means all money or other benefits paid or payable under section 415 or part C of title IV of the Act on account of disability or death due to pneumoconiosis. The term also includes any expenses related to the medical examination and testing authorized by the district director pursuant to § 725.406.

(7) *Benefits Review Board* or *Board* means the Benefits Review Board, U.S. Department of Labor, an appellate tribunal appointed by the Secretary of Labor pursuant to the provisions of section 21(b)(1) of the LHWCA. See parts 801 and 802 of this title.

(8) *Black Lung Disability Trust Fund* or the *fund* means the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977, as amended by the Black Lung Benefits Revenue Act of 1981, for the payment of certain claims adjudicated under this part (see subpart G of this part).

(9) *Chief Administrative Law Judge* means the Chief Administrative Law Judge of the Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., suite 400, Washington, DC 20001–8002.

(10) *Claim* means a written assertion of entitlement to benefits under section 415 or part C of title IV of the Act, submitted in a form and manner authorized by the provisions of this subchapter.

(11) *Claimant* means an individual who files a claim for benefits under this part.

(12) *Coal mine* means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, placed upon, under or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite or anthracite from its natural deposits in the earth by any means or method, and in the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(13) *Coal preparation* means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and such other work of preparing coal as is usually done by the operator of a coal mine. For purposes of this definition, the term does not include coal preparation performed by coke oven workers.

(14) *Department* means the United States Department of Labor.

(15) *Director* means the Director, OWCP, or his or her designee.

(16) *District Director* means a person appointed as provided in sections 39 and 40 of the LHWCA, or his or her designee, who is authorized to develop and adjudicate claims as provided in this subchapter (see § 725.350). The term District Director is substituted for the term Deputy Commissioner wherever that term appears in this subchapter. This substitution is for administrative purposes only and in no way affects the power or authority of the position as established in the statute. Any action taken by a person under the authority of a district director will be considered the action of a deputy commissioner.

(17) *Division* or *DCMWC* means the Division of Coal Mine Workers' Compensation in the OWCP, Employment Standards Administration, United States Department of Labor.

(18) *Insurer* or *carrier* means any private company, corporation, mutual association, reciprocal or interinsurance exchange, or any other person or fund, including any State fund, authorized under the laws of a State to insure employers' liability under workers' compensation laws. The term also includes the Secretary of Labor in the exercise of his or her authority under section 433 of the Act.

(19) *Miner* or *coal miner* means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. The term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment (see § 725.202). For purposes of this definition, the term does not include coke oven workers whose activities involve the preparation or use of coal for the coke manufacturing process.

(20) *The Nation's coal mines* means all coal mines located in any State.

(21) *Office* or *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor.

(22) *Office of Administrative Law Judges* means the Office of Administrative Law Judges, U.S. Department of Labor.

(23) *Operator* means any owner, lessee, or other person who operates, controls or supervises a coal mine, including a prior or successor operator as defined in section 422 of the Act and certain transportation and construction employers (see subpart G of this part).

(24) *Person* means an individual, partnership, association, corporation, firm, subsidiary or parent of a corporation, or other organization or business entity.

(25) *Pneumoconiosis* means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment (see part 718 of this subchapter).

(26) *Responsible operator* means an operator which has been determined to be liable for the payment of benefits to a claimant for periods of eligibility after December 31, 1973, with respect to a claim filed under section 415 or part C of title IV of the Act or reviewed under section 435 of the Act.

(27) *Secretary* means the Secretary of Labor, United States Department of Labor, or a person, authorized by him or her to perform his or her functions under title IV of the Act.

(28) *State* includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and prior to January 3, 1959, and August 21, 1959, respectively, the territories of Alaska and Hawaii.

(29) *Total disability* and *partial disability*, for purposes of this part, have the meaning given them as provided in part 718 of this subchapter.

(30) *Underground coal mine* means a coal mine in which the earth and other materials which lie above and around the natural deposit of coal (i.e., overburden) are not removed in mining; including all land, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, appurtenant thereto.

(31) A *workers' compensation law* means a law providing for payment of benefits to employees, and their dependents and survivors, for disability on account of injury, including occupational disease, or death, suffered in connection with their employment. A payment funded wholly out of general revenues shall not be considered a payment under a workers' compensation law.

(32) *Year* means a period of one calendar year (365 days), or partial periods totalling one year, during which the miner worked in or around a coal mine or mines. A ''working day'' means any day or part of a day for which a miner received pay for work as a miner, including any day for which the miner received pay while on an approved absence, such as vacation or sick leave.

(i) If the evidence establishes that the miner worked in or around coal mines at least 125 working days during a calendar year or partial periods totalling one year, then the miner has worked one year in coal mine employment for all purposes under the Act. If a miner worked fewer than 125 working days in a year, he or she has worked a fractional year based on the ratio of the actual number of days worked to 125. Proof that the miner worked more than 125 working days in a calendar year or partial periods totalling a year, shall not establish more than one year.

(ii) To the extent the evidence permits, the beginning and ending dates of all periods of coal mine employment shall be ascertained. The dates and length of employment may be established by any credible evidence including (but not limited to) company records, pension records, earnings statements, coworker affidavits, and sworn testimony. If the evidence establishes that the miner's employment lasted for a calendar year, it shall be presumed, in the absence of evidence to the contrary, that the miner spent at least 125 working days in such employment.

(iii) If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS). A copy of the BLS table shall be made a part of the record if the adjudication officer uses this method to establish the length of the miner's work history.

(iv) No periods of coal mine employment occurring outside the United States shall be considered in computing the miner's work history.

(b) *Statutory terms.* The definitions contained in this section shall not be construed in derogation of terms of the Act.

(c) *Dependents and survivors.* Dependents and survivors are those persons described in subpart B of this part.

§ 725.102 Disclosure of program information.

(a) All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director or his or her designee shall be the official custodian of those records maintained by the OWCP at its national office. The District Director shall be the official custodian of those records maintained at a district office.

(b) The official custodian of any record sought to be inspected shall permit or deny inspection in accordance with the Department of Labor's regulations pertaining thereto (see 29 CFR part 70). The original record in any such case shall not be removed from the Office of the custodian for such inspection. The custodian may, in his or her discretion, deny inspection of any record or part thereof which is of a character specified in 5 U.S.C. 552(b) if in his or her opinion such inspection may result in damage, harm, or harassment to the beneficiary or to any other person. For special provisions concerning release of information regarding injured employees undergoing vocational rehabilitation, see § 702.508 of this title.

(c) Any person may request copies of records he or she has been permitted to inspect. Such requests shall be addressed to the official custodian of the records sought to be copied. The official

custodian shall provide the requested copies under the terms and conditions specified in the Department of Labor's regulations relating thereto (see 29 CFR part 70).

(d) Any party to a claim (§ 725.360) or his or her duly authorized representative shall be permitted upon request to inspect the file which has been compiled in connection with such claim. Any party to a claim or representative of such party shall upon request be provided with a copy of any or all material contained in such claim file. A request for information by a party or representative made under this paragraph shall be answered within a reasonable time after receipt by the Office. Internal documents prepared by the district director which do not constitute evidence of a fact which must be established in connection with a claim shall not be routinely provided or presented for inspection in accordance with a request made under this paragraph.

§ 725.103 Burden of proof.

Except as otherwise provided in this part and part 718, the burden of proving a fact alleged in connection with any provision shall rest with the party making such allegation.

Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

§ 725.201 Who is entitled to benefits; contents of this subpart.

(a) Section 415 and part C of the Act provide for the payment of periodic benefits in accordance with this part to:

(1) A miner (see § 725.202) who is determined to be totally disabled due to pneumoconiosis; or

(2) The surviving spouse or surviving divorced spouse or, where neither exists, the child of a deceased miner, where the deceased miner:

(i) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a survivor's claim filed prior to June 30, 1982, or;

(3) The child of a miner's surviving spouse who was receiving benefits under section 415 or part C of title IV of the Act at the time of such spouse's death; or

(4) The surviving dependent parents, where there is no surviving spouse or child, or the surviving dependent brothers or sisters, where there is no surviving spouse, child, or parent, of a miner, where the deceased miner;

(i) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a survivor's claim filed prior to June 30, 1982.

(b) Section 411(c)(5) of the Act provides for the payment of benefits to the eligible survivors of a miner employed for 25 or more years in the mines prior to June 30, 1971, if the miner's death occurred on or before March 1, 1978, and if the claim was filed prior to June 30, 1982, unless it is established that at the time of death, the miner was not totally or partially disabled due to pneumoconiosis. For the purposes of this part the term ''total disability'' shall mean partial disability with respect to a claim for which eligibility is established under section 411(c)(5) of the Act. See § 718.306 of part 718 which implements this provision of the Act.

(c) The provisions contained in this subpart describe the conditions of entitlement to benefits applicable to a miner, or a surviving spouse, child, parent, brother, or sister, and the events which establish or terminate entitlement to benefits.

(d) In order for an entitled miner or surviving spouse to qualify for augmented benefits because of one or more dependents, such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act. Such requirements are also set forth in this subpart.

Conditions and Duration of Entitlement: Miner

§ 725.202 Miner defined; condition of entitlement, miner.

(a) *Miner defined.* A ''miner'' for the purposes of this part is any person who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal, and any person who works or has worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. There shall be a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner. This presumption may be rebutted by proof that:

(1) The person was not engaged in the extraction, preparation or transportation of coal while working at the mine site, or in maintenance or construction of the mine site; or

(2) The individual was not regularly employed in or around a coal mine or coal preparation facility.

(b) *Coal mine construction and transportation workers; special provisions.* A coal mine construction or transportation worker shall be considered a miner to the extent such individual is or was exposed to coal mine dust as a result of employment in or around a coal mine or coal preparation facility. A transportation worker shall be considered a miner to the extent that his or her work is integral to the extraction or preparation of coal. A construction worker shall be considered a miner to the extent that his or her work is integral to the building of a coal or underground mine (see § 725.101(a) (12) and (30)).

(1) There shall be a rebuttable presumption that such individual was exposed to coal mine dust during all periods of such employment occurring in or around a coal mine or coal preparation facility for purposes of:

(i) Determining whether such individual is or was a miner;

(ii) Establishing the applicability of any of the presumptions described in section 411(c) of the Act and part 718 of this subchapter; and

(iii) Determining the identity of a coal mine operator liable for the payment of benefits in accordance with § 725.495.

(2) The presumption may be rebutted by evidence which demonstrates that:

(i) The individual was not regularly exposed to coal mine dust during his or her work in or around a coal mine or coal preparation facility; or

(ii) The individual did not work regularly in or around a coal mine or coal preparation facility.

(c) A person who is or was a self-employed miner or independent contractor, and who otherwise meets the requirements of this paragraph, shall be considered a miner for the purposes of this part.

(d) *Conditions of entitlement; miner.* An individual is eligible for benefits under this subchapter if the individual:

(1) Is a miner as defined in this section; and

(2) Has met the requirements for entitlement to benefits by establishing that he or she:

(i) Has pneumoconiosis (see § 718.202); and

(ii) The pneumoconiosis arose out of coal mine employment (see § 718.203); and

(iii) Is totally disabled (see § 718.204(c)); and

(iv) The pneumoconiosis contributes to the total disability (see § 718.204(c)); and

(3) Has filed a claim for benefits in accordance with the provisions of this part.

§ 725.203 Duration and cessation of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month on or after January 1, 1974, in which the miner is totally disabled due to pneumoconiosis arising out of coal mine employment.

(b) The last month for which such individual is entitled to benefits is the month before the month during which either of the following events first occurs:

(1) The miner dies; or

(2) The miner's total disability ceases (see § 725.504).

(c) An individual who has been finally adjudged to be totally disabled due to pneumoconiosis and is receiving benefits under the Act shall promptly notify the Office and the responsible coal mine operator, if any, if he or she engages in his or her usual coal mine work or comparable and gainful work.

(d) Upon reasonable notice, an individual who has been finally adjudged entitled to benefits shall submit to any additional tests or examinations the Office deems appropriate if an issue arises pertaining to the validity of the original award.

Conditions and Duration of Entitlement: Miner's Dependents (Augmented Benefits)

§ 725.204 Determination of relationship; spouse.

(a) For the purpose of augmenting benefits, an individual will be considered to be the spouse of a miner if:

(1) The courts of the State in which the miner is domiciled would find that such individual and the miner validly married; or

(2) The courts of the State in which the miner is domiciled would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's spouse; or

(3) Under State law, such individual would have the right of a spouse to share in the miner's intestate personal property; or

(4) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment, would have been a valid marriage, unless the individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household in the month in which a request is filed that the miner's benefits be augmented because such individual qualifies as the miner's spouse.

(b) The qualification of an individual for augmentation purposes under this section shall end with the month before the month in which:

(1) The individual dies, or

(2) The individual who previously qualified as a spouse for purposes of § 725.520(c), entered into a valid marriage without regard to this section, with a person other than the miner.

§ 725.205 Determination of dependency; spouse.

For the purposes of augmenting benefits, an individual who is the miner's spouse (see § 725.204) will be determined to be dependent upon the miner if:

(a) The individual is a member of the same household as the miner (see § 725.232); or

(b) The individual is receiving regular contributions from the miner for support (see § 725.233(c)); or

(c) The miner has been ordered by a court to contribute to such individual's support (see § 725.233(e)); or

(d) The individual is the natural parent of the son or daughter of the miner; or

(e) The individual was married to the miner (see § 725.204) for a period of not less than 1 year.

§ 725.206 Determination of relationship; divorced spouse.

For the purposes of augmenting benefits with respect to any claim considered or reviewed under this part or part 727 of this subchapter (see § 725.4(d)), an individual will be considered to be the divorced spouse of a miner if the individual's marriage to the miner has been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to the miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final.

§ 725.207 Determination of dependency; divorced spouse.

For the purpose of augmenting benefits, an individual who is the miner's divorced spouse (§ 725.206) will be determined to be dependent upon the miner if:

(a) The individual is receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual is receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (c) and (f)); or

(c) A court order requires the miner to furnish substantial contributions to the individual's support (see § 725.233 (c) and (e)).

§ 725.208 Determination of relationship; child.

As used in this section, the term ''beneficiary'' means only a surviving spouse entitled to benefits at the time of death (see § 725.212), or a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which the beneficiary is domiciled (see § 725.231) would find, under the law they would apply, that the individual is the beneficiary's child; or

(b) The individual is the legally adopted child of such beneficiary; or

(c) The individual is the stepchild of such beneficiary by reason of a valid marriage of the individual's parent or adopting parent to such beneficiary; or

(d) The individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section if the beneficiary and the mother or the father, as the case may be, of the individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to

be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of the beneficiary if:

(1) The beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the parent of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(e)) because the individual is his or her son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time the beneficiary became entitled to benefits.

§ 725.209 Determination of dependency; child.

(a) For purposes of augmenting the benefits of a miner or surviving spouse, the term ''beneficiary'' as used in this section means only a miner or surviving spouse entitled to benefits (see § 725.202 and § 725.212). An individual who is the beneficiary's child (§ 725.208) will be determined to be, or to have been dependent on the beneficiary, if the child:

(1) Is unmarried; and

(2)(i) Is under 18 years of age; or

(ii) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before the age of 22; or

(iii) Is 18 years of age or older and is a student.

(b)(1) The term ''student'' means a ''full-time student'' as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7) (see §§ 404.367 through 404.369 of this title), or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be ''pursuing a full-time course of study or training at an institution'' if the student is enrolled in a noncorrespondence course of at least 13 weeks duration and is carrying a subject load which is considered full-time for day students under the institution's standards and practices. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is considered not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and the child shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of study or training; or

(ii) During periods of reasonable duration in which, in the judgment of the Office, the child is prevented by factors beyond the child's control from pursuing his or her education.

(4) A student whose 23rd birthday occurs during a semester or the enrollment period in which such student is pursuing a full-time course of study or training shall continue to be considered a student until the end of such period, unless eligibility is otherwise terminated.

§ 725.210 Duration of augmented benefits.

Augmented benefits payable on behalf of a spouse or divorced spouse, or a child, shall begin with the first month in which the dependent satisfies the conditions of relationship and dependency set forth in this subpart. Augmentation of benefits on account of a dependent continues through the month before the month in which the dependent ceases to satisfy these conditions, except in the case of a child who qualifies as a dependent because such child is a student. In the latter case, benefits continue to be augmented through the month before the first month during no part of which such child qualifies as a student.

§ 725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.

With respect to the spouse or child of a miner entitled to benefits, and with respect to the child of a surviving spouse entitled to benefits, the determination as to whether an individual purporting to be a spouse or child is related to or dependent upon such miner or surviving spouse shall be based on the facts and circumstances present in each case, at the appropriate time.

Conditions and Duration of Entitlement: Miner's Surviviors

§ 725.212 Condition of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual who is the surviving spouse or surviving divorced spouse of a miner is eligible for benefits if such individual:

(1) Is not married;

(2) Was dependent on the miner at the pertinent time; and

(3) The deceased miner either:

(i) Was receiving benefits under section 415 or part C of title IV of the Act at the time of death as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving spouse or surviving divorced spouse of a miner whose claim is filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under §718.306 of part 718 on a claim filed prior to June 30, 1982.

(b) If more than one spouse meets the conditions of entitlement prescribed in paragraph (a), then each spouse will be considered a beneficiary for purposes of section 412(a)(2) of the Act without regard to the existence of any other entitled spouse or spouses.

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(Pub. L. No. 96–511)

§ 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual is entitled to benefits as a surviving spouse, or as a surviving divorced spouse, for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.212 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which either of the following events first occurs:

(1) The surviving spouse or surviving divorced spouse marries; or

(2) The surviving spouse or surviving divorced spouse dies.

(c) A surviving spouse or surviving divorced spouse whose entitlement to benefits has been terminated pursuant to § 725.213(b)(1) may thereafter again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after the marriage ends and such individual meets the requirements of § 725.212. The individual shall not be required to reestablish the miner's entitlement to benefits (§ 725.212(a)(3)(i)) or the miner's death due to pneumoconiosis (§ 725.212(a)(3)(ii)).

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§ 725.214 Determination of relationship; surviving spouse.

An individual shall be considered to be the surviving spouse of a miner if:

(a) The courts of the State in which the miner was domiciled (see § 725.231) at the time of his or her death would find that the individual and the miner were validly married; or

(b) The courts of the State in which the miner was domiciled (see § 725.231) at the time of the miner's death would find that the individual was the miner's surviving spouse; or

(c) Under State law, such individual would have the right of the spouse to share in the miner's interstate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which but for a legal impediment (see § 725.230) would have been a valid marriage, unless such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death.

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§ 725.215 Determination of dependency; surviving spouse.

An individual who is the miner's surviving spouse (see § 725.214) shall be determined to have been dependent on the miner if, at the time of the miner's death:

(a) The individual was living with the miner (see § 725.232); or

(b) The individual was dependent upon the miner for support or the miner has been ordered by a court to contribute to such individual's support (see § 725.233); or

(c) The individual was living apart from the miner because of the miner's desertion or other reasonable cause; or

(d) The individual is the natural parent of the miner's son or daughter; or

(e) The individual had legally adopted the miner's son or daughter while the individual was married to the miner and while such son or daughter was under the age of 18; or

(f) The individual was married to the miner at the time both of them legally adopted a child under the age of 18; or

(g) (1) The individual was married to the miner for a period of not less than 9 months immediately before the day on which the miner died, unless the miner's death:

(i) Is accidental (as defined in paragraph (g)(2) of this section), or

(ii) Occurs in line of duty while the miner is a member of a uniformed service serving on active duty (as defined in § 404.1019 of this title), and the surviving spouse was married to the miner for a period of not less than 3 months immediately prior to the day on which such miner died.

(2) For purposes of paragraph (g)(l)(i) of this section, the death of a miner is accidental if such individual received bodily injuries solely through violent, external, and accidental means, and as a direct result of the bodily injuries and independently of all other causes, dies not later than 3 months after the day on which such miner receives such bodily injuries. The term ''accident'' means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the adjudication officer will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so incompetent as to be incapable of acting intentionally and voluntarily will be considered to be a death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) The provisions of paragraph (g) shall not apply if the adjudication officer determines that at the time of the marriage involved, the miner would not reasonably have been expected to live for 9 months.

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§ 725.216 Determination of relationship; surviving divorced spouse.

An individual will be considered to be the surviving divorced spouse of a deceased miner in a claim considered under this part or reviewed under part 727 of this subchapter (see § 725.4(d)), if such individual's marriage to the miner had been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to such miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final and ending with the year in which the divorce became final.

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§ 725.217 Determination of dependency; surviving divorced spouse.

An individual who is the miner's surviving divorced spouse (see § 725.216) shall be determined to have been dependent on the miner if, for the month before the month in which the miner died:

(a) The individual was receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (c) and (f)); or

(c) A court order required the miner to furnish substantial contributions to the individual's support (see § 725.233 (c) and (e)).

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§ 725.218 Conditions of entitlement; child.

(a) An individual is entitled to benefits where he or she meets the required standards of relationship and dependency under this subpart (see § 725.220 and § 725.221) and is the child of a deceased miner who:

(1) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982, or

(2) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. A surviving dependent child of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is

established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

(b) A child is not entitled to benefits for any month for which a miner, or the surviving spouse or surviving divorced spouse of a miner, establishes entitlement to benefits.

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§ 725.219 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.218 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18; and

(i) Is not a student (as defined in § 725.209(b)) during any part of the month in which the child attains age 18; and

(ii) Is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(4) If the child's entitlement beyond age 18 is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the child is a student; or

(ii) The month in which the child attains age 23 and is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(5) If the child's entitlement beyond age 18 is based on disability, the first month in no part of which such individual is under a disability.

(c) A child whose entitlement to benefits terminated with the month before the month in which the child attained age 18, or later, may thereafter (provided such individual is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after termination of benefits in which such individual is a student and has not attained the age of 23.

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§ 725.220 Determination of relationship; child.

For purposes of determining whether an individual may qualify for benefits as the child of a deceased miner, the provisions of § 725.208 shall be applicable. As used in this section, the term ''beneficiary'' means only a surviving spouse entitled to benefits at the time of such surviving spouse's death (see § 725.212), or a miner. For purposes of a survivor's claim, an individual will be considered to be a child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see § 725.231) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of such individual's parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the father or mother of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(a)) because the individual is a son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

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§ 725.221 Determination of dependency; child.

For the purposes of determining whether a child was dependent upon a deceased miner, the provisions of § 725.209 shall be applicable, except that for purposes of determining the eligibility of a child who is under a disability as defined in section 223(d) of the Social Security Act, such disability must have begun before the child attained age 22, or in the case of a student, before the child ceased to be a student.

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§ 725.222 Conditions of entitlement; parent, brother, or sister.

(a) An individual is eligible for benefits as a surviving parent, brother or sister if all of the following requirements are met:

(1) The individual is the parent, brother, or sister of a deceased miner;

(2) The individual was dependent on the miner at the pertinent time;

(3) Proof of support is filed within 2 years after the miner's death, unless the time is extended for good cause (§ 725.226);

(4) In the case of a brother or sister, such individual also:

(i) Is under 18 years of age; or

(ii) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before such individual attained age 22, or in the case of a student, before the student ceased to be a student; or

(iii) Is a student (see § 725.209(b)); or

(iv) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), at the time of the miner's death;

(5) The deceased miner:

(i) Was entitled to benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving dependent parent, brother or sister of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

(b)(1) A parent is not entitled to benefits if the deceased miner was survived by a spouse or child at the time of such miner's death.

(2) A brother or sister is not entitled to benefits if the deceased miner was survived by a spouse, child, or parent at the time of such miner's death.

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§ 725.223 Duration of entitlement; parent, brother, or sister.

(a) A parent, sister, or brother is entitled to benefits beginning with the month all the conditions of entitlement described in § 725.222 are met.

(b) The last month for which such parent is entitled to benefits is the month in which the parent dies.

(c) The last month for which such brother or sister is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) The individual dies;

(2)(i) The individual marries or remarries; or

(ii) If already married, the individual received support in any amount from his or her spouse;

(3) The individual attains age 18; and

(i) Is not a student (as defined in § 725.209(b)) during any part of the month in which the individual attains age 18; and

(ii) Is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(4) If the individual's entitlement beyond age 18 is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the individual is a student; or

(ii) The month in which the individual attains age 23 and is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(5) If the individual's entitlement beyond age 18 is based on disability, the first month in no part of which such individual is under a disability.

(d) A brother or sister whose entitlement to benefits terminated pursuant to § 725.223(c)(2)(i) may thereafter again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after the marriage ends and such individual meets the requirements of § 725.222. The individual shall not be required to reestablish the miner's entitlement to benefits (§ 725.222(a)(5)(i)) or the miner's death due to pneumoconiosis (§ 725.222(a)(5)(ii)).

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§ 725.224 Determination of relationship; parent, brother, or sister.

(a) An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which the miner was domiciled (see § 225.231) at the time of death would find, under the law they would apply, that the individual is the miner's parent, brother, or sister.

(b) Where, under State law, the individual is not the miner's parent, brother, or sister, but would, under State law, have the same status (i.e., right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be considered to be the parent, brother, or sister as appropriate.

§ 725.225 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister will be determined to have been dependent on the miner if, during the 1-year period immediately prior to the miner's death:

(a) The individual and the miner were living in the same household (see § 725.232); and

(b) The individual was totally dependent on the miner for support (see § 725.233(h)).

§ 725.226 "Good cause" for delayed filing of proof of support.

(a) *What constitutes "good cause."* "Good cause" may be found for failure to file timely proof of support where the parent, brother, or sister establishes to the satisfaction of the Office that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental, or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Office; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support.

(b) *What does not constitute "good cause."* "Good cause" for failure to file timely proof of support (see § 725.222(a)(3)) does not exist when there is evidence of record in the Office that the individual was informed that he or she should file within the prescribed period and he or she failed to do so deliberately or through negligence.

§ 725.227 Time of determination of relationship and dependency of survivors.

The determination as to whether an individual purporting to be an entitled survivor of a miner or beneficiary was related to, or dependent upon, the miner is made after such individual files a claim for benefits as a survivor. Such determination is based on the facts and circumstances with respect to a reasonable period of time ending with the miner's death. A prior determination that such individual was, or was not, a dependent for the purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is a dependent survivor of such miner.

§ 725.228 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been convicted of the felonious and intentional homicide of a miner or other beneficiary shall not be entitled to receive any benefits payable because of the death of such miner or other beneficiary, and such person shall be considered nonexistent in determining the entitlement to benefits of other individuals.

Terms Used in this Subpart

§ 725.229 Intestate personal property.

References in this subpart to the "same right to share in the intestate personal property" of a deceased miner (or surviving spouse) refer to the right of an individual to share in such distribution in the individual's own right and not the right of representation.

§ 725.230 Legal impediment.

For purposes of this subpart, "legal impediment" means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

§ 725.231 Domicile.

(a) For purposes of this subpart, the term "domicile" means the place of an individual's true, fixed, and permanent home.

(b) The domicile of a deceased miner or surviving spouse is determined as of the time of death.

(c) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied.

§ 725.232 Member of the same household—''living with,'' ''living in the same household,'' and ''living in the miner's household,'' defined.

(a) *Defined.* (1) The term ''member of the same household'' as used in section 402(a)(2) of the Act (with respect to a spouse); the term ''living with'' as used in section 402(e) of the Act (with respect to a surviving spouse); and the term ''living in the same household'' as used in this subpart, means that a husband and wife were customarily living together as husband and wife in the same place.

(2) The term ''living in the miner's household'' as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister) means that the miner and such parent, brother, or sister were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or the miner's spouse, parent, brother, or sister (as the case may be), does not preclude a finding that one was ''living with'' the other, or that they were ''members of the same household.'' The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together.

(c) *Relevant period of time.* (1) The determination as to whether a surviving spouse had been ''living with'' the miner shall be based upon the facts and circumstances as of the time of the death of the miner.

(2) The determination as to whether a spouse is a ''member of the same household'' as the miner shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material.

(3) The determination as to whether a parent, brother, or sister was ''living in the miner's household'' shall take account of the 1-year period immediately prior to the miner's death.

§ 725.233 Support and contributions.

(a) *Support* defined. The term ''support'' includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *Contributions* defined. The term ''contributions'' refers to contributions actually provided by the contributor from such individual's property, or the use thereof, or by the use of such individual's own credit.

(c) *Regular contributions* and *''substantial contributions''* defined. The terms ''regular contributions'' and ''substantial contributions'' mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.* When a spouse receives and uses for his or her support income from services or property, and such income, under applicable State law, is the community property of the wife and her husband, no part of such income is a ''contribution'' by one spouse to the other's support regardless of the legal interest of the donor. However, when a spouse receives and uses for support, income from the services and the property of the other spouse and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the donor to the spouse's support.

(e) *Court order for support* defined. References to a support order in this subpart means any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *Written agreement* defined. The term ''written agreement'' in the phrase ''substantial contributions pursuant to a written agreement'', as used in this subpart means an agreement signed by the miner providing for substantial contributions by the miner for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *One-half support* defined. The term ''one-half support'' means that the miner made regular contributions, in cash or in kind, to the support of a divorced spouse at the specified time or for the specified period, and that the amount of such contributions equalled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *Totally dependent for support* defined. The term ''totally dependent for support'' as used in § 725.225(b) means that the miner made regular contributions to the support of the miner's parents, brother, or sister, as the case may be, and that the amount of such contributions at least equalled the total cost of such individual's support.

Subpart C—Filing of Claims

§ 725.301 Who may file a claim.

(a) Any person who believes he or she may be entitled to benefits under the Act may file a claim in accordance with this subpart.

(b) A claimant who has attained the age of 18, is mentally competent and physically able, may file a claim on his or her own behalf.

(c) If a claimant is unable to file a claim on his or her behalf because of a legal or physical impairment, the following rules shall apply:

(1) A claimant between the ages of 16 and 18 years who is mentally competent and not under the legal custody or care of another person, or a committee or institution, may upon filing a statement to the effect, file a claim on his or her own behalf. In any other case where the claimant is under 18 years of age, only a person, or the manager or principal officer of an institution having legal custody or care of the claimant may file a claim on his or her behalf.

(2) If a claimant over 18 years of age has a legally appointed guardian or committee, only the guardian or committee may file a claim on his or her behalf.

(3) If a claimant over 18 years of age is mentally incompetent or physically unable to file a claim and is under the care of another person, or an institution, only the person, or the manager or principal officer of the institution responsible for the care of the claimant, may file a claim on his or her behalf.

(4) For good cause shown, the Office may accept a claim executed by a person other than one described in paragraphs (c) (2) or (3) of this section.

(d) Except as provided in § 725.305 of this part, in order for a claim to be considered, the claimant must be alive at the time the claim is filed.

§ 725.302 Evidence of authority to file a claim on behalf of another.

A person filing a claim on behalf of a claimant shall submit evidence of his or her authority to so act at the time of filing or at a reasonable time thereafter in accordance with the following:

(a) A legally appointed guardian or committee shall provide the Office with certification of appointment by a proper official of the court.

(b) Any other person shall provide a statement describing his or her

relationship to the claimant, the extent to which he or she has care of the claimant, or his or her position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

§ 725.303 Date and place of filing of claims.

(a)(1) Claims for benefits shall be delivered, mailed to, or presented at, any of the various district offices of the Social Security Administration, or any of the various offices of the Department of Labor authorized to accept claims, or, in the case of a claim filed by or on behalf of a claimant residing outside the United States, mailed or presented to any office maintained by the Foreign Service of the United States. A claim shall be considered filed on the day it is received by the office in which it is first filed.

(2) A claim submitted to a Foreign Service Office or any other agency or subdivision of the U.S. Government shall be forwarded to the Office and considered filed as of the date it was received at the Foreign Service Office or other governmental agency or unit.

(b) A claim submitted by mail shall be considered filed as of the date of delivery unless a loss or impairment of benefit rights would result, in which case a claim shall be considered filed as of the date of its postmark. In the absence of a legible postmark, other evidence may be used to establish the mailing date.

§ 725.304 Forms and initial processing.

(a) Claims shall be filed on forms prescribed and approved by the Office. The district office at which the claim is filed will assist claimants in completing their forms.

(b) If the place at which a claim is filed is an office of the Social Security Administration, such office shall forward the completed claim form to an office of the DCMWC, which is authorized to process the claim.

§ 725.305 When a written statement is considered a claim.

(a) The filing of a statement signed by an individual indicating an intention to claim benefits shall be considered to be the filing of a claim for the purposes of this part under the following circumstances:

(1) The claimant or a proper person on his or her behalf (see § 725.301) executes and files a prescribed claim form with the Office during the claimant's lifetime within the period specified in paragraph (b) of this section.

(2) Where the claimant dies within the period specified in paragraph (b) of this section without filing a prescribed claim form, and a person acting on behalf of the deceased claimant's estate executes and files a prescribed claim form within the period specified in paragraph (c) of this section.

(b) Upon receipt of a written statement indicating an intention to claim benefits, the Office shall notify the signer in writing that to be considered the claim must be executed by the claimant or a proper party on his or her behalf on the prescribed form and filed with the Office within six months from the date of mailing of the notice.

(c) If before the notice specified in paragraph (b) of this section is sent, or within six months after such notice is sent, the claimant dies without having executed and filed a prescribed form, or without having had one executed and filed in his or her behalf, the Office shall upon receipt of notice of the claimant's death advise his or her estate, or those living at his or her last known address, in writing that for the claim to be considered, a prescribed claim form must be executed and filed by a person authorized to do so on behalf of the claimant's estate within six months of the date of the later notice.

(d) Claims based upon written statements indicating an intention to claim benefits not perfected in accordance with this section shall not be processed.

§ 725.306 Withdrawal of a claim.

(a) A claimant or an individual authorized to execute a claim on a claimant's behalf or on behalf of claimant's estate under § 725.305, may withdraw a previously filed claim provided that:

(1) He or she files a written request with the appropriate adjudication officer indicating the reasons for seeking withdrawal of the claim;

(2) The appropriate adjudication officer approves the request for withdrawal on the grounds that it is in the best interests of the claimant or his or her estate, and;

(3) Any payments made to the claimant in accordance with § 725.522 are reimbursed.

(b) When a claim has been withdrawn under paragraph (a) of this section, the claim will be considered not to have been filed.

§ 725.307 Cancellation of a request for withdrawal.

At any time prior to approval, a request for withdrawal may be canceled by a written request of the claimant or a person authorized to act on the claimant's behalf or on behalf of the claimant's estate.

§ 725.308 Time limits for filing claims.

(a) A claim for benefits filed under this part by, or on behalf of, a miner shall be filed within three years after a medical determination of total disability due to pneumoconiosis which has been communicated to the miner or a person responsible for the care of the miner, or within three years after the date of enactment of the Black Lung Benefits Reform Act of 1977, whichever is later. There is no time limit on the filing of a claim by the survivor of a miner.

(b) A miner who is receiving benefits under part B of title IV of the Act and who is notified by HEW of the right to seek medical benefits may file a claim for medical benefits under part C of title IV of the Act and this part. The Secretary of Health, Education, and Welfare is required to notify each miner receiving benefits under part B of this right. Notwithstanding the provisions of paragraph (a) of this section, a miner notified of his or her rights under this paragraph may file a claim under this part on or before December 31, 1980. Any claim filed after that date shall be untimely unless the time for filing has been enlarged for good cause shown.

(c) There shall be a rebuttable presumption that every claim for benefits is timely filed. However, except as provided in paragraph (b) of this section, the time limits in this section are mandatory and may not be waived or tolled except upon a showing of extraordinary circumstances.

§ 725.309 Additional claims; effect of a prior denial of benefits.

(a) A claimant whose claim for benefits was previously approved under part B of title IV of the Act may file a claim for benefits under this part as provided in §§ 725.308(b) and 725.702.

(b) If a claimant files a claim under this part while another claim filed by the claimant under this part is still pending, the later claim shall be merged with the earlier claim for all purposes. For purposes of this section, a claim shall be considered pending if it has not yet been finally denied.

(c) If a claimant files a claim under this part within one year after the effective date of a final order denying a claim previously filed by the claimant under this part (see § 725.502(a)(2)), the later claim shall be considered a request for modification of the prior denial and shall be processed and adjudicated under § 725.310 of this part.

(d) If a claimant files a claim under this part more than one year after the effective date of a final order denying a

claim previously filed by the claimant under this part (see § 725.502(a)(2)), the later claim shall be considered a subsequent claim for benefits. A subsequent claim shall be processed and adjudicated in accordance with the provisions of subparts E and F of this part, except that the claim shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement (see §§ 725.202(d) (miner), 725.212 (spouse), 725.218 (child), and 725.222 (parent, brother, or sister)) has changed since the date upon which the order denying the prior claim became final. The applicability of this paragraph may be waived by the operator or fund, as appropriate. The following additional rules shall apply to the adjudication of a subsequent claim:

(1) Any evidence submitted in connection with any prior claim shall be made a part of the record in the subsequent claim, provided that it was not excluded in the adjudication of the prior claim.

(2) For purposes of this section, the applicable conditions of entitlement shall be limited to those conditions upon which the prior denial was based. For example, if the claim was denied solely on the basis that the individual was not a miner, the subsequent claim must be denied unless the individual worked as a miner following the prior denial. Similarly, if the claim was denied because the miner did not meet one or more of the eligibility criteria contained in part 718 of this subchapter, the subsequent claim must be denied unless the miner meets at least one of the criteria that he or she did not meet previously.

(3) If the applicable condition(s) of entitlement relate to the miner's physical condition and the new evidence submitted in connection with the subsequent claim pursuant to § 725.413 of this part establishes at least one applicable condition of entitlement, there shall be a rebuttable presumption that the miner's physical condition has changed. The presumption may be rebutted only if an evaluation of the record compiled in the prior claim reveals that the order denying that claim is clearly erroneous and that the claim should have been approved as a matter of law. If the presumption is rebutted, the claimant shall bear the burden of proving that his pulmonary or respiratory condition has significantly deteriorated since the date upon which the order denying the prior claim became final. The provisions of paragraph (d)(3) shall not be applicable in the case of a claim filed by a surviving spouse, child, parent, brother, or sister.

(4) If the claimant demonstrates a change in one of the applicable conditions of entitlement, no findings made in connection with the prior claim, except those based on a party's failure to contest an issue (see § 725.463), shall be binding on any party in the adjudication of the subsequent claim. However, any stipulation made by any party in connection with the prior claim shall be binding on that party in the adjudication of the subsequent claim.

(5) In any case in which a subsequent claim is awarded, no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final.

(e) Notwithstanding any other provision of this part or part 727 of this subchapter (see § 725.4(d)), a person may exercise the right of review provided in paragraph (c) of § 727.103 at the same time such person is pursuing an appeal of a previously denied part B claim under the law as it existed prior to March 1, 1978. If the part B claim is ultimately approved as a result of the appeal, the claimant must immediately notify the Secretary of Labor and, where appropriate, the coal mine operator, and all duplicate payments made under part C shall be considered an overpayment and arrangements shall be made to insure the repayment of such overpayments to the fund or an operator, as appropriate.

(f) In any case involving more than one claim filed by the same claimant, under no circumstances are duplicate benefits payable for concurrent periods of eligibility. Any duplicate benefits paid shall be subject to collection or offset under subpart H of this part.

§ 725.310 Modification of awards and denials.

(a) Upon his or her own initiative, or upon the request of any party on grounds of a change in conditions or because of a mistake in a determination of fact, the district director may, at any time before one year from the date of the last payment of benefits, or at any time before one year after the denial of a claim, reconsider the terms of an award or denial of benefits.

(b) Modification proceedings shall be conducted in accordance with the provisions of this part as appropriate, except that the claimant and the operator, or group of operators or the fund, as appropriate, shall each be entitled to submit no more than one additional pulmonary evaluation or consultative report, in accordance with the provisions of § 725.414 of this part, along with such rebuttal evidence as may be required. Modification proceedings shall not be initiated before an administrative law judge or the Benefits Review Board.

(c) At the conclusion of modification proceedings before the district director, the district director may issue a proposed decision and order (§ 725.418) or, if appropriate, deny the claim by reason of abandonment (§ 725.409). In any case in which the district director has initiated modification proceedings on his own initiative to alter the terms of an award or denial of benefits issued by an administrative law judge, the district director shall, at the conclusion of modification proceedings, forward the claim for a hearing (§ 725.421). In any case forwarded for a hearing, the administrative law judge assigned to hear such case shall consider whether any additional evidence submitted by the parties demonstrates a change in condition and, regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact.

(d) An order issued following the conclusion of modification proceedings may terminate, continue, reinstate, increase or decrease benefit payments or award benefits. Such order shall not affect any benefits previously paid, except that an order increasing the amount of benefits payable based on a finding of a mistake in a determination of fact may be made effective on the date from which benefits were determined payable by the terms of an earlier award. In the case of an award which is decreased, no payment made in excess of the decreased rate prior to the date upon which the party requested reconsideration under paragraph (a) or, in a case in which no request was made, the district director initiated modification proceedings, shall be subject to collection or offset under subpart H of this part. In the case of an award which is terminated, no payment made prior to the date upon which the party requested reconsideration under paragraph (a) or, in a case in which no request was made, the district director initiated modification proceedings, shall be subject to collection or offset under subpart H of this part.

§ 725.311 Communications with respect to claims; time computations.

(a) Unless otherwise specified by this part, all requests, responses, notices, decisions, orders, or other communications required or permitted by this part shall be in writing.

(b) If required by this part, any document, brief, or other statement

submitted in connection with the adjudication of a claim under this part shall be sent to each party to the claim by the submitting party. If proof of service is required with respect to any communication, such proof of service shall be submitted to the appropriate adjudication officer and filed as part of the claim record.

(c) In computing any period of time described in this part, by any applicable statute, or by the order of any adjudication officer, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday, or legal holiday. ''Legal holiday'' includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

(d) In any case in which a provision of this part requires a document to be sent to a person or party by certified mail, and the document is not sent by certified mail, but the person or party actually received the document, the document shall be deemed to have been sent in compliance with the provisions of this part. In such a case, any time period which commences upon the service of the document shall commence on the date the document was received.

Subpart D—Adjudication Officers; Parties and Representatives

§ 725.350 Who are the adjudication officers.

(a) *General.* The persons authorized by the Secretary of Labor to accept evidence and decide claims on the basis of such evidence are called ''adjudication officers.'' This section describes the status of black lung claims adjudication officers.

(b) *District Director.* The district director is that official of the DCMWC or his designee who is authorized to perform functions with respect to the development, processing, and adjudication of claims in accordance with this part.

(c) *Administrative law judge.* An administrative law judge is that official appointed pursuant to 5 U.S.C. 3105 (or Public Law 94–504) who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings with respect to, and adjudicate, claims in accordance with this part. A person appointed under Public Law 94–504 shall not be considered an administrative law judge for purposes of this part for any period after March 1, 1979.

§ 725.351 Powers of adjudication officers.

(a) *District Director.* The district director is authorized to:

(1) Make determinations with respect to claims as is provided in this part;

(2) Conduct conferences and informal discovery proceedings as provided in this part;

(3) Compel the production of documents by the issuance of a subpoena, with the written approval of the Director;

(4) Prepare documents for the signature of parties;

(5) Issue appropriate orders as provided in this part; and

(6) Do all other things necessary to enable him or her to discharge the duties of the office.

(b) *Administrative Law Judge.* An administrative law judge is authorized to:

(1) Conduct formal hearings in accordance with the provisions of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses by the issuance of subpoenas;

(4) Issue decisions and orders with respect to claims as provided in this part; and

(5) Do all other things necessary to enable him or her to discharge the duties of the office.

(c) If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the district director with the approval of the Director, or the administrative law judge responsible for the adjudication of the claim, shall certify the facts to the Federal district court having jurisdiction in the place in which he or she is sitting (or to the U.S. District Court for the District of Columbia if he or she is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 725.352 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceedings in a claim in which he or she is prejudiced or partial, or where he or she has any interest in the matter pending for decision. A decision to withdraw from the consideration of a claim shall be within the discretion of the adjudication officer. If that adjudication officer withdraws, another officer shall be designated by the Director or the Chief Administrative Law Judge, as the case may be, to complete the adjudication of the claim.

(b) No adjudication officer shall be permitted to appear or act as a representative of a party under this part while such individual is employed as an adjudication officer. No adjudication officer shall be permitted at any time to appear or act as a representative in connection with any case or claim in which he or she was personally involved. No fee or reimbursement shall be awarded under this part to an individual who acts in violation of this paragraph.

(c) No adjudication officer shall act in any claim involving a party which employed such adjudication officer within one year before the adjudication of such claim.

(d) Notwithstanding paragraph (a) of this section, no adjudication officer shall be permitted to act in any claim involving a party who is related to the adjudication officer by consanguinity or affinity within the third degree as determined by the law of the place where such party is domiciled. Any action taken by an adjudication officer in knowing violation of this paragraph shall be void.

§ 725.360 Parties to proceedings.

(a) Except as provided in § 725.361, no person other than the Secretary of Labor and authorized personnel of the Department of Labor shall participate at any stage in the adjudication of a claim for benefits under this part, unless such person is determined by the appropriate adjudication officer to qualify under the provisions of this section as a party to the claim. The following persons shall be parties:

(1) The claimant;

(2) A person other than a claimant, authorized to execute a claim on such claimant's behalf under § 725.301;

(3) Any coal mine operator notified under § 725.407 of its possible liability for the claim;

(4) Any insurance carrier of such operator; and

(5) The Director in all proceedings relating to a claim for benefits under this part.

(b) A widow, child, parent, brother, or sister, or the representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by a decision of an adjudication officer, may be made a party.

(c) Any coal mine operator or prior operator or insurance carrier which has not been notified under § 725.407 and which makes a showing in writing that its rights may be prejudiced by a decision of an adjudication officer may be made a party.

(d) Any other individual may be made a party if that individual's rights with respect to benefits may be prejudiced by a decision to be made.

§ 725.361 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case, a person or entity which is not a party may be allowed to participate amicus curiae in a formal hearing only as to an issue of law. A person may participate amicus curiae in a formal hearing upon written request submitted with supporting arguments prior to the hearing. If the request is granted, the administrative law judge hearing the case will inform the party of the extent to which participation will be permitted. The request may, however, be denied summarily and without explanation.

§ 725.362 Representation of parties.

(a) Except for the Secretary of Labor, whose interests shall be represented by the Solicitor of Labor or his or her designee, each of the parties may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. An attorney qualified in accordance with § 725.363(a) shall file a written declaration that he or she is authorized to represent a party, or declare his or her representation on the record at a formal hearing. Any other person (see § 725.363(b)) shall file a written notice of appointment signed by the party or his or her legal guardian, or enter his or her appearance on the record at a formal hearing if the party he or she seeks to represent is present and consents to the representation. Any written declaration or notice required by this section shall include the OWCP number assigned by the Office and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case, such representative must be qualified under § 725.363. No authorization for representation or agreement between a claimant and representative as to the amount of a fee, filed with the Social Security Administration in connection with a claim under part B of title IV of the Act, shall be valid under this part. A claimant who has previously authorized a person to represent him or her in connection with a claim originally filed under part B of title IV may renew such authorization by filing a statement to such effect with the Office or appropriate adjudication officer.

(b) Any party may waive his or her right to be represented in the adjudication of a claim. If an adjudication officer determines, after an appropriate inquiry has been made, that a claimant who has been informed of his or her right to representation does not wish to obtain the services of a representative, such adjudication officer shall proceed to consider the claim in accordance with this part, unless it is apparent that the claimant is, for any reason, unable to continue without the help of a representative. However, it shall not be necessary for an adjudication officer to inquire as to the ability of a claimant to proceed without representation in any adjudication taking place without a hearing. The failure of a claimant to obtain representation in an adjudication taking place without a hearing shall be considered a waiver of the claimant's right to representation. However, at any time during the processing or adjudication of a claim, any claimant may revoke such waiver and obtain a representative.

§ 725.363 Qualification of representative.

(a) *Attorney*. Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession, or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative, may be appointed as a representative.

(b) *Other person*. With the approval of the adjudication officer, any other person may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 725.364 Authority of representative.

A representative, appointed and qualified as provided in §§ 725.362 and 725.363, may make or give on behalf of the party he or she represents, any request or notice relative to any proceeding before an adjudication officer, including formal hearing and review, except that such representative may not execute a claim for benefits, unless he or she is a person designated in § 725.301 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the party represented and to obtain information with respect to the claim of such party to the same extent as such party. Notice given to any party of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative of such party and such notice or request shall have the same force and effect as if it had been sent to the party represented.

§ 725.365 Approval of representative's fees; lien against benefits.

No fee charged for representation services rendered to a claimant with respect to any claim under this part shall be valid unless approved under this subpart. No contract or prior agreement for a fee shall be valid. In cases where the obligation to pay the attorney's fee is upon the claimant, the amount of the fee awarded may be made a lien upon the benefits due under an award and the adjudication officer shall fix, in the award approving the fee, such lien and the manner of payment of the fee. Any representative who is not an attorney may be awarded a fee for services under this subpart, except that no lien may be imposed with respect to such representative's fee.

§ 725.366 Fees for representatives.

(a) A representative seeking a fee for services performed on behalf of a claimant shall make application therefor to the district director, administrative law judge, or appropriate appellate tribunal, as the case may be, before whom the services were performed. The application shall be filed and served upon the claimant and all other parties within the time limits allowed by the district director, administrative law judge, or appropriate appellate tribunal. The application shall be supported by a complete statement of the extent and character of the necessary work done, and shall indicate the professional status (e.g., attorney, paralegal, law clerk, lay representative or clerical) of the person performing such work, and

the customary billing rate for each such person. The application shall also include a listing of reasonable unreimbursed expenses, including those for travel, incurred by the representative or an employee of a representative in establishing the claimant's case. Any fee requested under this paragraph shall also contain a description of any fee requested, charged, or received for services rendered to the claimant before any State or Federal court or agency in connection with a related matter.

(b) Any fee approved under paragraph (a) of this section shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other information which may be relevant to the amount of fee requested. No fee approved shall include payment for time spent in preparation of a fee application. No fee shall be approved for work done on claims filed between December 30, 1969, and June 30, 1973, under part B of title IV of the Act, except for services rendered on behalf of the claimant in regard to the review of the claim under section 435 of the Act and part 727 of this subchapter (see § 725.4(d)).

(c) In awarding a fee, the appropriate adjudication officer shall consider, and shall add to the fee, the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. Reimbursement for travel expenses incurred by an attorney shall be determined in accordance with the provisions of § 725.459(a). No reimbursement shall be permitted for expenses incurred in obtaining medical or other evidence which has previously been submitted to the Office in connection with the claim.

(d) Upon receipt of a request for approval of a fee, such request shall be reviewed and evaluated by the appropriate adjudication officer and a fee award issued. Any party may request reconsideration of a fee awarded by the adjudication officer. A revised or modified fee award may then be issued, if appropriate.

(e) Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested. If a fee awarded by a district director is disputed, such award shall be appealable directly to the Benefits Review Board. In such a fee dispute case, the record before the Board shall consist of the order of the district director awarding or denying the fee, the application for a fee, any written statement in opposition to the fee and the documentary evidence contained in the file which verifies or refutes any item claimed in the fee application.

§ 725.367 Payment of a claimant's attorney's fee by responsible operator or fund.

(a) An attorney who represents a claimant in the successful prosecution of a claim for benefits may be entitled to collect a reasonable attorney's fee from the responsible operator that is ultimately found liable for the payment of benefits, or, in a case in which there is no operator who is liable for the payment of benefits, from the fund. Generally, an attorney who represents a successful claimant may obtain payment of his or her fee where the operator or fund, as appropriate, took action, or acquiesced in action, that created an adversarial relationship between itself and the claimant. Circumstances in which a successful attorney's fees shall be payable by the responsible operator or the fund include, but are not limited to, the following:

(1) If the responsible operator initially found to be liable for the payment of benefits by the district director (see § 725.410(a)) contests the claimant's eligibility for benefits, either by filing a response pursuant to § 725.411(b)(1), or, in a case in which the district director issues an initial finding that the claimant is not eligible for benefits, by failing to file a response. The operator that is ultimately determined to be liable for benefits shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney after the date of the responsible operator's response or the date on which it was due, whichever is earlier;

(2) If there is no operator that may be held liable for the payment of benefits, and the district director issues an initial finding that the claimant is not eligible for benefits. The fund shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney after the date on which the district director issued the initial finding;

(3) If the claimant submits a bill for medical treatment, and the party liable for the payment of benefits declines to pay the bill on the grounds that the treatment is unreasonable, or is for a condition that is not compensable. The responsible operator or fund, as appropriate, shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney after the date on which the liable party declined to pay;

(4) If a beneficiary seeks an increase in the amount of benefits payable, and the responsible operator or fund issues a notice of controversion contesting the claimant's right to that increase. If the beneficiary is successful in securing an increase in the amount of benefits payable, the operator or fund shall be liable for an attorney's fee with respect to all reasonable services performed by the beneficiary's attorney after the date on which the operator or fund contested the increase; and

(5) If the responsible operator or fund seeks a decrease in the amount of benefits payable. If the beneficiary is successful in resisting the request for a decrease in the amount of benefits payable, the operator or fund shall be liable for an attorney's fee with respect to all reasonable services performed by the beneficiary's attorney after the date of the request by the operator or fund. A request for information clarifying the amount of benefits payable shall not be considered a request to decrease that amount.

(b) In no event shall an operator or the fund be liable for the payment of attorney's fees with respect to any services performed prior to the dates specified in this section.

(c) Any fee awarded under this section shall be in addition to the award of benefits, and shall be awarded, in an order, by the district director, administrative law judge, Board or court, before whom the work was performed. The operator or fund shall pay such fee promptly and directly to the claimant's attorney in a lump sum after the award of benefits becomes final.

(d) Section 205(a) of the Black Lung Benefits Amendments of 1981, Public Law 97–119, amended section 422 of the Act and relieved operators and carriers from liability for the payment of benefits on certain claims. Payment of benefits on those claims was made the responsibility of the fund. The claims subject to this transfer of liability are described in § 725.496 of this part. On claims subject to the transfer of liability described in this paragraph the fund will pay all fees and costs which have been or will be awarded to claimant's attorneys which were or would have become the liability of an operator or carrier but for the enactment of the 1981 Amendments and which have not already been paid by such operator or carrier. Section 9501(d)(7) of the Internal Revenue Code, which was also enacted as a part of the 1981 Amendments to the Act, expressly prohibits the fund from reimbursing an

operator or carrier for any attorney fees or costs which it has paid on cases subject to the transfer of liability provisions.

Subpart E—Adjudication of Claims by the District Director

§ 725.401 Claims development—general.

After a claim has been received by the district director, the district director shall take such action as is necessary to develop, process, and make determinations with respect to the claim as provided in this subpart.

§ 725.402 Approved State workers' compensation law.

If a district director determines that any claim filed under this part is one subject to adjudication under a workers' compensation law approved under part 722 of this subchapter, he or she shall advise the claimant of this determination and of the Act's requirement that the claim must be filed under the applicable State workers' compensation law. The district director shall then prepare a proposed decision and order dismissing the claim for lack of jurisdiction pursuant to § 725.418 and proceed as appropriate.

§ 725.403 Requirement to file under State workers' compensation law—section 415 claims.

(a) No benefits shall be payable to or on behalf of a claimant who has filed a claim under section 415 of part B of title IV of the Act, for any period of eligibility occurring between July 1, and December 31, 1973, unless the claimant has filed and diligently pursued a claim for benefits under an applicable State workers' compensation law. A State workers' compensation claim need not be filed where filing would be futile. It shall be determined that the filing of a State claim would be futile when:

(1) The period within which the claim may be filed under such law has expired; or

(2) Pneumoconiosis as defined in part 718 of this subchapter is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workers' compensation payments under applicable State law; or

(5) The claimant otherwise establishes to the satisfaction of the Office that the filing of a claim under State law would be futile.

(b) Where the Office determines that a claimant is required to file a State claim under this section, the Office shall so notify the claimant. Such notice shall instruct the claimant to file a State claim within 30 days of such notice. If no such State claim is filed within the 30-day period, no benefits shall be payable under this part to the claimant for any period between July 1, and December 31, 1973.

(c) The failure of a claimant to comply with paragraph (a) of this section shall not absolve any operator of its liability for the payment of benefits to a claimant for periods of eligibility occurring on or after January 1, 1974.

(d) The district director may determine that a claimant is ineligible for benefits under section 415 of part B of title IV of the Act without requiring the claimant to file a claim under a State workers' compensation law.

§ 725.404 Development of evidence—general.

(a) *Employment history.* Each claimant shall furnish the district director with a complete and detailed history of the coal miner's employment and, upon request, supporting documentation.

(b) *Matters of record.* Where it is necessary to obtain proof of age, marriage or termination of marriage, death, family relationship, dependency (see subpart B of this part), or any other fact which may be proven as a matter of public record, the claimant shall furnish such proof to the district director upon request.

(c) *Documentary evidence.* If a claimant is required to submit documents to the district director, the claimant shall submit either the original, a certified copy or a clear readable copy thereof. The district director or administrative law judge may require the submission of an original document or certified copy thereof, if necessary.

(d) *Submission of insufficient evidence.* In the event a claimant submits insufficient evidence regarding any matter, the district director shall inform the claimant of what further evidence is necessary and request that such evidence be submitted within a specified reasonable time which may, upon request, be extended for good cause.

§ 725.405 Development of medical evidence; scheduling of medical examinations and tests.

(a) Upon receipt of a claim, the district director shall ascertain whether the claim was filed by or on account of a miner as defined in § 725.202, and in the case of a claim filed on account of a deceased miner, whether the claim was filed by an eligible survivor of such miner as defined in subpart B of this part.

(b) In the case of a claim filed by or on behalf of a miner, the district director shall, where necessary, schedule the miner for a medical examination and testing under § 725.406.

(c) In the case of a claim filed by or on behalf of a survivor of a miner, the district director shall obtain whatever medical evidence is necessary and available for the development and evaluation of the claim.

(d) The district director shall, where appropriate, collect other evidence necessary to establish:

(1) The nature and duration of the miner's employment; and

(2) All other matters relevant to the determination of the claim.

(e) If at any time during the processing of the claim by the district director, the evidence establishes that the claimant is not entitled to benefits under the Act, the district director may terminate evidentiary development of the claim and proceed as appropriate.

§ 725.406 Medical examinations and tests.

(a) The Act requires the Department to provide each miner who applies for benefits with the opportunity to undergo a complete pulmonary evaluation at no expense to the miner. A complete pulmonary evaluation includes a report of physical examination, a pulmonary function study, a chest roentgenogram and, unless medically contraindicated, a blood gas study.

(b) The district director will arrange for each miner to be given a complete pulmonary evaluation by a physician or medical facility selected by the Office. The evaluation shall be conducted, if possible, in the vicinity of the miner's residence. The district director will notify the miner of these arrangements, and inform the miner that he may select an alternate physician or facility. The district director will also inform the miner of the consequences of selecting an alternate physician or facility, as provided by paragraphs (c) and (d) of this section.

(c) If the miner selects an alternate physician or facility, the complete pulmonary evaluation performed under this section shall count as one of the two evaluations which the claimant may submit in support of his claim (see § 725.414). If the physician or facility selected by the miner cannot perform one or more of the tests which make up a complete pulmonary evaluation, the district director will arrange for the miner to have these tests performed at a facility selected by the Office prior to

his examination by the physician or facility he has selected. A copy of any such tests shall be provided to the physician or facility selected by the miner.

(d) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in substantial compliance with the provisions of part 718 of this subchapter, or does not provide sufficient information to allow the district director to decide whether the miner is eligible for benefits, the district director shall schedule the miner for further examination and testing where necessary and appropriate, provided that the deficiencies in the report are not the result of any lack of effort on the part of the miner. In order to determine whether any medical examination or test was administered and reported in substantial compliance with the provisions of part 718 of this subchapter, the district director may have any component of such examination or test reviewed by a physician selected by the district director. If the miner selected the physician or facility that performed the test, the district director shall notify the miner, and the physician or facility, of the reasons why the report is not in substantial compliance with the provisions of part 718, or does not provide sufficient information, and shall allow the miner reasonable additional time within which to correct any deficiency.

(e) If, at any time after the completion of the initial complete pulmonary evaluation, unresolved medical questions remain, the district director may cause the claimant to be examined by a physician or medical facility selected by the district director. If additional medical evidence is obtained in accordance with this paragraph, the district director may order the physician selected to retest or reexamine the miner to do so without the presence or participation of any other physician who previously examined the miner, and without benefit of the conclusions of any other physician who has examined the miner.

(f) The cost of any medical examination or test authorized under this section, including the cost of travel to and from the examination, shall be paid by the fund. No reimbursement for overnight accommodations shall be authorized unless the district director determines that an adequate testing facility is unavailable within one day's round trip travel by automobile from the miner's residence. The fund shall be reimbursed for such payments by an operator, if any, found liable for the payment of benefits to the claimant. If an operator fails to repay such expenses, with interest, upon request of the Office, the entire amount may be collected in an action brought under section 424 of the Act and § 725.603 of this part.

§ 725.407 Identification and notification of responsible operator.

(a) Upon receipt of the miner's employment history, the district director shall investigate whether any operator may be held liable for the payment of benefits as a responsible operator in accordance with the criteria contained in subpart G of this part.

(b) Prior to issuing an initial finding pursuant to § 725.410, the district director may identify one or more operators potentially liable for the payment of benefits in accordance with the criteria set forth in § 725.495 of this part. The district director shall notify each such operator of the existence of the claim. Where the records maintained by the Office pursuant to part 726 of this subchapter indicate that the operator had obtained a policy of insurance, and the claim falls within such policy, the notice provided pursuant to this section shall also be sent to the operator's carrier. Any operator or carrier notified of the claim shall thereafter be considered a party to the claim in accordance with § 725.360 of this part unless it is dismissed by an adjudication officer and is not thereafter notified again of its potential liability.

(c) The notification issued pursuant to this section shall include a copy of the claimant's application and a copy of all evidence obtained by the district director relating to the miner's employment. The district director may request the operator to answer specific questions, including, but not limited to, questions related to the nature of its operations, its relationship with the miner, its financial status, including any insurance obtained to secure its obligations under the Act, and its relationship with other potentially liable operators. A copy of any notification issued pursuant to this section shall be sent to the claimant by regular mail.

(d) If at any time before a case is referred to the Office of Administrative Law Judges, the district director determines that an operator which may be liable for the payment of benefits has not been notified under this section or has been incorrectly dismissed pursuant to § 725.413(c)(1), the district director shall give such operator notice of its potential liability in accordance with this section. The adjudication officer shall then take such further action on the claim as may be appropriate. There shall be no time limit applicable to a later identification of an operator under this paragraph if the operator fraudulently concealed its identity as an employer of the miner.

§ 725.408 Operator's response to notification.

(a)(1) An operator which receives notification under § 725.407 shall, within 30 days of receipt, file a response, and shall indicate its intent to accept or contest its identification as a potentially liable operator. The operator's response shall also be sent to the claimant by regular mail.

(2) If the operator contests its identification, it shall, on a form supplied by the district director, state the precise nature of its disagreement by admitting or denying each of the following assertions. In answering these assertions, the term ''operator'' shall include any operator for which the identified operator may be considered a successor operator pursuant to § 725.492.

(i) That the named operator was an operator for any period after June 30, 1973;

(ii) That the operator employed the miner as a miner for a cumulative period of not less than one year;

(iii) That the miner was exposed to coal mine dust while working for the operator;

(iv) That the miner's employment with the operator included at least one working day after December 31, 1969; and

(v) That the operator is capable of assuming liability for the payment of benefits.

(3) An operator which receives notification under § 725.407, and which fails to file a response within the time limit provided by this section, shall not be allowed to contest its liability for the payment of benefits on the grounds set forth in paragraph (a)(2).

(b)(1) Within 60 days of the date on which it receives notification under § 725.407, an operator may submit documentary evidence in support of its position.

(2) No documentary evidence relevant to the grounds set forth in paragraph (a)(2) may be admitted in any further proceedings unless it is submitted within the time limits set forth in this section.

§ 725.409 Denial of a claim by reason of abandonment.

(a) A claim may be denied at any time by the district director by reason of abandonment where the claimant fails:

(1) To undergo a required medical examination without good cause; or,

(2) To submit evidence sufficient to make a determination of the claim; or,

(3) To pursue the claim with reasonable diligence; or,

(4) To attend an informal conference without good cause.

(b) If the district director determines that a denial by reason of abandonment is appropriate, he or she shall notify the claimant of the reasons for such denial and of the action which must be taken to avoid a denial by reason of abandonment. If the claimant completes the action requested within the time allowed, the claim shall be developed, processed and adjudicated as specified in this part. If the claimant does not fully comply with the action requested by the district director, the district director shall notify the claimant that the claim has been denied by reason of abandonment. Any request for a hearing prior to the issuance of such notification shall be considered invalid and of no effect. Such notification shall be served on the claimant and all other parties to the claim by certified mail. The denial shall become effective and final unless, within 30 days after the denial is issued, the claimant requests a hearing. If the claimant timely requests a hearing, the district director shall refer the case to the Office of Administrative Law Judges in accordance with § 725.421. The hearing will be limited to the issue of whether the claim was properly denied by reason of abandonment. Following the expiration of the 30-day period, a new claim may be filed at any time pursuant to § 725.309.

§ 725.410 Initial findings by the district director.

(a) Based upon the evidence developed, the district director shall make an initial finding with respect to the claim. The initial finding shall include a determination with respect to the claimant's eligibility and a determination with respect to whether any of the operators notified of potential liability under § 725.407 of this part is the responsible operator in accordance with § 725.495 of this part.

(b) The district director shall serve the initial finding, together with a copy of all of the evidence developed, on the claimant, the responsible operator, and all other operators which received notification pursuant to § 725.407 of this part. The initial finding shall be served on each party by certified mail.

(c) If the evidence submitted does not support a finding of eligibility, the initial finding shall specify the reasons why the claim cannot be approved and the additional evidence necessary to establish entitlement. The initial finding shall notify the claimant that he has the right to obtain further adjudication of his eligibility in accordance with this subpart, that he has the right to submit additional evidence in accordance with this subpart, and that he has the right to obtain counsel, under the terms set forth in subpart D, in order to assist him. The initial finding shall further notify the claimant that, if he establishes his entitlement to benefits, the cost of obtaining additional evidence, along with a reasonable attorney's fee, shall be reimbursed by the responsible operator, or, if no operator can be held liable, the fund.

§ 725.411 Initial finding—eligibility.

(a) *Claimant response*—(1) *Finding that the claimant is not eligible for benefits.* (i) Within one year after the district director issues an initial finding that the claimant is not eligible for benefits, the claimant may request further adjudication of the claim. Any statement filed during the applicable time period demonstrating the claimant's intention to pursue his or her claim shall be considered a request for further adjudication in accordance with this section. The claimant may not request a hearing at this point. Any request for a hearing prior to the issuance of a proposed decision and order shall be considered invalid and of no effect.

(ii) If the claimant does not request further adjudication of the claim within the time limits set forth in this section, the claim shall be deemed to have been denied, effective as of the date of the issuance of the initial finding. Any submission by the claimant after the time limits set forth in this section will be treated as an intent to file a new claim for benefits in accordance with § 725.305. Such a claim may be approved only if it meets the conditions of § 725.309.

(2) *Finding that the claimant is eligible for benefits.* If the district director issues an initial finding that the evidence submitted supports a finding of eligibility, the claimant may, within 30 days of the issuance of the initial finding, request revision of any of the terms of the initial finding. If the claimant does not file a timely request pursuant to this paragraph, he shall be deemed to have accepted the district director's initial finding.

(b) *Operator response.* (1) Within 30 days of the issuance of an initial finding, the responsible operator initially found liable for the payment of benefits shall file a response with regard to the claimant's eligibility for benefits. The response shall specifically indicate whether the operator agrees or disagrees with the initial finding of eligibility. A response that the operator is not liable for benefits shall not be sufficient to contest the claimant's eligibility under this section. A response to the initial finding of eligibility shall be filed regardless of whether the district director finds the claimant eligible for benefits.

(2) If the operator initially found liable for the payment of benefits does not file a timely response, it shall be deemed to have accepted the district director's initial finding with respect to the claimant's eligibility, and shall not, except as provided in § 725.463, be permitted to raise issues or present evidence with respect to issues inconsistent with the initial findings in any further proceeding conducted with respect to the claim.

§ 725.412 Initial finding-liability.

(a) Within 30 days of the issuance of an initial finding, the responsible operator initially found liable for the payment of benefits shall file a response with regard to its liability for benefits. The response shall specifically indicate whether the operator agrees or disagrees with the initial finding of liability. A response that the operator is not liable for benefits under this section shall not be sufficient to contest the claimant's eligibility. A response to the initial finding of liability shall be filed regardless of whether or not the district director finds the claimant eligible for benefits.

(b) If the responsible operator initially found liable for the payment of benefits does not file a timely response, it shall be deemed to have accepted the district director's initial finding with respect to its liability, and to have waived its right to contest its liability in any further proceeding conducted with respect to the claim.

§ 725.413 Initial adjudication by the district director.

(a) If the district director issues an initial finding that the evidence submitted supports a finding of eligibility, and

(1) The responsible operator does not file a timely response under either § 725.411 or § 725.412, or

(2) There is no operator responsible for the payment of benefits, the district director shall, after considering any request filed by the claimant pursuant to § 725.411(a)(2), issue a proposed decision and order in accordance with § 725.418.

(b) If the district director issues an initial finding that the evidence submitted does not support a finding of eligibility, and the claimant does not file a timely response pursuant to § 725.411,

the claim shall be considered to have been denied, effective as of the date of the issuance of the initial finding. Any later submission by the claimant will be treated as an intent to file a claim for benefits in accordance with § 725.305. Such a claim may be approved only if it meets the conditions of § 725.309.

(c)(1) In all other cases, the district director shall, following the expiration of all applicable time periods for filing responses, or the receipt of responses, notify all parties of any responses received from the claimant and the responsible operator. The district director may, in his discretion, dismiss as parties any of the operators notified of their potential liability pursuant to § 725.407. If the district director thereafter determines that the participation of a party dismissed pursuant to this section is required, he may once again notify the operator in accordance with § 725.407(d).

(2) The district director shall notify the parties of a schedule for submitting documentary evidence. Such schedule shall allow the parties not less than 60 days within which to submit evidence in support of their contentions, and shall provide not less than an additional 30 days within which the parties may respond to evidence submitted by other parties. Any such evidence must meet the requirements set forth in § 725.414 in order to be admitted into the record.

§ 725.414 Development of evidence.

(a) *Medical evidence*—(1)(i) *Pulmonary evaluation.* For purposes of this section, a pulmonary evaluation shall consist of one chest roentgenogram, one pulmonary function study, one report of physical examination, and the results of such other testing, including arterial blood gas testing, as the physician who prepares the report of physical examination deems necessary to fully evaluate the claimant's respiratory and pulmonary condition. The tests need not be performed at the same facility, nor be administered or supervised by the same physician.

(ii) *Consultative report.* For purposes of this section, a consultative report shall consist of the opinion of a physician based on a review of any medical evidence relevant to the miner's respiratory or pulmonary condition.

(2) The claimant shall be entitled to submit the results of up to two pulmonary evaluations or consultative reports. If the claimant selected the physician who prepared the report of physical examination pursuant to § 725.406 of this part, the complete pulmonary evaluation obtained pursuant to that section shall be considered one of the two evaluations or reports that the claimant may submit.

(3) The Department intends that all parties to a claim, including all operators notified of their potential liability under § 725.407 that have not been dismissed, shall be bound by a final adjudication of the claimant's eligibility. Accordingly, any operator notified of its potential liability in accordance with § 725.407 shall not be entitled to require the claimant to re-adjudicate his eligibility in the event the district director's initial finding with respect to the responsible operator is determined to have been erroneous.

(i) The responsible operator and any other operators that remain parties to the case shall collectively be entitled to obtain and submit the results of no more than two pulmonary evaluations or consultative reports. In obtaining such evaluations, no miner shall be required to travel more than 100 miles from his or her place of residence for the purpose of submitting to a pulmonary evaluation requested by an operator, unless a trip of greater distance is authorized in writing by the district director. If a miner unreasonably refuses—

(A) To provide the Office or a coal mine operator with a complete statement of his or her medical history and/or to authorize access to his or her medical records, or

(B) To submit to an evaluation or test requested by the district director or a potentially liable operator, the miner's claim may be denied by reason of abandonment (See § 725.409 of this part).

(ii) In a case in which the district director has not identified any potentially liable operators, the district director shall be entitled to exercise the rights of a responsible operator under this section, except that in any case where the complete pulmonary evaluation performed pursuant to § 725.406 was performed by a physician selected by the district director, the evaluation shall be admitted into evidence, and shall be considered one of the two evaluations or reports that the district director may submit.

(iii) Except for the responsible operator, any operator notified of its potential liability pursuant to § 725.407, and which has not been dismissed as a party by the district director, must request permission of the district director to obtain an independent pulmonary evaluation of the miner, or to submit a consultative report. Such permission shall be granted only upon a showing that the responsible operator has not undertaken a full development of the evidence, and that without such permission, the potentially liable operator will be unable to secure a full and fair litigation of the claimant's eligibility. In granting such permission, the district director may take such action as is necessary to prevent the miner from undergoing unnecessary testing, and shall ensure that the record contains no more than two pulmonary evaluations or consultative reports submitted by the parties opposing the claimant's eligibility.

(4) Notwithstanding the limitations in paragraph (a)(3) of this section, any record of a miner's hospitalization for a pulmonary or related disease, medical treatment for a pulmonary or related disease, or a biopsy or autopsy may be received into evidence.

(5) A copy of any documentary evidence submitted by a party must be served on all other parties to the claim. If the claimant is not represented by an attorney, the district director shall mail a copy of all documentary evidence submitted by the claimant to all other parties to the claim. Following the development and submission of affirmative medical evidence, the parties may submit rebuttal evidence in accordance with the schedule issued by the district director. Such rebuttal evidence shall include no more than one interpretive opinion with respect to the results of each component of the pulmonary evaluations submitted by the opposing party, and may not include a third pulmonary evaluation of the miner.

(6) The district director shall admit into the record all evidence submitted in accordance with this section, and shall also admit the results of any medical evaluation or review conducted by a physician selected by the district director pursuant to § 725.406.

(b) *Evidence pertaining to liability.* (1) Except as provided by § 725.408(b)(2), the potential responsible operator may submit evidence to demonstrate that it is not the potentially liable operator that most recently employed the claimant. Failure to submit such evidence shall be deemed an acceptance of the district director's initial finding of liability.

(2) Any other party may submit evidence regarding the liability of the potential responsible operator or any other operator.

(3) A copy of any documentary evidence submitted under this paragraph must be mailed to all other parties to the claim. Following the submission of affirmative evidence, the parties may submit rebuttal evidence in accordance with the schedule issued by the district director.

(c) *Testimony.* The claimant, and any person who prepared documentary evidence submitted pursuant to this

section, may testify at any formal hearing conducted in accordance with subpart F of this part with respect to the claim. In accordance with the schedule issued by the district director, all parties shall notify the district director of the name and current address of any other witness that the party intends to call at such hearing. No testimony by any witness who is not identified as a witness in accordance with this section shall be admitted in any hearing conducted with respect to the claim.

(d) Except to the extent permitted by § 725.456, no documentary evidence shall be admitted in any further proceeding conducted with respect to a claim unless it is submitted to the district director in accordance with this section.

§ 725.415 Action by the district director after development of operator's evidence.

(a) At the end of the period permitted under § 725.413(c)(2) for the submission of evidence, the district director shall review the claim on the basis of all evidence submitted in accordance with § 725.414.

(b) After review of all evidence submitted, the district director may schedule a conference in accordance with § 725.416, issue a proposed decision and order in accordance with § 725.418, or take such other action as the district director considers appropriate.

§ 725.416 Conferences.

(a) At the conclusion of the period permitted by § 725.413(c)(2) for the submission of evidence, the district director may conduct an informal conference in any claim where it appears that such conference will assist in the voluntary resolution of any issue raised with respect to the claim. The conference proceedings shall not be stenographically reported and sworn testimony shall not be taken.

(b) The district director shall notify the parties of a definite time and place for the conference and may in his or her discretion, or on the motion of any party, cancel or reschedule a conference.

(c) The unexcused failure of any party to appear at an informal conference shall be grounds for the imposition of sanctions. If the claimant fails to appear, the district director may take such steps as are authorized by § 725.409 to deny the claim by reason of abandonment. If the responsible operator fails to appear, it shall be deemed to have waived its right to contest its potential liability for an award of benefits and, in the discretion of the district director, its right to contest any issue related to the claimant's eligibility.

(d) Any representative of an operator, of an operator's insurance carrier, or of a claimant, authorized to represent such party in accordance with § 725.362, shall be deemed to have sufficient authority to stipulate facts or issues or agree to a final disposition of the claim.

(e) Procedures to be followed at a conference shall be within the discretion of the district director. In the case of a conference involving an unrepresented claimant, the district director shall fully inform the claimant of the consequences of any agreement the claimant is asked to sign. If it is apparent that the unrepresented claimant does not understand the nature or effect of the proceedings, the district director shall not permit the execution of any stipulation or agreement in the claim unless it is clear that the best interests of the claimant are served thereby.

§ 725.417 Action at the conclusion of conference.

(a) At the conclusion of a conference, the district director shall prepare a stipulation of contested and uncontested issues which shall be signed by the parties and the district director. If a hearing is conducted with respect to the claim, this stipulation shall be submitted to the Office of Administrative Law Judges and placed in the claim record.

(b) In any case, where appropriate, the district director may permit a reasonable time for the submission of additional evidence following a conference, provided that such evidence does not exceed the limits set forth in § 725.414.

(c) Within 20 days after the termination of all conference proceedings, the district director shall prepare and send to the parties by certified mail a memorandum of conference, on a form prescribed by the Office, summarizing the conference and including the following:

(1) Date, time and place of conference;

(2) Names, addresses, telephone numbers, and status (i.e., claimant, attorney, operator, carrier's representative, etc.);

(3) Issues discussed at conference;

(4) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);

(5) Issues resolved at conference; and

(6) District director's recommendation.

(d) Each party shall, in writing, either accept or reject, in whole or in part, the district director's recommendation, stating the reasons for such rejection. If no reply is received within 30 days from the date on which the recommendation was sent to parties, the recommendation shall be deemed accepted.

§ 725.418 Proposed decision and order.

(a) After evaluating the parties' responses to the district director's recommendation pursuant to § 725.417, or, if no informal conference is to be held, at the conclusion of the period permitted by § 725.413(c)(2) for the submission of evidence, the district director shall issue a proposed decision and order. A proposed decision and order is a document, issued by the district director after the evidentiary development of the claim is completed and all contested issues, if any, are joined, which purports to resolve a claim on the basis of the evidence submitted to or obtained by the district director. A proposed decision and order shall be considered a final adjudication of a claim only as provided in § 725.419. A proposed decision and order may be issued by the district director in any claim and at any time during the adjudication of a claim if:

(1) Issuance is authorized or required by this part; or,

(2) The district director determines that its issuance will expedite the adjudication of the claim.

(b) A proposed decision and order shall contain findings of fact and conclusions of law and an appropriate order shall be served on all parties to the claim by certified mail.

§ 725.419 Response to proposed decision and order.

(a) Within 30 days after the date of issuance of a proposed decision and order, any party may, in writing, request a revision of the proposed decision and order or a hearing. If a hearing is requested, the district director shall refer the claim to the Office of Administrative Law Judges (see § 725.421).

(b) Any response made by a party to a proposed decision and order shall specify the findings and conclusions with which the responding party disagrees, and shall be served on the district director and all other parties to the claim.

(c) If a timely request for revision of a proposed decision and order is made, the district director may amend the proposed decision and order, as circumstances require, and serve the revised proposed decision and order on all parties or take such other action as is appropriate. If a revised proposed decision and order is issued, each party to the claim shall have 30 days from the date of issuance of that revised

proposed decision and order within which to request a hearing.

(d) If no response to a proposed decision and order is sent to the district director within the period described in paragraph (a) of this section, or if no response to a revised proposed decision and order is sent to the district director within the period described in paragraph (c) of this section, the proposed decision and order shall become a final decision and order, which is effective upon the expiration of the applicable 30-day period. Once a proposed decision and order or revised proposed decision and order becomes final and effective, all rights to further proceedings with respect to the claim shall be considered waived, except as provided in § 725.310.

§ 725.420 Initial determinations.

(a) Section 9501(d)(1)(A)(1) of the Internal Revenue Code provides that the Black Lung Disability Trust Fund shall begin the payment of benefits on behalf of an operator in any case in which the operator liable for such payments has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary. For claims filed on or after January 1, 1982, the payment of such interim benefits from the fund is limited to benefits accruing after the date of such initial determination.

(b) Except as provided in § 725.415 of this subpart, after the district director has determined that a claimant is eligible for benefits, on the basis of all evidence submitted by a claimant and operator, and has determined that a hearing will be necessary to resolve the claim, the district director shall in writing so inform the parties and direct the operator to begin the payment of benefits to the claimant in accordance with § 725.522. The date on which this writing is sent to the parties shall be considered the date of initial determination of the claim.

(c) If a notified operator refuses to commence payment of a claim within 30 days from the date on which an initial determination is made under this section, benefits shall be paid by the fund to the claimant in accordance with § 725.522, and the operator shall be liable to the fund, if such operator is determined liable for the claim, for all benefits paid by the fund on behalf of such operator, and, in addition, such penalties and interest as are appropriate.

§ 725.421 Referral of a claim to the Office of Administrative Law Judges.

(a) In any claim for which a formal hearing is requested or ordered, and with respect to which the district director has completed development and adjudication without having resolved all contested issues in the claim, the district director shall refer the claim to the Office of Administrative Law Judges for a hearing.

(b) In any case referred to the Office of Administrative Law Judges under this section, the district director shall transmit to that office the following documents, which shall be placed in the record at the hearing subject to the objection of any party:

(1) Copies of the claim form or forms;

(2) Any statement, document, or pleading submitted by a party to the claim;

(3) A copy of the notification to an operator of its possible liability for the claim;

(4) All evidence submitted to the district director under this part;

(5) Any written stipulation of law or fact or stipulation of contested and uncontested issues entered into by the parties;

(6) Any pertinent forms submitted to the district director;

(7) The statement by the district director of contested and uncontested issues in the claim; and

(8) The district director's initial determination of eligibility or other documents necessary to establish the right of the fund to reimbursement, if appropriate. Copies of the transmittal notice shall also be sent to all parties to the claim by regular mail.

(c) A party may at any time request and obtain from the district director copies of documents transmitted to the Office of Administrative Law Judges under paragraph (b) of this section. If the party has previously been provided with such documents, additional copies may be sent to the party upon the payment of a copying fee to be determined by the district director.

§ 725.422 Legal assistance.

The Secretary or his or her designee may, upon request, provide a claimant with legal assistance in processing a claim under the Act. Such assistance may be made available to a claimant in the discretion of the Solicitor of Labor or his or her designee at any time prior to or during the time in which the claim is being adjudicated and shall be furnished without charge to the claimant. Representation of a claimant in adjudicatory proceedings shall not be provided by the Department of Labor unless it is determined by the Solicitor of Labor that such representation is in the best interests of the black lung benefits program. In no event shall representation be provided to a claimant in a claim with respect to which the claimant's interests are adverse to those of the Secretary of Labor or the fund.

§ 725.423 Extensions of time.

Except for the one-year time limit set forth in § 725.411(a)(1)(i) and the 30-day time limit set forth in § 725.419, any of the time periods set forth in this subpart may be extended, for good cause shown, by filing a request for an extension with the district director prior to the expiration of the time period.

Subpart F—Hearings

§ 725.450 Right to a hearing.

Any party to a claim (see § 725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the district director. There shall be no right to a hearing until the processing and adjudication of the claim by the district director has been completed. There shall be no right to a hearing in a claim with respect to which a determination of the claim made by the district director has become final and effective in accordance with this part.

§ 725.451 Request for hearing.

After the completion of proceedings before the district director, or as is otherwise indicated in this part, any party may in writing request a hearing on any contested issue of fact or law (see § 725.419). A district director may on his or her own initiative refer a case for hearing. If a hearing is requested, or if a district director determines that a hearing is necessary to the resolution of any issue, the claim shall be referred to the Chief Administrative Law Judge for a hearing under § 725.421.

§ 725.452 Type of hearing; parties.

(a) A hearing held under this part shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. Except as otherwise provided by this part, all hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 *et seq.*

(b) All parties to a claim shall be permitted to participate fully at a hearing held in connection with such claim.

(c) A full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law. All parties shall be entitled to respond to the motion for summary judgment prior to decision thereon.

(d) If the administrative law judge believes that an oral hearing is not necessary (for any reason other than on motion for summary judgment), the judge shall notify the parties by written order and allow at least 30 days for the parties to respond. The administrative law judge shall hold the oral hearing if any party makes a timely request in response to the order.

§ 725.453 Notice of hearing.

All parties shall be given at least 30 days written notice of the date and place of a hearing and the issues to be resolved at the hearing. Such notice shall be sent to each party or representative by certified mail.

§ 725.454 Time and place of hearing; transfer of cases.

(a) The Chief Administrative Law Judge shall assign a definite time and place for a formal hearing, and shall, where possible, schedule the hearing to be held at a place within 75 miles of the claimant's residence unless an alternate location is requested by the claimant.

(b) If the claimant's residence is not in any State, the Chief Administrative Law Judge may, in his or her discretion, schedule the hearing in the country of the claimant's residence.

(c) The Chief Administrative Law Judge or the administrative law judge assigned the case may in his or her discretion direct that a hearing with respect to a claim shall begin at one location and then later be reconvened at another date and place.

(d) The Chief Administrative Law Judge or administrative law judge assigned the case may change the time and place for a hearing, either on his or her own motion or for good cause shown by a party. The administrative law judge may adjourn or postpone the hearing for good cause shown, at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days notice shall be given to the parties of any change in the time or place of hearing.

(e) The Chief Administrative Law Judge may for good cause shown transfer a case from one administrative law judge to another.

§ 725.455 Hearing procedures; generally.

(a) *General.* The purpose of any hearing conducted under this subpart shall be to resolve contested issues of fact or law. Except as provided in § 725.421(b)(8), any findings or determinations made with respect to a claim by a district director shall not be considered by the administrative law judge.

(b) *Evidence.* The administrative law judge shall at the hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the district director under § 725.421, and such additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

(c) *Procedure.* The conduct of the hearing and the order in which allegations and evidence shall be presented shall be within the discretion of the administrative law judge and shall afford the parties an opportunity for a fair hearing.

(d) *Oral argument and written allegations.* The parties, upon request, may be allowed a reasonable time for the presentation of oral argument at the hearing. Briefs or other written statements or allegations as to facts or law may be filed by any party with the permission of the administrative law judge. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties by the submitting party.

§ 725.456 Introduction of documentary evidence.

(a) All documents transmitted to the Office of Administrative Law Judges under § 725.421 shall be placed into evidence by the administrative law judge, subject to objection by any party.

(b) Documentary evidence which is obtained by any party either after the district director forwards the claim to the Office of Administrative Law Judges or in excess of the limitations contained in § 725.414 shall not be admitted into the hearing record in the absence of extraordinary circumstances (see § 725.414(d)).

(c) Subject to paragraph (b) of this section, documentary evidence which the district director excludes from the record, and the objections to such evidence, may be submitted by the parties to the administrative law judge, who shall independently determine whether the evidence shall be admitted.

(1) If the evidence is admitted, the administrative law judge may, in his or her discretion, remand the claim to the district director for further consideration.

(2) If the evidence is admitted, the administrative law judge shall afford the opposing party or parties the opportunity to develop such additional documentary evidence as is necessary to protect the right of cross-examination.

(d) All medical records and reports submitted by any party shall be considered by the administrative law judge in accordance with the quality standards contained in part 718 of this subchapter.

(e) If the administrative law judge concludes that the complete pulmonary evaluation provided pursuant to § 725.406, or any part thereof, fails to comply with the applicable quality standards, or fails to address the relevant conditions of entitlement (see § 725.202(d)(2) (i) through (iv)) in a manner which permits resolution of the claim, and such evaluation or part thereof was performed by a physician or facility selected by the Office, the administrative law judge shall, in his or her discretion, remand the claim to the district director with instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

§ 725.457 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge and the parties may question witnesses with respect to any matters relevant and material to any contested issue. Any party who intends to present the testimony of an expert witness at a hearing shall so notify all other parties to the claim at least 10 days before the hearing. The failure to give notice of the appearance of an expert witness in accordance with this paragraph, unless notice is waived by all parties, shall preclude the presentation of testimony by such expert witness.

(b) No person shall be required to appear as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his or her place of residence, unless the lawful mileage and witness fee for 1 day's attendance is paid in advance of the hearing date.

(c) No person shall be permitted to testify as a witness at the hearing unless that person:

(1) Prepared documentary evidence which was submitted to the district director pursuant to § 725.414 (a) or (b), or

(2) Was identified as a potential hearing witness while the claim was pending before the district director in accordance with § 725.414(c), or

(3) Prepared documentary evidence which was admitted by the

administrative law judge pursuant to § 725.456.

(d) Notwithstanding paragraph (c)(2) of this section, no physician shall be permitted to testify as a witness at the hearing unless he has prepared a medical report which is entered into evidence. A physician shall be permitted to testify only with respect to the contents of the report or reports he has prepared.

§ 725.458 Depositions; interrogatories.

The testimony of any witness or party may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District or outside the United States), except that at least 30 days prior notice of any deposition shall be given to all parties unless such notice is waived. No post-hearing deposition or interrogatory shall be permitted unless authorized by the administrative law judge upon the motion of a party to the claim. The testimony of any physician which is taken by deposition shall be subject to the limitations on the scope of the testimony contained in § 725.457(d).

§ 725.459 Witness fees.

(a) A witness testifying at a hearing before an administrative law judge, or whose deposition is taken, shall receive the same fees and mileage as witnesses in courts of the United States. If the witness is an expert, he or she shall be entitled to an expert witness fee. Except as provided in paragraphs (b) and (c) of this section, such fees shall be paid by the proponent of the witness.

(b) If the witness' proponent does not intend to call the witness to appear at hearing or deposition, any other party may subpoena the witness for cross-examination. If such witness is required to attend the hearing, give a deposition or respond to interrogatories for cross-examination purposes, the subpoenaing party shall pay the witness' fee. If the witness' proponent does call the witness to testify as part of its case, then cross-examination of that witness by any other party will not shift liability for fees and costs from the proponent to the other party or parties.

(c) If a claimant is determined entitled to benefits, there may be assessed as costs against a responsible operator, if any, or the fund, fees and mileage for necessary witnesses attending the hearing at the request of the claimant. Both the necessity for the witness and the reasonableness of the fees of any expert witness shall be approved by the administrative law judge. The amounts awarded against a responsible operator or the fund as attorney's fees, or costs, fees and mileage for witnesses, shall not in any respect affect or diminish benefits payable under the Act.

§ 725.460 Consolidated hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one claim may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

§ 725.461 Waiver of right to appear and present evidence.

(a) If all parties waive their right to appear before the administrative law judge, it shall not be necessary for the administrative law judge to give notice of, or conduct, an oral hearing. A waiver of the right to appear shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge assigned to hear the case. Such waiver may be withdrawn by a party for good cause shown at any time prior to the mailing of the decision in the claim. Even though all of the parties have filed a waiver of the right to appear, the administrative law judge may, nevertheless, after giving notice of the time and place, conduct a hearing if he or she believes that the personal appearance and testimony of the party or parties would assist in ascertaining the facts in issue in the claim. Where a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant documentary evidence submitted in accordance with this part and any further written stipulations of the parties. Such documents and stipulations shall be considered the evidence of record in the case and the decision shall be based upon such evidence.

(b) Except as provided in § 725.456(a), the unexcused failure of any party to attend a hearing shall constitute a waiver of such party's right to present evidence at the hearing, and may result in a dismissal of the claim (see § 725.465).

§ 725.462 Withdrawal of controversion of issues set for formal hearing; effect.

A party may, on the record, withdraw his or her controversion of any or all issues set for hearing. If a party withdraws his or her controversion of all issues, the administrative law judge shall remand the case to the district director for the issuance of an appropriate order.

§ 725.463 Issues to be resolved at hearing; new issues.

(a) Except as otherwise provided in this section, the hearing shall be confined to those contested issues which have been identified by the district director (see § 725.421) or any other issue raised in writing before the district director.

(b) An administrative law judge may consider a new issue only if such issue was not reasonably ascertainable by the parties at the time the claim was before the district director. Such new issue may be raised upon application of any party, or upon an administrative law judge's own motion, with notice to all parties, at any time after a claim has been transmitted by the district director to the Office of Administrative Law Judges and prior to decision by an administrative law judge. If a new issue is raised, the administrative law judge may, in his or her discretion, either remand the case to the district director with instructions for further proceedings, hear and resolve the new issue, or refuse to consider such new issue.

(c) If a new issue is to be considered by the administrative law judge, a party may, upon request, be granted an appropriate continuance.

§ 725.464 Record of hearing.

All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

§ 725.465 Dismissals for cause.

(a) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim:

(1) Upon the failure of the claimant or his or her representative to attend a hearing without good cause;

(2) Upon the failure of the claimant to comply with a lawful order of the administrative law judge; or

(3) Where there has been a prior final adjudication of the claim or defense to the claim under the provisions of this subchapter and no new evidence is submitted (except as provided in part 727 of this subchapter; see § 725.4(d)).

(b) A party who is not a proper party to the claim (see § 725.360) shall be dismissed by the administrative law judge.

(c) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense or party.

(d) No claim shall be dismissed in a case with respect to which payments prior to final adjudication have been made to the claimant in accordance with § 725.522, except upon the motion or written agreement of the Director.

§ 725.466 Order of dismissal.

(a) An order dismissing a claim shall be served on the parties in accordance with § 725.478. The dismissal of a claim shall have the same effect as a decision and order disposing of the claim on its merits, except as provided in paragraph (b) of this section. Such order shall advise the parties of their right to request review by the Benefits Review Board.

(b) Where the Chief Administrative Law Judge or the presiding administrative law judge issues a decision and order dismissing the claim after a show cause proceeding, the district director shall terminate any payments being made to the claimant under § 725.522, and the order of dismissal shall, if appropriate, order the claimant to reimburse the fund for all benefits paid to the claimant.

§ 725.475 Termination of hearings.

Hearings are officially terminated when all the evidence has been received, witnesses heard, pleadings and briefs submitted to the administrative law judge, and the transcript of the proceedings has been printed and delivered to the administrative law judge.

§ 725.476 Issuance of decision and order.

Within 20 days after the official termination of the hearing (see § 725.475), the administrative law judge shall issue a decision and order with respect to the claim making an award to the claimant, rejecting the claim, or taking such other action as is appropriate.

§ 725.477 Form and contents of decision and order.

(a) Orders adjudicating claims for benefits shall be designated by the term ''decision and order'' or ''supplemental decision and order'' as appropriate, followed by a descriptive phrase designating the particular type of order, such as ''award of benefits,'' ''rejection of claim,'' ''suspension of benefits,'' ''modification of award.''

(b) A decision and order shall contain a statement of the basis of the order, the names of the parties, findings of fact, conclusions of law, and an award, rejection or other appropriate paragraph containing the action of the administrative law judge, his or her signature and the date of issuance. A decision and order shall be based upon the record made before the administrative law judge.

§ 725.478 Filing and service of decision and order.

On the date of issuance of a decision and order under § 725.477, the administrative law judge shall serve the decision and order on all parties to the claim by certified mail. On the same date, the original record of the claim shall be sent to the DCMWC in Washington, D.C. Upon receipt by the DCMWC, the decision and order shall be considered to be filed in the office of the district director, and shall become effective on that date.

§ 725.479 Finality of decisions and orders.

(a) A decision and order shall become effective when filed in the office of the district director (see § 725.478), and unless proceedings for suspension or setting aside of such order are instituted within 30 days of such filing, the order shall become final at the expiration of the 30th day after such filing (see § 725.481).

(b) Any party may, within 30 days after the filing of a decision and order under § 725.478, request a reconsideration of such decision and order by the administrative law judge. The procedures to be followed in the reconsideration of a decision and order shall be determined by the administrative law judge.

(c) The time for appeal to the Benefits Review Board shall be suspended during the consideration of a request for reconsideration. After the administrative law judge has issued and filed a denial of the request for reconsideration, or a revised decision and order in accordance with this part, any dissatisfied party shall have 30 days within which to institute proceedings to set aside the decision and order on reconsideration.

(d) Regardless of any defect in service, actual receipt of the decision is sufficient to commence the 30-day period for requesting reconsideration or appealing the decision.

§ 725.480 Modification of decisions and orders.

A party who is dissatisfied with a decision and order which has become final in accordance with § 725.479 may request a modification of the decision and order if the conditions set forth in § 725.310 are met.

§ 725.481 Right to appeal to the Benefits Review Board.

Any party dissatisfied with a decision and order issued by an administrative law judge may, before the decision and order becomes final (see § 725.479), appeal the decision and order to the Benefits Review Board. A notice of appeal shall be filed with the Board. Proceedings before the Board shall be conducted in accordance with part 802 of this title.

§ 725.482 Judicial review.

(a) Any person adversely affected or aggrieved by a final order of the Benefits Review Board may obtain a review of that order in the U.S. court of appeals for the circuit in which the injury occurred by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless the court finds that irreparable injury would otherwise ensue to an operator or carrier.

(b) The Director, Office of Workers' Compensation Program, as designee of the Secretary of Labor responsible for the administration and enforcement of the Act, shall be considered the proper party to appear and present argument on behalf of the Secretary of Labor in all review proceedings conducted pursuant to this part and the Act, either as petitioner or respondent.

§ 725.483 Costs in proceedings brought without reasonable grounds.

If a United States court having jurisdiction of proceedings regarding any claim or final decision and order, determines that the proceedings have been instituted or continued before such court without reasonable ground, the costs of such proceedings shall be assessed against the party who has so

instituted or continued such proceedings.

Subpart G—Responsible Coal Mine Operators

General Provisions

§ 725.490 Statutory provisions and scope.

(a) One of the major purposes of the black lung benefits amendments of 1977 was to provide a more effective means of transferring the responsibility for the payment of benefits from the Federal government to the coal industry with respect to claims filed under this part. In furtherance of this goal, a Black Lung Disability Trust Fund financed by the coal industry was established by the Black Lung Benefits Revenue Act of 1977. The primary purpose of the Fund is to pay benefits with respect to all claims in which the last coal mine employment of the miner on whose account the claim was filed occurred before January 1, 1970. With respect to most claims in which the miner's last coal mine employment occurred after January 1, 1970, individual coal mine operators will be liable for the payment of benefits. The 1981 amendments to the Act relieved individual coal mine operators from the liability for payment of certain special claims involving coal mine employment on or after January 1, 1970, where the claim was previously denied and subsequently approved under section 435 of the Act. See § 725.496 for a detailed description of these special claims. Where no such operator exists or the operator determined to be liable is in default in any case, the fund shall pay the benefits due and seek reimbursement as is appropriate. See also § 725.420 for the fund's role in the payment of interim benefits in certain contested cases. In addition, the Black Lung Benefits Reform Act of 1977 amended certain provisions affecting the scope of coverage under the Act and describing the effects of particular corporate transactions on the liability of operators.

(b) The provisions of this subpart define the term ''operator'' and prescribe the manner in which the identity of an operator which may be liable for the payment of benefits—referred to herein as a ''responsible operator''—will be determined.

§ 725.491 Operator defined.

(a) For purposes of this part, the term ''operator'' shall include:

(1) Any owner, lessee, or other person who operates, controls, or supervises a coal mine, or any independent contractor performing services or construction at such mine; or

(2) Any other person who:

(i) Employs an individual in the transportation of coal or in coal mine construction in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment (see § 725.202);

(ii) In accordance with the provisions of § 725.492, may be considered a successor operator; or

(iii) Paid wages or a salary, or provided other benefits, to an individual in exchange for work as a miner (see § 725.202).

(b) The terms ''owner,'' ''lessee,'' and ''person'' shall include any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization, as appropriate, except that an officer of a corporation shall not be considered an ''operator'' for purposes of this part. Following the issuance of an order awarding benefits against a corporation that has not secured its liability for benefits in accordance with section 423 of the Act and § 726.4, such order may be enforced against the president, secretary, or treasurer of the corporation in accordance with subpart I of this part.

(c) The term ''independent contractor'' shall include any person who contracts to perform services. Such contractor's status as an operator shall not be contingent upon the amount or percentage of its work or business related to activities in or around a mine, nor upon the number or percentage of its employees engaged in such activities.

(d) For the purposes of determining whether a person is or was an operator that may be found liable for the payment of benefits under this part, there shall be a rebuttable presumption that during the course of an individual's employment with such employer, such individual was regularly and continuously exposed to coal dust during the course of employment. The presumption may be rebutted by a showing that the employee was not exposed to coal dust for significant periods during such employment.

(e) The operation, control, or supervision referred to in paragraph (a)(1) of this section may be exercised directly or indirectly. Thus, for example, where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced, the lessor may be considered an operator. Similarly, any parent entity or other controlling business entity may be considered an operator for purposes of this part, regardless of the nature of its business activities.

(f) Neither the United States, nor any State, nor any instrumentality or agency of the United States or any State, shall be considered an operator.

§ 725.492 Successor operator defined.

(a) Any person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such prior operator, or substantially all of the assets thereof, shall be considered a ''successor operator'' with respect to any miners previously employed by such prior operator.

(b) The following transactions shall also be deemed to create successor operator liability:

(1) If an operator ceases to exist by reason of a reorganization which involves a change in identity, form, or place of business or organization, however effected;

(2) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation; or

(3) If an operator ceases to exist by reason of a sale of substantially all its assets, or as a result of merger, consolidation, or division.

(c) In any case in which a transaction specified in paragraph (b), or substantially similar to a transaction specified in paragraph (b) took place, the resulting entity shall be considered a ''successor operator'' with respect to any miners previously employed by such prior operator.

(d) This section shall not be construed to relieve a prior operator of any liability if such prior operator meets the conditions set forth in § 725.494. If the prior operator does not meet the conditions set forth in § 725.494, the following provisions shall apply:

(1) In any case in which a prior operator transferred a mine or mines, or substantially all of the assets thereof, to a successor operator, or sold its coal mining business or substantially all of the assets thereof, to a successor operator, and then ceased to exist, within the terms of paragraph (b), the successor operator as identified in paragraph (a) shall be primarily liable for the payment of benefits to any miners previously employed by such prior operator.

(2) In any case in which a prior operator transferred mines, or substantially all of the assets thereof, to more than one successor operator, the successor operator that most recently acquired a mine or mines or assets from the prior operator shall be primarily liable for the payment of benefits to any

miners previously employed by such prior operator.

(3) In any case in which a mine or mines, or substantially all the assets thereof, have been transferred more than once, the successor operator that most recently acquired such mine or mines or assets shall be primarily liable for the payment of benefits to any miners previously employed by the original prior operator. If the most recent successor operator does not meet the criteria for a potentially liable operator set forth in § 725.494, the next most recent successor operator shall be liable.

(e) An ''acquisition,'' for purposes of this section, shall include any transaction by which title to the mine or mines, or substantially all of the assets thereof, or the right to extract or prepare coal at such mine or mines, becomes vested in a person other than the prior operator.

§ 725.493 Employment relationship defined.

(a)(1) In determining the identity of a responsible operator under this part, the terms ''employ'' and ''employment'' shall be construed as broadly as possible, and shall include any relationship under which an operator retains the right to direct, control, or supervise the work performed by a miner, or any other relationship under which an operator derives a benefit from the work performed by a miner. Any individuals who participate with one or more persons in the mining of coal, such as owners, proprietors, partners, and joint venturers, whether they are compensated by wages, salaries, piece rates, shares, profits, or by any other means, shall be deemed employees.

(2) The payment of wages or salary shall be prima facie evidence of the right to direct, control, or supervise an individual's work, and the Department intends that where the operator who paid a miner's wages or salary meets the criteria for a potentially liable operator set forth in § 725.494, that operator shall be primarily liable for the payment of any benefits due the miner as a result of such employment. The absence of such payment, however, will not negate the existence of an employment relationship. Thus, the Department also intends that where the person who paid a miner's wages may not be considered a potentially liable operator, any other operator who retained the right to direct, control or supervise the work performed by the miner, or who benefitted from such work, may be considered a potentially liable operator.

(b) This paragraph contains examples of relationships that shall be considered employment relationships for purposes of this part. The list is not intended to be exclusive.

(1) In any case in which an operator may be considered a successor operator, as determined in accordance with § 725.492, any employment with a prior operator shall also be deemed to be employment with the successor operator. In a case in which the miner was not independently employed by the successor operator, the prior operator shall remain primarily liable for the payment of any benefits based on the miner's employment with the prior operator. In a case in which the miner was independently employed by the successor operator after the transaction giving rise to successor operator liability, the successor operator shall be primarily liable for the payment of any benefits.

(2) In any case in which the operator which directed, controlled or supervised the miner is no longer in business and such operator was a subsidiary of a parent company, a member of a joint venture, a partner in a partnership, or was substantially owned or controlled by another business entity, such parent entity or other member of a joint venture or partner or controlling business entity may be considered the employer of any employees of such operator.

(3) In any claim in which the operator which directed, controlled or supervised the miner is a lessee, the lessee shall be considered primarily liable for the claim. The liability of the lessor may be established only after it has been determined that the lessee is unable to provide for the payment of benefits to a successful claimant. In any case involving the liability of a lessor for a claim arising out of employment with a lessee, any determination of lessor liability shall be made on the basis of the facts present in the case in accordance with the following considerations:

(i) Where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced, the lessor shall be considered the employer of any employees of the lessee.

(ii) Where a coal mine is leased to a self-employed operator, the lessor shall be considered the employer of such self-employed operator and its employees if the lease or agreement is executed or renewed after August 18, 1978 and such lease or agreement does not require the lessee to guarantee the payment of benefits which may be required under this part and part 726 of this subchapter.

(iii) Where a lessor previously operated a coal mine, it may be considered an operator with respect to employees of any lessee of such mine, particularly where the leasing arrangement was executed or renewed after August 18, 1978 and does not require the lessee to secure benefits provided by the Act.

(4) A self-employed operator, depending upon the facts of the case, may be considered an employee of any other operator, person, or business entity which substantially controls, supervises, or is financially responsible for the activities of the self-employed operator.

§ 725.494 Potentially liable operators.

An operator may be considered a ''potentially liable operator'' with respect to a claim for benefits under this part if each of the following conditions is met:

(a) The miner's disability or death shall have arisen at least in part out of employment in or around a mine or other facility during a period when the mine or facility was operated by such operator, or by a person with respect to which the operator may be considered a successor operator. For purposes of this section, there shall be a rebuttable presumption that the miner's disability or death arose in whole or in part out of his or her employment with such operator. Unless this presumption is rebutted, the responsible operator shall be liable to pay benefits to the claimant on account of the disability or death of the miner in accordance with this part. A miner's pneumoconiosis, or disability or death therefrom, shall be considered to have arisen in whole or in part out of work in or around a mine if such work caused, contributed to or aggravated the progression or advancement of a miner's loss of ability to perform his or her regular coal mine employment or comparable employment.

(b) The operator, or any person with respect to which the operator may be considered a successor operator, shall have been an operator for any period after June 30, 1973.

(c) The miner shall have been employed by the operator, or any person with respect to which the operator may be considered a successor operator, for a cumulative period of not less than one year (§ 725.101(a)(32)).

(d) The miner's employment with the operator, or any person with respect to which the operator may be considered a successor operator, shall have included at least one working day

(§ 725.101(a)(32)) after December 31, 1969.

(e) The operator shall be capable of assuming its liability for the payment of continuing benefits under this part. An operator will be deemed capable of assuming its liability for a claim if one of the following three conditions is met:

(1) The operator obtained a policy or contract of insurance under section 423 of the Act and part 726 of this subchapter that covers the claim, except that such policy shall not be considered sufficient to establish the operator's capability of assuming liability if the insurance company has been declared insolvent and its obligations for the claim are not otherwise guaranteed;

(2) The operator qualified as a self-insurer under section 423 of the Act and part 726 of this subchapter during the period in which the miner was last employed by the operator, provided that the operator still qualifies as a self-insurer or the security given by the operator pursuant to § 726.104(b) is sufficient to secure the payment of benefits in the event the claim is awarded; or

(3) The operator possesses sufficient assets to secure the payment of benefits in the event the claim is awarded in accordance with § 725.606 of this part.

§ 725.495 Criteria for determining a responsible operator.

(a)(1) The operator responsible for the payment of benefits in a claim adjudicated under this part (the ''responsible operator'') shall be the potentially liable operator, as determined in accordance with § 725.494, that most recently employed the miner.

(2) If more than one potentially liable operator may be deemed to have employed the miner most recently, then the liability for any benefits payable as a result of such employment shall be assigned as follows:

(i) First, to the potentially liable operator that directed, controlled, or supervised the miner;

(ii) Second, to any potentially liable operator that may be considered a successor operator with respect to miners employed by the operator identified in paragraph (a)(2)(i); and

(iii) Third, to any other potentially liable operator which may be deemed to have been the miner's most recent employer pursuant to § 725.493 of this part.

(3) If the operator that most recently employed the miner may not be considered a potentially liable operator, as determined in accordance with § 725.494, the responsible operator shall be the potentially liable operator that next most recently employed the miner. Any potentially liable operator that employed the miner for at least one day after December 31, 1969 may be deemed the responsible operator if no more recent employer may be considered a potentially liable operator.

(b) Except as provided in this section and § 725.408(a)(3) of this part, with respect to the adjudication of the identity of a responsible operator, the Director shall bear the burden of proving that the responsible operator initially found liable for the payment of benefits pursuant to § 725.410 of this part (the ''designated responsible operator'') is a potentially liable operator. It shall be presumed, in the absence of evidence to the contrary, that the designated responsible operator is capable of assuming liability for the payment of benefits in accordance with § 725.494(e) of this part.

(c) The designated responsible operator shall bear the burden of proving either:

(1) that it does not possess sufficient assets to secure the payment of benefits in accordance with § 725.606 of this part; or

(2) that it is not the potentially liable operator that most recently employed the miner. Such proof must include evidence that the miner was employed as a miner after he or she stopped working for the designated responsible operator and that the person by whom he or she was employed is a potentially liable operator within the meaning of § 725.494. In order to establish that a more recent employer is a potentially liable operator, the designated responsible operator must demonstrate that the more recent employer possesses sufficient assets to secure the payment of benefits in accordance with § 725.606 of this part. The designated responsible operator may satisfy its burden by presenting evidence that the owner, if the more recent employer is a sole proprietorship; the partners, if the more recent employer is a partnership; or the president, secretary, and treasurer, if the more recent employer is a corporation that failed to secure the payment of benefits pursuant to part 726 of this subchapter, possess assets sufficient to secure the payment of benefits, provided such assets may be reached in a proceeding brought under subpart I of this part.

(d) In any case referred to the Office of Administrative Law Judges pursuant to § 725.421 in which the responsible operator initially found liable for the payment of benefits pursuant to § 725.410 is not the operator that most recently employed the miner, the record shall contain a statement from the district director explaining the reasons for such initial finding. If the reasons include the most recent employer's failure to meet the conditions of § 725.494(e), the record shall also contain a statement that the Office has searched the files it maintains pursuant to part 726, and that the Office has no record of insurance coverage for that employer, or of authorization to self-insure, that meets the conditions of § 725.494(e)(1) or (e)(2). Such a statement shall be prima facie evidence that the most recent employer is not financially capable of assuming its liability for a claim. In the absence of such a statement, it shall be presumed that the most recent employer is financially capable of assuming its liability for a claim.

§ 725.496 Special claims transferred to the fund.

(a) The 1981 amendments to the Act amended section 422 of the Act and transferred liability for payment of certain special claims from operators and carriers to the fund. These provisions apply to claims which were denied before March 1, 1978, and which have been or will be approved in accordance with section 435 of the Act.

(b) Section 402(i) of the Act defines three classes of denied claims subject to the transfer provisions:

(1) Claims filed with and denied by the Social Security Administration before March 1, 1978;

(2) Claims filed with the Department of Labor in which the claimant was notified by the Department of an administrative or informal denial before March 1, 1977, and in which the claimant did not within one year of such notification either:

(i) Request a hearing; or

(ii) Present additional evidence; or

(iii) Indicate an intention to present additional evidence; or

(iv) Request a modification or reconsideration of the denial on the ground of a change in conditions or because of a mistake in a determination of fact.

(3) Claims filed with the Department of Labor and denied under the law in effect prior to the enactment of the Black Lung Benefits Reform Act of 1977, that is, before March 1, 1978, following a formal hearing before an administrative law judge or administrative review before the Benefits Review Board or review before a United States Court of Appeals.

(c) Where more than one claim was filed with the Social Security Administration and/or the Department of Labor prior to March 1, 1978, by or on behalf of a miner or a surviving

dependent of a miner, unless such claims were required to be merged by the agency's regulations, the procedural history of each such claim must be considered separately to determine whether the claim is subject to the transfer of liability provisions.

(d) For a claim filed with and denied by the Social Security Administration prior to March 1, 1978, to come within the transfer provisions, such claim must have been or must be approved under the provisions of section 435 of the Act. No claim filed with and denied by the Social Security Administration is subject to the transfer of liability provisions unless a request was made by or on behalf of the claimant for review of such denied claim under section 435. Such review must have been requested by the filing of a valid election card or other equivalent document with the Social Security Administration in accordance with section 435(a) and its implementing regulations at 20 CFR 410.700 through 410.707.

(e) Where a claim filed with the Department of Labor prior to March 1, 1977, was subjected to repeated administrative or informal denials, the last such denial issued during the pendency of the claim determines whether the claim is subject to the transfer of liability provisions.

(f) Where a miner's claim comes within the transfer of liability provisions of the 1981 amendments the fund is also liable for the payment of any benefits to which the miner's dependent survivors are entitled after the miner's death. However, if the survivor's entitlement was established on a separate claim not subject to the transfer of liability provisions prior to approval of the miner's claim under section 435, the party responsible for the payment of such survivors' benefits shall not be relieved of that responsibility because the miner's claim was ultimately approved and found subject to the transfer of liability provisions.

§ 725.497 Procedures in special claims transferred to the fund.

(a) *General.* It is the purpose of this section to define procedures to expedite the handling and disposition of claims affected by the benefit liability transfer provisions of Section 205 of the Black Lung Benefits Amendments of 1981.

(b) *Action by the Department.* The OWCP shall, in accordance with the criteria contained in § 725.496, review each claim which is or may be affected by the provisions of Section 205 of the Black Lung Benefits Amendments of 1981. Any party to a claim, adjudication officer, or adjudicative body may request that such a review be conducted and that the record be supplemented with any additional documentation necessary for an informed consideration of the transferability of the claim. Where the issue of the transferability of the claim can not be resolved by agreement of the parties and the evidence of record is not sufficient for a resolution of the issue, the hearing record may be reopened or the case remanded for the development of the additional evidence concerning the procedural history of the claim necessary to such resolution. Such determinations shall be made on an expedited basis.

(c) *Dismissal of operators.* If it is determined that a coal mine operator or insurance carrier which previously participated in the consideration or adjudication of any claim, may no longer be found liable for the payment of benefits to the claimant by reason of section 205 of the Black Lung Benefits Amendments of 1981, such operator or carrier shall be promptly dismissed as a party to the claim. The dismissal of an operator or carrier shall be concluded at the earliest possible time and in no event shall an operator or carrier participate as a necessary party in any claim for which only the fund may be liable.

(d) *Procedure following dismissal of an operator.* After it has been determined that an operator or carrier must be dismissed as a party in any claim in accordance with this section, the Director shall take such action as is authorized by the Act to bring about the proper and expeditious resolution of the claim in light of all relevant medical and other evidence. Action to be taken in this regard by the Director may include, but is not limited to, the assignment of the claim to the Black Lung Disability Trust Fund for the payment of benefits, the reimbursement of benefits previously paid by an operator or carrier if appropriate, the defense of the claim on behalf of the fund, or proceedings authorized by § 725.310.

(e) Any claimant whose claim has been subsequently denied in a modification proceeding will be entitled to expedited review of the modification decision. Where a formal hearing was previously held, the claimant may waive his right to a further hearing and ask that a decision be made on the record of the prior hearing, as supplemented by any additional documentary evidence which the parties wish to introduce and briefs of the parties, if desired. In any case in which the claimant waives his right to a second hearing, a decision and order must be issued within 30 days of the date upon which the parties agree the record has been completed.

Subpart H—Payment of Benefits

General Provisions

§ 725.501 Payment provisions generally.

The provisions of this subpart govern the payment of benefits to claimants whose claims are approved for payment under section 415 and part C of title IV of the Act or approved after review under section 435 of the Act and part 727 of this subchapter (see § 725.4(d)).

§ 725.502 When benefit payments are due; manner of payment.

(a)(1) Except with respect to benefits paid by the fund pursuant to an initial determination issued in accordance with § 725.418 (see § 725.522), benefits under the Act shall be paid when they become due. Benefits shall be considered due after the issuance of an effective order requiring the payment of benefits by a district director, administrative law judge, Benefits Review Board, or court, notwithstanding the pendency of a motion for reconsideration before an administrative law judge or an appeal to the Board or court, except that benefits shall not be considered due where the payment of such benefits has been stayed by the Benefits Review Board or appropriate court. An effective order shall remain in effect unless it is vacated by an administrative law judge on reconsideration, or, upon review under section 21 of the LHWCA, by the Benefits Review Board or an appropriate court, or is superseded by an effective order issued pursuant to § 725.310.

(2) A proposed order issued by a district director pursuant to § 725.418 becomes effective at the expiration of the thirtieth day thereafter if no party timely requests revision of the proposed decision and order or a hearing (see § 725.419). An order issued by an administrative law judge becomes effective when it is filed in the office of the district director (see § 725.479). An order issued by the Benefits Review Board shall become effective when it is issued. An order issued by a court shall become effective in accordance with the rules of the court.

(b)(1) While an effective order requiring the payment of benefits remains in effect, monthly benefits, at the rates set forth in § 725.520, shall be due on the first business day of the month following the month for which the benefits are payable. For example, benefits payable for the month of January shall be due on the first business day in February.

(2) Within 30 days after the issuance of an effective order requiring the payment of benefits, the district director shall compute the amount of benefits payable for periods prior to the effective date of the order, in addition to any interest payable for such periods (see § 725.608), and shall so notify the parties. Any computation made by the district director under this paragraph shall strictly observe the terms of the order. Benefits and interest payable for such periods shall be due on the thirtieth day following issuance of the district director's computation. A copy of the current table of applicable interest rates shall be attached.

(c) Benefits are payable for monthly periods and shall be paid directly to an eligible claimant or his or her representative payee (see § 725.510) beginning with the month during which eligibility begins. Benefit payments shall terminate with the month before the month during which eligibility terminates. If a claimant dies in the first month during which all requirements for eligibility are met, benefits shall be paid for that month.

§ 725.503 Date from which benefits are payable.

(a) In accordance with the provisions of section 6(a) of the Longshore Act as incorporated by section 422(a) of the Act, and except as provided in § 725.504, the provisions of this section shall be applicable in determining the date from which benefits are payable to an eligible claimant for any claim filed after March 31, 1980. Except as provided in paragraph (d), the date from which benefits are payable for any claim approved under part 727 shall be determined in accordance with § 727.302 (see § 725.4(d)).

(b) *Miner's claim*. In the case of a miner who is entitled to benefits, benefits are payable to such miner beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment. Where the evidence does not establish the month of onset, benefits shall be payable to such miner beginning with the month during which the claim was filed. In the case of a miner who filed a claim before January 1, 1982, benefits shall be payable to the miner's eligible survivor (if any) beginning with the month in which the miner died.

(c) *Survivor's claim*. In the case of an eligible survivor, benefits shall be payable beginning with the month of the miner's death, or January 1, 1974, whichever is later.

(d) If a claim is awarded pursuant to section 22 of the Longshore Act and § 725.310, then the date from which benefits are payable shall be determined as follows:

(1) *Mistake in fact*. The provisions of paragraphs (b) or (c) of this section, as applicable, shall govern the determination of the date from which benefits are payable.

(2) *Change in conditions*. Benefits are payable to a miner beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment, provided that no benefits shall be payable for any month prior to the effective date of the most recent denial of the claim by a district director or administrative law judge. Where the evidence does not establish the month of onset, benefits shall be payable to such miner from the month of the earliest evidence the adjudication officer finds supportive of a condition of entitlement (see § 725.202(d)) not previously resolved in favor of the claimant in the denial of benefits the claimant seeks to modify, provided that such evidence was developed after the date upon which the most recent denial by a district director or administrative law judge became effective.

(e) In the case of a claim filed between July 1, 1973, and December 31, 1973, benefits shall be payable as provided by this section, except to the extent prohibited by § 727.303 (see § 725.4(d)).

(f) No benefits shall be payable with respect to a claim filed after December 31, 1973 (a part C claim), for any period of eligibility occurring before January 1, 1974.

(g) Each decision and order awarding benefits shall indicate the month from which benefits are payable to the eligible claimant.

§ 725.504 Payments to a claimant employed as a miner.

(a) In the case of a claimant who is employed as a miner (see § 725.202) at the time of a final determination of such miner's eligibility for benefits, no benefits shall be payable unless:

(1) The miner's eligibility is established under section 411(c)(3) of the Act; or

(2) The miner terminates his or her coal mine employment within 1 year from the date of the final determination of the claim.

(b) If the eligibility of a working miner is established under section 411(c)(3) of the Act, benefits shall be payable as is otherwise provided in this part. If eligibility cannot be established under section 411(c)(3), and the miner continues to be employed as a miner in any capacity for a period of less than 1 year after a final determination of the claim, benefits shall be payable beginning with the month during which the miner ends his or her coal mine employment. If the miner's employment continues for more than 1 year after a final determination of eligibility, such determination shall be considered a denial of benefits on the basis of the miner's continued employment, and the miner may seek benefits only as provided in § 725.310, if applicable, or by filing a new claim under this part. The provisions of Subparts E and F of this part shall be applicable to claims considered under this section as is appropriate.

(c) In any case where the miner returns to coal mine or comparable and gainful work, the payments to such miner shall be suspended and no benefits shall be payable (except as provided in section 411(c)(3) of the Act) for the period during which the miner continues to work. If the miner again terminates employment, the district director may require the miner to submit to further medical examination before authorizing the payment of benefits.

§ 725.505 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent.

§ 725.506 Payment on behalf of another; ''legal guardian'' defined.

Benefits are paid only to the beneficiary, his or her representative payee (see § 725.510) or his or her legal guardian. As used in this section, ''legal guardian'' means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law to assume control of and responsibility for the care of the beneficiary, the management of his or her estate, or both.

§ 725.507 Guardian for minor or incompetent.

An adjudication officer may require that a legal guardian or representative be appointed to receive benefit payments payable to any person who is mentally incompetent or a minor and to exercise the powers granted to, or to perform the duties otherwise required of such person under the Act.

§ 725.510 Representative payee.

(a) If the district director determines that the best interests of a beneficiary are served thereby, the district director may certify the payment of such beneficiary's benefits to a representative payee.

(b) Before any amount shall be certified for payment to any

representative payee for or on behalf of a beneficiary, such representative payee shall submit to the district director such evidence as may be required of his or her relationship to, or his or her responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his or her authority to receive such a payment. The district director may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If a person requesting representative payee status fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him or her on behalf of the beneficiary unless the required evidence is thereafter submitted.

(c) All benefit payments made to a representative payee shall be available only for the use and benefit of the beneficiary, as defined in § 725.511.

§ 725.511 Use and benefit defined.

(a) Payments certified to a representative payee shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—i.e., to replace current income lost because of the disability of the beneficiary. Where a beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution and charges made for the current and foreseeable needs of the beneficiary which are not met by the institution.

(b) Payments certified to a representative payee which are not needed for the current maintenance of the beneficiary, except as they may be used under § 725.512, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds which shall be purchased in accordance with applicable regulations of the U.S. Treasury Department (31 CFR part 315). Surplus funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

Name of beneficiary _____
by (Name of representative payee)
representative payee,
or (Name of beneficiary)
by (Name of representative payee) trustee,

U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows: (Name of beneficiary) (Social Security No.), for whom (Name of payee) is representative payee for black lung benefits.

§ 725.512 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 725.513 Accountability; transfer.

(a) The district director may require a representative payee to submit periodic reports including a full accounting of the use of all benefit payments certified to a representative payee. If a requested report or accounting is not submitted within the time allowed, the district director shall terminate the certification of the representative payee and thereafter payments shall be made directly to the beneficiary. A certification which is terminated under this section may be reinstated for good cause, provided that all required reports are supplied to the district director.

(b) A representative payee who has conserved or invested funds from payments under this part shall, upon the direction of the district director, transfer any such funds (including interest) to a successor payee appointed by the district director or, at the option of the district director, shall transfer such funds to the Office for recertification to a successor payee or the beneficiary.

§ 725.514 Certification to dependent of augmentation portion of benefit.

(a) If the basic benefit of a miner or of a surviving spouse is augmented because of one or more dependents, and it appears to the district director that the best interests of such dependent would be served thereby, or that the augmented benefit is not being used for the use and benefit (as defined in this subpart) of the augmentee, the district director may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly, or to a legal guardian or a representative payee for the use and benefit of such dependent.

(b) Any request to the district director to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section shall be in writing on such form and in accordance with such instructions as are prescribed by the Office.

(c) The district director shall specify the terms and conditions of any certification authorized under this section and may terminate any such certification where appropriate.

(d) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment, except that such payment shall not be construed to abridge the rights of any party to recoup any overpayment made.

§ 725.515 Assignment and exemption from claims of creditors.

Except as provided by the Act and this part, no assignment, release, or commutation of benefits due or payable under this part shall be valid, and all benefits shall be exempt from claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

Benefit Rates

§ 725.520 Computation of benefits.

(a) *Basic rate.* The amount of benefits payable to a beneficiary for a month is determined, in the first instance, by computing the ''basic rate.'' The basic rate is equal to 37½ percent of the monthly pay rate for Federal employees in GS–2, step 1. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12; and

(3) Ascertaining the basic rate under the Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.375 (that is, by 37½ percent).

(b) *Basic benefit.* When a miner or surviving spouse is entitled to benefits for a month for which he or she has no dependents who qualify under this part and when a surviving child of a miner or spouse, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the

amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next high multiple of 10 cents). This amount is referred to as the ''basic benefit.''

(c) *Augmented benefit.* (1) When a miner or surviving spouse is entitled to benefits for a month for which he or she has one or more dependents who qualify under this part, the amount of benefits to which such miner or surviving spouse is entitled is increased. This increase is referred to as an ''augmentation.''

(2) The benefits of a miner or surviving spouse are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in this part, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in this part, except in the case of a child who qualifies as a dependent because he or she is a student. In the latter case, such benefits continue to be augmented through the month before the first month during no part of which he or she qualifies as a student.

(3) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefits.* As used in this section, ''survivor'' means a surviving child of a miner or surviving spouse, or a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under this part.

(e) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(3) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

(f) *Eligibility based on the coal mine employment of more than one miner.* Where an individual, for any month, is entitled (and/or qualifies as a dependent for purposes of augmentation of benefits) based on the disability or death due to pneumoconiosis arising out of the coal mine employment of more than one miner, the benefit payable to or on behalf of such individual shall be at a rate equal to the highest rate of benefits for which entitlement is established by reason of eligibility as a beneficiary, or by reason of his or her qualification as a dependent for augmentation of benefit purposes.

§ 725.521 Commutation of payments; lump sum awards.

(a) Whenever the district director determines that it is in the interest of justice, the liability for benefits or any part thereof as determined by a final adjudication, may, with the approval of the Director, be discharged by the payment of a lump sum equal to the present value of future benefit payments commuted, computed at 4 percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the district director in the manner prescribed by the district director. If the district director determines that an award of a lump sum payment of such benefits would be in the interest of justice, he or she shall refer such application, together with the reasons in support of such determination, to the Director for consideration.

(c) The Director shall, in his or her discretion, grant or deny the application for commutation of payments. Such decision may be appealed to the Benefits Review Board.

(d) The computation of all commutations of such benefits shall be made by the OWCP. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump sum award, the probability of the death of the disabled miner and/or other persons entitled to benefits before the expiration of the period during which he or she is entitled to benefits, shall be determined in accordance with the most current United States Life Tables, as developed by the Department of Health, Education, and Welfare, and the probability of the remarriage of a surviving spouse shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(f) In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall be notified of and given an opportunity to participate in the proceedings to determine whether a lump sum award shall be made. Such operator or carrier shall, in the event a lump sum award is made, tender full and prompt payment of such award to the claimant as though such award were a final payment of monthly benefits. Except as provided in paragraph (g) of this section, such lump sum award shall forever discharge such operator or carrier from its responsibility to make monthly benefit payments under the Act to the person who has requested such lump-sum award. In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall not be liable for any portion of a commuted or lump sum award predicated upon benefits due any claimant prior to January 1, 1974.

(g) In the event a lump-sum award is approved under this section, such award shall not operate to discharge an operator carrier, or the fund from any responsibility imposed by the Act for the payment of medical benefits to an eligible miner.

§ 725.522 Payments prior to final adjudication.

(a) If an operator or carrier fails or refuses to commence the payment of benefits within 30 days of issuance of an initial determination of eligibility by the district director (see § 725.420), or fails or refuses to commence the payment of any benefits due pursuant to an effective order by a district director, administrative law judge, Benefits Review Board, or court, the fund shall commence the payment of such benefits and shall continue such payments as appropriate. In the event that the fund undertakes the payment of benefits on behalf of an operator or carrier, the provisions of §§ 725.601 through 725.609 shall be applicable to such operator or carrier.

(b) If benefit payments are commenced prior to the final adjudication of the claim and it is later determined by an administrative law judge, the Board, or court that the claimant was ineligible to receive such payments, such payments shall be considered overpayments pursuant to § 725.540 of this subpart and may be recovered in accordance with the provisions of this subpart.

Special Provisions for Operator Payments

§ 725.530 Operator payments; generally.

(a) Benefits payable by an operator or carrier pursuant to an effective order issued by a district director, administrative law judge, Benefits Review Board, or court, or by an operator that has agreed that it is liable for the payment of benefits to a claimant, shall be paid by the operator

or carrier immediately when they become due (see § 725.502(b)). An operator that fails to pay any benefits that are due, with interest, shall be considered in default with respect to those benefits, and the provisions of § 725.605 of this part shall be applicable. In addition, a claimant who does not receive any benefits within 10 days of the date they become due is entitled to additional compensation equal to twenty percent of those benefits (see § 725.607). Arrangements for the payment of medical costs shall be made by such operator or carrier in accordance with the provisions of subpart J of this part.

(b) Benefit payments made by an operator or carrier shall be made directly to the person entitled thereto or a representative payee if authorized by the district director. The payment of a claimant's attorney's fee, if any is awarded, shall be made directly to such attorney. Reimbursement of the fund, including interest, shall be paid directly to the Secretary on behalf of the fund.

§ 725.531 Receipt for payment.

Any individual receiving benefits under the Act in his or her own right, or as a representative payee, or as the duly appointed agent for the estate of a deceased beneficiary, shall execute receipts for benefits paid by any operator which shall be produced by such operator for inspection whenever the district director requires. A canceled check shall be considered adequate receipt of payment for purposes of this section. No operator or carrier shall be required to retain receipts for payments made for more than 5 years after the date on which such receipt was executed.

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(Pub. L. No. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

§ 725.532 Suspension, reduction, or termination of payments.

(a) No suspension, reduction, or termination in the payment of benefits is permitted unless authorized by the district director, administrative law judge, Board, or court. No suspension, reduction, or termination shall be authorized except upon the occurrence of an event which terminates a claimant's eligibility for benefits (see subpart B of this part) or as is otherwise provided in subpart C of this part, §§ 725.306 and 725.310, or this subpart (see also §§ 725.533 through 725.546).

(b) Any unauthorized suspension in the payment of benefits by an operator or carrier shall be treated as provided in subpart I.

(c) Unless suspension, reduction, or termination of benefits payments is required by an administrative law judge, the Benefits Review Board or a court, the district director, after receiving notification of the occurrence of an event that would require the suspension, reduction, or termination of benefits, shall follow the procedures for the determination of claims set forth in subparts E and F.

Increases and Reductions of Benefits

§ 725.533 Modification of benefits amounts; general.

(a) Under certain circumstances the amount of monthly benefits as computed in § 725.520 or lump-sum award (§ 725.521) shall be modified to determine the amount actually to be paid to a beneficiary. With respect to any benefits payable for all periods of eligibility after January 1, 1974, a reduction of the amount of benefits payable shall be required on account of:

(1) Any compensation or benefits received under any State workers' compensation law because of death or partial or total disability due to pneumoconiosis; or

(2) Any compensation or benefits received under or pursuant to any Federal law including part B of title IV of the Act because of death or partial or total disability due to pneumoconiosis; or

(3) In the case of benefits to a parent, brother, or sister as a result of a claim filed at any time or benefits payable on a miner's claim which was filed on or after January 1, 1982, the excess earnings from wages and from net earnings from self-employment (see § 410.530 of this title) of such parent, brother, sister, or miner, respectively; or

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such claim is effective for a payment during the month of filing, or a dependent qualifies under this part for an augmentation portion of a benefit of a miner or widow for a period in which another dependent has previously qualified for an augmentation.

(b) With respect to periods of eligibility occurring after June 30, 1973, but before January 1, 1974, benefits shall be reduced in months of eligibility occurring during such period only:

(1) By an amount equal to any payment received under the workers' compensation, unemployment compensation, or disability insurance laws of any State on account of the disability or death of the miner due to pneumoconiosis; and

(2) On account of excess earnings under section 203 (b) through (l) of the Social Security Act; and

(3) For failure to report earnings from work in employment and self-employment within the prescribed period of time; and

(4) By reason of the fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a month prior to the month of filing, or a dependent qualifies under this part or this chapter for an augmentation portion of a benefit of a miner or surviving spouse for a month for which another dependent has previously qualified for an augmentation.

(c) With respect to claims filed between July 1 and December 31, 1973, and paid for periods of eligibility occurring during such period, there shall be no retroactive adjustment of benefits paid in light of the amendments enacted by the Black Lung Benefits Reform Act of 1977 insofar as such amendments affect events which cause a reduction in benefits.

(d) An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 725.540 through 725.546).

(e) A suspension of a beneficiary's monthly benefits may be required when the Office has information indicating that reductions on account of excess earnings may reasonably be expected.

(f) Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after the applicable computations, augmentations, and reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents, a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

(g) Any individual entitled to a benefit, who is aware of any circumstances which could affect entitlement to benefits, eligibility for payment, or the amount of benefits, or result in the termination, suspension, or reduction of benefits, shall promptly report these circumstances to the Office. The Office may at any time require an individual receiving, or claiming entitlement to, benefits, either on his or her own behalf or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure of an individual to submit any such report or statement, properly executed, to the Office shall

subject such benefit to reductions, suspension, or termination as the case may be.

§ 725.534 Reduction of State benefits.

No benefits under section 415 of part B of title IV of the Act shall be payable to the residents of a State which, after December 31, 1969, reduces the benefits payable to persons eligible to receive benefits under section 415 of the Act under State laws applicable to its general work force with regard to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

§ 725.535 Reductions; receipt of State or Federal benefit.

(a) As used in this section the term ''State or Federal benefit'' means a payment to an individual on account of total or partial disability or death due to pneumoconiosis only under State or Federal laws relating to workers' compensation. With respect to a claim for which benefits are payable for any month between July 1 and December 31, 1973, ''State benefit'' means a payment to a beneficiary made on account of disability or death due to pneumoconiosis under State laws relating to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for any month are reduced (but not below zero) by an amount equal to any payments of State or Federal benefits received by such beneficiary for such month.

(c) Where a State or Federal benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitution for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State or Federal benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙ to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with this claim for State or Federal benefits (defined in paragraph (a) of this section) are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consistent with State or Federal Law. Such medical, legal, or related expenses may be evidenced by the State or Federal benefit awards, compromise agreement, or court order in the State or Federal benefit proceedings, or by such other evidence as the Office may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable. Such expenses shall not be excluded unless established by evidence as required by the Office.

§ 725.536 Reductions; excess earnings.

In the case of a surviving parent, brother, or sister, whose claim was filed at any time, or of a miner whose claim was filed on or after January 1, 1982, benefit payments are reduced as appropriate by an amount equal to the deduction which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402) (see §§ 404.428 through 404.456 of this title).

§ 725.537 Reductions; retroactive effect of an additional claim for benefits.

Except as provided in § 725.212(b), beginning with the month in which a person other than a miner files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

§ 725.538 Reductions; effect of augmentation of benefits based on subsequent qualification of individual.

(a) Ordinarily, a written request that the benefits of a miner or surviving spouse be augmented on account of a qualified dependent is made as part of the claim for benefits. However, it may also be made thereafter.

(b) In the latter case, beginning with the month in which such a request is filed on account of a particular dependent and in which such dependent qualifies for augmentation purposes under this part, the augmented benefits attributable to other qualified dependents (with respect to the same miner or surviving spouse), if any, are adjusted downward, if necessary, so that the permissible amount of augmented benefits (the maximum amount for the number of dependents involved) will not be exceeded.

(c) Where, based on the entitlement to benefits of a miner or surviving spouse, a dependent would have qualified for augmentation purposes for a prior month of such miner's or surviving spouse's entitlement had such request been filed in such prior month, such request is effective for such prior month. For any month before the month of filing such request, however, otherwise correct benefits previously certified by the Office may not be changed. Rather the amount of the augmented benefit attributable to the dependent filing such request in the later month is reduced for each month of the retroactive period to the extent that may be necessary. This means that for each month of the retroactive period, the amount payable to the dependent filing the later augmentation request is the difference, if any, between:

(1) The total amount of augmented benefits certified for payment for other dependents for that month, and

(2) The permissible amount of augmented benefits (the maximum amount for the number of dependents involved) payable for the month for all dependents, including the dependent filing later.

§ 725.539 More than one reduction event.

If a reduction for receipt of State or Federal benefits and a reduction on account of excess earnings are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State or Federal benefits, and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

Overpayments; Underpayments

§ 725.540 Overpayments.

(a) *General.* As used in this subpart, the term ''overpayment'' includes:

(1) Payment where no amount is payable under this part;

(2) Payment in excess of the amount payable under this part;

(3) A payment under this part which has not been reduced by the amounts required by the Act (see § 725.533);

(4) A payment under this part made to a resident of a State whose residents are not entitled to benefits (see §§ 725.402 and 725.403);

(5) Payment resulting from failure to terminate benefits to an individual no longer entitled thereto;

(6) Duplicate benefits paid to a claimant on account of concurrent eligibility under this part and parts 410 or 727 (see § 725.4(d)) of this title or as provided in § 725.309.

(b) *Overpaid beneficiary is living.* If the beneficiary to whom an overpayment was made is living at the time of a determination of such overpayment, is entitled to benefits at the time of the overpayment, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish, material information; and

(3) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not unreasonably extend the period of adjustment.

(d) *Overpaid beneficiary dies before adjustment.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 725.541 Notice of waiver of adjustment or recovery of overpayment.

Whenever a determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual, to any other individual against whom adjustment or recovery of the overpayment is to be effected, and to any operator or carrier which may be liable to such overpaid individual.

§ 725.542 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery of an overpayment in any case where an incorrect payment has been made with respect to an individual:

(a) Who is without fault, and where

(b) Adjustment or recovery would either:

(1) Defeat the purpose of title IV of the Act, or

(2) Be against equity and good conscience.

§ 725.543 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in § 725.542 shall be the same as those applied by the Social Security Administration under §§ 410.561 through 410.561h of this title.

§ 725.544 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.* In accordance with the Federal Claims Collection Act of 1966 and applicable regulations, claims by the Office against an individual for recovery of an overpayment under this part not exceeding the sum of $ 20,000, exclusive of interest, may be compromised, or collection suspended or terminated, where such individual or his or her estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.* (1) In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office, if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having any interest in the claim.

(2) In any case where the overpaid individual is deceased:

(i) A claim for overpayment in excess of $5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual; and

(ii) A claim for overpayment, regardless of the amount, will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under this part, the Office shall consider the individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office shall consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under this part would not justify enforced collection proceedings for the full amount of the claim, or where there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount may be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under this part shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings, giving due consideration to the exemption available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.* Payment of the amount the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under this part shall be made within the time and in the manner set by the Office. A claim for the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his or her estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

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(Pub. L. No. 96–511)

§ 725.545 Underpayments.

(a) *General.* As used in this subpart, the term ''underpayment'' includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits is payable.

(b) *Underpaid individual is living.* If an individual to whom an underpayment was made is living, the deficit represented by such underpayment shall be paid to such individual either in a single payment (if he or she is not entitled to a monthly benefit or if a single payment is requested by the claimant in writing) or by increasing one or more monthly benefit payments to which such individual becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment was made dies before receiving payment of the deficit or negotiating the check or checks representing payment of the deficit, such payment shall be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death; or

(ii) In the case of a deceased miner, entitled for the month of death to black lung benefits as his or her surviving spouse or surviving divorced spouse.

(2) In the case of a deceased miner or spouse his or her child entitled to benefits as the surviving child of such miner or surviving spouse for the month in which such miner or spouse died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) *Deceased beneficiary.* In the event that a person, who is otherwise qualified to receive payments as the result of a deficit caused by an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his or her share of the underpayment shall be divided among the remaining living person(s) in the same order or priority. In the event that there is (are) no other such person(s), the underpayment shall be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.* The term ''legal representative,'' for the purpose of qualifying for receipt of an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

(1) A person who qualifies under a State's ''small estate'' statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority under applicable law to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of ''good acquittance.''* A person is considered to give the Office ''good acquittance'' when payment to that person will release the Office from further liability for such payment.

§ 725.546 Relation to provisions for reductions or increases.

The amount of an overpayment or an underpayment is the difference between the amount to which the beneficiary was actually entitled and the amount paid. Overpayment and underpayment simultaneously outstanding against the same beneficiary shall first be adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 725.547 Applicability of overpayment and underpayment provisions to operator or carrier.

(a) The provisions of this subpart relating to overpayments and underpayments shall be applicable to overpayments and underpayments made by responsible operators or their insurance carriers, as appropriate.

(b) No operator or carrier may recover, or make an adjustment of, an overpayment without prior application to, and approval by, the Office which shall exercise full supervisory authority over the recovery or adjustment of all overpayments.

(c) In any case involving either overpayments or underpayments, the Office may take any necessary action, and district directors may issue appropriate orders to protect the rights of the parties.

(d) Disputes arising out of orders so issued shall be resolved by the procedures set out in subpart F of this part.

Subpart I—Enforcement of Liability; Reports

§ 725.601 Enforcement generally.

(a) The Act, together with certain incorporated provisions from the Longshoremen's and Harbor Workers' Compensation Act, contains a number of provisions which subject an operator or other employer, claimants and others to penalties for failure to comply with certain provisions of the Act, or failure to commence and continue prompt periodic payments to a beneficiary.

(b) It is the policy and intent of the Department to vigorously enforce the provisions of this part through the use of the remedies provided by the Act. Accordingly, if an operator refuses to pay benefits with respect to a claim for which the operator has been adjudicated liable, the Director shall invoke and execute the lien on the property of the operator as described in § 725.603. Enforcement of this lien shall be pursued in an appropriate U.S. district court. If the Director determines that the remedy provided by § 725.603 may not be sufficient to guarantee the continued compliance with the terms of an award or awards against the operator, the Director shall in addition seek an injunction in the U.S. district court to prohibit future noncompliance by the operator and such other relief as the court considers appropriate (see § 725.604). If an operator unlawfully suspends or terminates the payment of benefits to a claimant, the district director shall declare the award in default and proceed in accordance with § 725.605. In all cases payments in

addition to compensation (see § 725.607) and interest (see § 725.608) shall be sought by the Director or awarded by the district director.

(c) In certain instances the remedies provided by the Act are concurrent; that is, more than one remedy might be appropriate in any given case. In such a case, the Director shall select the remedy or remedies appropriate for the enforcement action. In making this selection, the Director shall consider the best interests of the claimant as well as those of the fund.

§ 725.602 Reimbursement of the fund.

(a) In any case in which the fund has paid benefits, including medical benefits, on behalf of an operator or other employer which is determined liable therefore, or liable for a part thereof, such operator or other employer shall simultaneously with the first payment of benefits made to the beneficiary, reimburse the fund (with interest) for the full amount of all benefit payments made by the fund with respect to the claim.

(b) In any case where benefit payments have been made by the fund, the fund shall be subrogated to the rights of the beneficiary. The Secretary of Labor may, as appropriate, exercise such subrogation rights.

§ 725.603 Payments by the fund on behalf of an operator; liens.

(a) If an amount is paid out of the fund to an individual entitled to benefits under this part or part 727 of this subchapter (see § 725.4(d)) on behalf of an operator or other employer which is or was required to pay or secure the payment of all or a portion of such amount (see § 725.522), the operator or other employer shall be liable to the United States for repayment to the fund of the amount of benefits properly attributable to such operator or other employer.

(b) If an operator or other employer liable to the fund refuses to pay, after demand, the amount of such liability, there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator or other employer. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(c)(1) Except as otherwise provided under this section, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954.

(2) In the case of a bankruptcy or insolvency proceeding, the lien imposed under this section shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

(3) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under this section and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of the section, notice of the lien imposed hereunder shall be filed in the same manner as under section 6323(f) (disregarding paragraph (4) thereof) and (g) of the Internal Revenue Code of 1954.

(5) In any case where there has been a refusal or neglect to pay the liability imposed under this section, the Secretary of Labor may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which it has any right, title, or interest, to the payment of such liability.

(6) The liability imposed by this paragraph may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date upon which the liability was finally determined, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. This period of limitation shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

§ 725.604 Enforcement of final awards.

Notwithstanding the provisions of § 725.603, if an operator or other employer or its officers or agents fails to comply with an order awarding benefits that has become final, any beneficiary of such award or the district director may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the U.S. District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such operator or other employer or its officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such operator or other employer and its officers or agents compliance with the order.

§ 725.605 Defaults.

(a) Except as is otherwise provided in this part, no suspension, termination or other failure to pay benefits awarded to a claimant is permitted. If an employer found liable for the payment of such benefits fails to make such payments within 30 days after any date on which such benefits are due and payable, the person to whom such benefits are payable may, within one year after such default, make application to the district director for a supplementary order declaring the amount of the default.

(b) If after investigation, notice and hearing as provided in subparts E and F of this part, a default is found, the district director or the administrative law judge, if a hearing is requested, shall issue a supplementary order declaring the amount of the default, if any. In cases where a lump-sum award has been made, if the payment in default is an installment, the district director or administrative law judge, may, in his or her discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the operator has its principal place of business or maintains an office or for the judicial district in which the injury occurred. In case such principal place of business or office is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the U.S. District Court for the District of Columbia. Such supplementary order shall be final and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefits order upon presentation of a certified copy thereof to the court.

(c) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the district director shall make payment from the fund, and in addition, provide any necessary medical, surgical, and other treatment required by subpart J of this part. A defaulting employer shall be liable to the fund for payment of the amounts paid by the fund under this section; and for the purpose of enforcing this liability, the fund shall be subrogated to all the rights of the person receiving such payments or benefits.

§ 725.606 Security for the payment of benefits.

(a) Following the issuance of an effective order by a district director (see § 725.418), administrative law judge (see § 725.479), Benefits Review Board, or court that requires the payment of benefits by an operator that has failed to secure the payment of benefits in accordance with section 423 of the Act and § 726.4 of this subchapter, or by a coal mine construction or transportation employer, the Director may request that the operator secure the payment of all benefits ultimately payable on the claim. Such operator or other employer shall thereafter immediately secure the payment of benefits in accordance with the provisions of this section, and provide proof of such security to the Director. Such security may take the form of an indemnity bond, a deposit of cash or negotiable securities in compliance with §§ 726.106(c) and 726.107 of this subchapter, or any other form acceptable to the Director.

(b) The amount of security initially required by this section shall be determined as follows:

(1) In a case involving an operator subject to section 423 of the Act and § 726.4 of this subchapter, the amount of the security shall not be less than $175,000, and may be a higher amount as determined by the Director, taking into account the life expectancies of the claimant and any dependents using the most recent life expectancy tables published by the Social Security Administration; or

(2) In a case involving a coal mine construction or transportation employer, the amount of the security shall be determined by the Director, taking into account the life expectancies of the claimant and any dependents using the most recent life expectancy tables published by the Social Security Administration.

(c) If the operator or other employer fails to provide proof of such security to the Director within 30 days of its receipt of the Director's request to secure the payment of benefits issued under paragraph (a), the appropriate adjudication officer shall issue an order requiring the operator or other employer to make a deposit of negotiable securities with a Federal Reserve Bank in the amount required by paragraph (a). Such securities shall comply with the requirements of §§ 726.106(c) and 726.107 of this subchapter. In a case in which the effective order was issued by a district director, the district director shall be considered the appropriate adjudication officer. In any other case, the administrative law judge who issued the most recent decision in the case, or such other administrative law judge as the Chief Administrative Law Judge shall designate, shall be considered the appropriate adjudication officer, and shall issue an order under this paragraph on motion of the Director. The administrative law judge shall have jurisdiction to issue an order under this paragraph notwithstanding the pendency of an appeal of the award of benefits with the Benefits Review Board or court.

(d) An order issued under this section shall be considered effective when issued. Disputes regarding such orders shall be resolved in accordance with subpart F of this part.

(e) Notwithstanding any further review of the order in accordance with subpart F of this part, if an operator or other employer subject to an order issued under this section fails to comply with such order, the appropriate adjudication officer shall certify such non-compliance to the appropriate United States district court in accordance with § 725.351(c).

(f) Security posted in accordance with this section may be used to make payment of benefits that become due with respect to the claim in accordance with § 725.502. In the event that either the order awarding compensation or the order issued under this section is vacated or reversed, the operator or other employer may apply to the appropriate adjudication officer for an order authorizing the return of any amounts deposited with the United States Treasurer and not yet disbursed, and such application shall be granted. If at any time the Director determines that additional security is required beyond that initially required by paragraph (b), he may request the operator or other employer to increase the amount. Such request shall be treated as if it were issued under paragraph (a) of this section.

(g) If a coal mine construction or transportation employer fails to comply with an order issued under paragraph (c), and such employer is a corporation, the provisions of § 725.609 shall be applicable to the president, secretary, and treasurer of such employer.

§ 725.607 Payments in addition to compensation.

(a) If any benefits payable under the terms of an award by a district director (§ 725.419(d)), a decision and order filed and served by an administrative law judge (§ 725.478), or a decision filed by the Board or a U.S. court of appeals, are not paid by an operator or other employer ordered to make such payments within 10 days after such payments become due, there shall be added to such unpaid benefits an amount equal to 20 percent thereof, which shall be paid to the claimant at the same time as, but in addition to, such benefits, unless review of the order making such award is sought as provided in section 21 of the LHWCA and an order staying payments has been issued.

(b) If, on account of an operator's or other employer's failure to pay benefits as provided in paragraph (a) of this section, benefit payments are made by the fund, the eligible claimant shall nevertheless be entitled to receive such additional compensation to which he or she may be eligible under paragraph (a) of this section, with respect to all amounts paid by the fund on behalf of such operator or other employer.

(c) The fund shall not be liable for payments in addition to compensation under any circumstances.

§ 725.608 Interest.

(a)(1) In any case in which an operator fails to pay benefits that are due (§ 725.502), the beneficiary shall also be entitled to simple annual interest, computed from the date on which the benefits were due. The interest shall be computed through the date on which the operator paid the benefits, except that the beneficiary shall not be entitled to interest for any period following the date on which the beneficiary received payment of any benefits from the fund pursuant to § 725.522.

(2) In any case in which an operator is liable for the payment of retroactive benefits, the beneficiary shall also be entitled to simple annual interest on such benefits, computed from 30 days after the date of the first determination that such an award should be made. The first determination that such an award should be made may be a district director's initial determination of entitlement, an award made by an administrative law judge or a decision by the Board or a court, whichever is the first such determination of entitlement made upon the claim.

(3) In any case in which an operator is liable for the payment of additional compensation (§ 725.607), the beneficiary shall also be entitled to simple annual interest computed from the date upon which the beneficiary's right to additional compensation first arose.

(4) In any case in which an operator is liable for the payment of medical benefits, the beneficiary or medical provider to whom such benefits are owed shall also be entitled to simple annual interest, computed from the date upon which the services were rendered, or from 30 days after the date of the first determination that the miner is generally entitled to medical benefits, whichever is later. The first determination that the miner is generally entitled to medical benefits may be a district director's initial determination of entitlement, an award made by an administrative law judge or a decision by the Board or a court, whichever is the first such determination of general entitlement made upon the claim. The interest shall be computed through the date on which the operator paid the benefits, except that the beneficiary shall not be entitled to interest for any period following the date on which the beneficiary received payment of any benefits from the fund pursuant to § 725.522 or subpart I of this part.

(b) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits or an initial determination of eligibility made by the district director and the fund undertakes such payments, such operator or other employer shall be liable to the fund for simple annual interest on all payments made by the fund for which such operator is determined liable, computed from the first date on which such benefits are paid by the fund, in addition to such operator's liability to the fund, as is otherwise provided in this part. Interest payments owed pursuant to this paragraph shall be paid directly to the fund.

(c) In any case in which an operator is liable for the payment of an attorney's fee pursuant to § 725.367, and the attorney's fee is payable because the award of benefits has become final, the attorney shall also be entitled to simple annual interest, computed from the date on which the attorney's fee was awarded. The interest shall be computed through the date on which the operator paid the attorney's fee.

(d) The rates of interest applicable to paragraphs (a), (b), and (c) of this section shall be computed as follows:

(1) For all amounts outstanding prior to January 1, 1982, the rate shall be 6% simple annual interest;

(2) For all amounts outstanding for any period during calendar year 1982, the rate shall be 15% simple annual interest; and

(3) For all amounts outstanding during any period after calendar year 1982, the rate shall be simple annual interest at the rate established by section 6621 of the Internal Revenue Code of 1954 which is in effect for such period.

(e) The fund shall not be liable for the payment of interest under any circumstances, other than the payment of interest on advances from the United States Treasury as provided by section 9501(c) of the Internal Revenue Code of 1954.

§ 725.609 Enforcement against other persons.

In any case in which an award of benefits creates obligations on the part of an operator or insurer that may be enforced under the provisions of this subpart, such obligations may also be enforced, in the discretion of the Secretary or district director, as follows:

(a) In a case in which the operator is a sole proprietorship or partnership, against any person who owned, or was a partner in, such operator during any period commencing on or after the date on which the miner was last employed by the operator;

(b) In a case in which the operator is a corporation that failed to secure its liability for benefits in accordance with section 423 of the Act and § 726.4, and the operator has not secured its liability for the claim in accordance with § 725.606, against any person who served as the president, secretary, or treasurer of such corporation during any period commencing on or after the date on which the miner was last employed by the operator;

(c) In a case in which the operator is no longer capable of assuming its liability for the payment of benefits (§ 725.494(e)), against any operator which became a successor operator with respect to the liable operator (§ 725.492) after the date on which the claim was filed, beginning with the most recent such successor operator;

(d) In a case in which the operator is no longer capable of assuming its liability for the payment of benefits (§ 725.494(e)), and such operator was a subsidiary of a parent company or a product of a joint venture, or was substantially owned or controlled by another business entity, against such parent entity, any member of such joint venture, or such controlling business entity; or

(e) Against any other person who has assumed or succeeded to the obligations of the operator or insurer by operation of any state or federal law, or by any other means.

§ 725.620 Failure to secure benefits; other penalties.

(a) If an operator fails to discharge its insurance obligations under the Act, the provisions of subpart D of part 726 shall apply.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after one of its employees has been injured within the purview of the Act, and with intent to avoid the payment of benefits under the Act to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such penalty or imprisonment as well as jointly liable with such corporation for such fine.

(c) No agreement by a miner to pay any portion of a premium paid to a carrier by such miner's employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing benefits or medical services and supplies as required by this part shall be valid; and any employer who makes a deduction for such purpose from the pay of a miner entitled to benefits under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.

(d) No agreement by a miner to waive his or her right to benefits under the Act and the provisions of this part shall be valid.

(e) This section shall not affect any other liability of the employer under this part.

§ 725.621 Reports.

(a) Upon making the first payment of benefits and upon suspension, reduction, or increase of payments, the operator or other employer responsible for making payments shall immediately notify the district director of the action taken, in accordance with a form prescribed by the Office.

(b) Within 16 days after final payment of benefits has been made by an employer, such employer shall so notify the district director, in accordance with a form prescribed by the Office, stating

that such final payment, has been made, the total amount of benefits paid, the name of the beneficiary, and such other information as the Office deems pertinent.

(c) The Director may from time to time prescribe such additional reports to be made by operators, other employers, or carriers as the Director may consider necessary for the efficient administration of the Act.

(d) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed $500 for each failure or refusal, which penalty shall be determined in accordance with the procedures set forth in subpart D of part 726, as appropriate. The maximum penalty applicable to any violation of this paragraph that takes place after [effective date of the final rule] shall be $550.

(e) No request for information or response to such request shall be considered a report for purposes of this section or the Act, unless it is so designated by the Director or by this section.

(Approved by the Office of Management and Budget under control number 1215–0064)

(Pub. L. No. 96–511)

Subpart J—Medical Benefits and Vocational Rehabilitation

§ 725.701 Availability of medical benefits.

(a) A miner who is determined to be eligible for benefits under this part or part 727 of this subchapter (see § 725.4(d)) is entitled to medical benefits as set forth in this subpart as of the date of his or her claim, but in no event before January 1, 1974. No medical benefits shall be provided to the survivor or dependent of a miner under this part.

(b) A responsible operator, other employer, or where there is neither, the fund, shall furnish a miner entitled to benefits under this part with such medical, surgical, and other attendance and treatment, nursing and hospital services, medicine and apparatus, and any other medical service or supply, for such periods as the nature of the miner's pneumoconiosis and ancillary pulmonary conditions and disability require.

(c) The medical benefits referred to in paragraphs (a) and (b) of this section shall include palliative measures useful only to prevent pain or discomfort associated with the miner's pneumoconiosis or attendant disability.

(d) The costs recoverable under this subpart shall include the reasonable cost of travel necessary for medical treatment (to be determined in accordance with prevailing United States government mileage rates) and the reasonable documented cost to the miner or medical provider incurred in communicating with the employer, carrier, or district director on matters connected with medical benefits.

(e) If a miner receives treatment, as described in this section, for any pulmonary disorder, there shall be a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis. The presumption may be rebutted by evidence that the specific disorder being treated is neither related to, nor aggravated by, the miner's pneumoconiosis. The party liable for the payment of benefits shall bear the burden to rebut the presumption (see § 725.103).

(f) Evidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment is insufficient to establish any fact concerning a miner's entitlement to medical benefits under this subpart.

§ 725.702 Claims for medical benefits only under section 11 of the Reform Act.

(a) Section 11 of the Reform Act directs the Secretary of Health, Education and Welfare to notify each miner receiving benefits under part B of title IV of the Act that he or she may file a claim for medical treatment benefits described in this subpart. Section 725.308(b) of this subpart provides that a claim for medical treatment benefits shall be filed on or before December 31, 1980, unless the period is enlarged for good cause shown. This section sets forth the rules governing the processing, adjudication, and payment of claims filed under section 11.

(b) (1) A claim filed pursuant to the notice described in paragraph (a) of this section shall be considered a claim for medical benefits only, and shall be filed, processed, and adjudicated in accordance with the provisions of this part, except as provided in this section. While a claim for medical benefits must be treated as any other claim filed under part C of title IV of the Act, the Department shall accept the Social Security Administration's finding of entitlement as its initial determination.

(2) In the case of a part B beneficiary whose coal mine employment terminated before January 1, 1970, the Secretary shall make an immediate award of medical benefits. Where the part B beneficiary's coal mine employment terminated on or after January 1, 1970, the Secretary shall immediately authorize the payment of medical benefits and thereafter inform the responsible operator, if any, of the operator's right to contest the claimant's entitlement for medical benefits.

(c) A miner on whose behalf a claim is filed under this section (see § 725.301) must have been alive on March 1, 1978, in order for the claim to be considered.

(d) The criteria contained in subpart C of part 727 of this subchapter (see § 725.4(d)) are applicable to claims for medical benefits filed under this section.

(e) No determination made with respect to a claim filed under this section shall affect any determination previously made by the Social Security Administration. The Social Security Administration may, however, reopen a previously approved claim if the conditions set forth in § 410.672(c) of this chapter are present. These conditions are generally limited to fraud or concealment.

(f) If medical benefits are awarded under this section, such benefits shall be payable by a responsible coal mine operator (see subpart G of this part), if the miner's last employment occurred on or after January 1, 1970, and in all other cases by the fund. An operator which may be required to provide medical treatment benefits to a miner under this section shall have the right to participate in the adjudication of the claim as is otherwise provided in this part.

(g) Any miner whose coal mine employment terminated after January 1, 1970, may be required to submit to a medical examination requested by an identified operator. The unreasonable refusal to submit to such an examination shall have the same consequences as are provided under § 725.414.

(h) If a miner is determined eligible for medical benefits in accordance with this section, such benefits shall be provided from the date of filing, except that such benefits may also include payments for any unreimbursed medical treatment costs incurred personally by such miner during the period from January 1, 1974, to the date of filing which are attributable to medical care required as a result of the miner's total disability due to pneumoconiosis. No reimbursement for health insurance premiums, taxes attributable to any public health insurance coverage, or other deduction or payments made for the purpose of securing third party liability for medical care costs is authorized by this section. If a miner seeks reimbursement for medical care costs personally incurred before the filing of a claim under this section, the district director shall require

documented proof of the nature of the medical service provided, the identity of the medical provider, the cost of the service, and the fact that the cost was paid by the miner, before reimbursement for such cost may be awarded.

§ 725.703 Physician defined.

The term ''physician'' includes only doctors of medicine (MD) and osteopathic practitioners within the scope of their practices as defined by State law. No treatment or medical services performed by any other practitioner of the healing arts is authorized by this part, unless such treatment or service is authorized and supervised both by a physician as defined in this section and the district director.

§ 725.704 Notification of right to medical benefits; authorization of treatment.

(a) Upon notification to a miner of such miner's entitlement to benefits, the Office shall provide the miner with a list of authorized treating physicians and medical facilities in the area of the miner's residence. The miner may select a physician from this list or may select another physician with approval of the Office. Where emergency services are necessary and appropriate, authorization by the Office shall not be required.

(b) The Office may, on its own initiative, or at the request of a responsible operator, order a change of physicians or facilities, but only where it has been determined that the change is desirable or necessary in the best interest of the miner. The miner may change physicians or facilities subject to the approval of the Office.

(c) If adequate treatment cannot be obtained in the area of the claimant's residence, the Office may authorize the use of physicians or medical facilities outside such area as well as reimbursement for travel expenses and overnight accommodations.

§ 725.705 Arrangements for medical care.

(a) *Operator liability*. If an operator has been determined liable for the payment of benefits to a miner, the Office shall notify such operator or insurer of the names, addresses, and telephone numbers of the authorized providers of medical benefits chosen by an entitled miner, and shall require the operator or insurer to:

(1) Notify the miner and the providers chosen that such operator will be responsible for the cost of medical services provided to the miner on account of the miner's total disability due to pneumoconiosis;

(2) Designate a person or persons with decisionmaking authority with whom the Office, the miner and authorized providers may communicate on matters involving medical benefits provided under this subpart and notify the Office, miner and providers of such designation;

(3) Make arrangements for the direct reimbursement of providers for their services.

(b) *Fund liability*. If there is no operator found liable for the payment of benefits, the Office shall make necessary arrangements to provide medical care to the miner, notify the miner and medical care facility selected of the liability of the fund, designate a person or persons with whom the miner or provider may communicate on matters relating to medical care, and make arrangements for the direct reimbursement of the medical provider.

§ 725.706 Authorization to provide medical services.

(a) Except as provided in paragraph (b) of this section, medical services from an authorized provider which are payable under § 725.701 shall not require prior approval of the Office or the responsible operator.

(b) Except where emergency treatment is required, prior approval of the Office or the responsible operator shall be obtained before any hospitalization or surgery, or before ordering an apparatus for treatment where the purchase price exceeds $300. A request for approval of non-emergency hospitalization or surgery shall be acted upon expeditiously, and approval or disapproval will be given by telephone if a written response cannot be given within 7 days following the request. No employee of the Department of Labor, other than a district director or the Chief, Branch of Medical Analysis and Services, DCMWC, is authorized to approve a request for hospitalization or surgery by telephone.

(c) Payment for medical services, treatment, or an apparatus shall be made at no more than the rate prevailing in the community in which the providing physician, medical facility or supplier is located.

§ 725.707 Reports of physicians and supervision of medical care.

(a) Within 30 days following the first medical or surgical treatment provided under § 725.701, the treating physician or facility shall furnish to the Office and the responsible operator, if any, a report of such treatment.

(b) In order to permit continuing supervision of the medical care provided to the miner with respect to the necessity, character and sufficiency of any medical care furnished or to be furnished, the treating physician, facility, employer or carrier shall provide such reports in addition to those required by paragraph (a) of this section as the Office may from time to time require. Within the discretion of the district director, payment may be refused to any medical provider who fails to submit any report required by this section.

§ 725.708 Disputes concerning medical benefits.

(a) Whenever a dispute develops concerning medical services under this part, the district director shall attempt to informally resolve such dispute. In this regard the district director may, on his or her own initiative or at the request of the responsible operator order the claimant to submit to an examination by a physician selected by the district director.

(b) If no informal resolution is accomplished, the district director shall refer the case to the Office of Administrative Law Judges for hearing in accordance with this part. Any such hearing shall be scheduled at the earliest possible time and shall take precedence over all other requests for hearing except for prior requests for hearing arising under this section and as provided by § 727.405 of this subchapter (see § 725.4(d)). During the pendency of such adjudication, the Director may order the payment of medical benefits prior to final adjudication under the same conditions applicable to benefits awarded under § 725.522.

(c) In the development or adjudication of a dispute over medical benefits, the adjudication officer is authorized to take whatever action may be necessary to protect the health of a totally disabled miner.

(d) Any interested medical provider may, if appropriate, be made a party to a dispute over medical benefits.

§ 725.710 Objective of vocational rehabilitation.

The objective of vocational rehabilitation is the return of a miner who is totally disabled for work in or around a coal mine and who is unable to utilize those skills which were employed in the miner's coal mine employment to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

§ 725.711 Requests for referral to vocational rehabilitation assistance.

Each miner who has been determined entitled to receive benefits under part C of title IV of the Act shall be informed by the OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself or herself of vocational rehabilitation, his or her request shall be processed and referred by OWCP vocational rehabilitation advisors pursuant to the provisions of §§ 702.501 through 702.508 of this chapter as is appropriate.

5. Part 726 is proposed to be revised as follows:

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

Subpart A—General

Sec.
726.1 Statutory insurance requirements for coal mine operators.
726.2 Purpose and scope of this part.
726.3 Relationship of this part to other parts in this subchapter.
726.4 Who must obtain insurance coverage.
726.5 Effective date of insurance coverage.
726.6 The Office of Workers' Compensation Programs.
726.7 Forms, submission of information.
726.8 Definitions.

Subpart B—Authorization of Self-Insurers

726.101 Who may be authorized to self-insure.
726.102 Application for authority to become a self-insurer; how filed; information to be submitted.
726.103 Application for authority to self-insure; effect of regulations contained in this part.
726.104 Action by the Office upon application of operator.
726.105 Fixing the amount of security.
726.106 Type of security.
726.107 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; authority to sell such securities; interest thereon.
726.108 Withdrawal of negotiable securities.
726.109 Increase or reduction in the amount of security.
726.110 Filing of agreement and undertaking.
726.111 Notice of authorization to self-insure.
726.112 Reports required of self-insurer; examination of accounts of self-insurer.
726.113 Disclosure of confidential information.
726.114 Period of authorization as self-insurer; reauthorization.
726.115 Revocation of authorization to self-insure.

Subpart C—Insurance Contracts

726.201 Insurance contracts—generally.
726.202 Who may underwrite an operator's liability.
726.203 Federal Coal Mine Health and Safety Act endorsement.
726.204 Statutory policy provisions.
726.205 Other forms of endorsement and policies.
726.206 Terms of policies.
726.207 Discharge by the carrier of obligations and duties of operator.

Reports by Carrier

726.208 Report by carrier of issuance of policy or endorsement.
726.209 Report; by whom sent.
726.210 Agreement to be bound by report.
726.211 Name of one employer only shall be given in each report.
726.212 Notice of cancellation.
726.213 Reports by carriers concerning the payment of benefits.

Subpart D—Civil Money Penalties

726.300 Purpose and Scope.
726.301 Definitions.
726.302 Determination of penalty.
726.303 Notification; Investigation.
726.304 Notice of initial assessment.
726.305 Contents of notice.
726.306 Finality of administrative assessment.
726.307 Form of notice of contest and request for hearing.
726.308 Service and computation of time.
726.309 Referral to the Office of Administrative Law Judges.
726.310 Appointment of Administrative Law Judge and notification of hearing date.
726.311 Evidence.
726.312 Burdens of proof.
726.313 Decision and Order of Administrative Law Judge.
726.314 Review by the Secretary.
726.315 Contents.
726.316 Filing and Service.
726.317 Discretionary Review.
726.318 Final decision of the Secretary.
726.319 Retention of official record.
726.320 Collection and recovery of penalty.

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 933, 934, 936, 945; 33 U.S.C. 901 et seq., Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

Subpart A—General

§ 726.1 Statutory insurance requirements for coal mine operators.

Section 423 of title IV of the Federal Coal Mine Health and Safety Act as amended (hereinafter the Act) requires each coal mine operator who is operating or has operated a coal mine in a State which is not included in the list published by the Secretary (see part 722 of this chapter) to secure the payment of benefits for which he may be found liable under section 422 of the Act and the provisions of this subchapter by either:

(a) Qualifying as a self-insurer, or

(b) By subscribing to and maintaining in force a commercial insurance contract (including a policy or contract procured from a State agency).

§ 726.2 Purpose and scope of this part.

(a) This part provides rules directing and controlling the circumstances under which a coal mine operator shall fulfill his insurance obligations under the Act.

(b) This subpart A sets forth the scope and purpose of this part and generally describes the statutory framework within which this part is operative.

(c) Subpart B of this part sets forth the criteria a coal mine operator must meet in order to qualify as a self-insurer.

(d) Subpart C of this part sets forth the rules and regulations of the Secretary governing contracts of insurance entered into by coal operators and commercial insurance sources for the payment of black lung benefits under part C of the Act.

(e) Subpart D of this part sets forth the rules governing the imposition of civil money penalties on coal mine operators that fail to secure their liability under the Act.

§ 726.3 Relationship of this part to other parts in this subchapter.

(a) This part 726 implements and effectuates responsibilities for the payment of black lung benefits placed upon coal operators by sections 415 and 422 of the Act and the regulations of the Secretary in this subchapter, particularly those set forth in part 725 of this subchapter. All definitions, usages, procedures, and other rules affecting the responsibilities of coal operators prescribed in parts 715, 720, and 725 of this subchapter are hereby made applicable, as appropriate, to this part 726.

(b) In the event that an apparent conflict arises between the interpretation of any provision in this part 726 and the interpretation of some provision appearing in a different part of this chapter, the conflicting provisions shall be read harmoniously to the fullest extent possible. In the event that a harmonious interpretation of the provisions is impossible, the provision or provisions of this part shall govern insofar as the question is one which arises out of a dispute over the responsibilities and obligations of coal mine operators to secure the payment of black lung benefits as prescribed by the Act. No provision of this part shall be operative as to matters falling outside the purview of this part.

§ 726.4 Who must obtain insurance coverage.

(a) Section 423 of part C of title IV of the Act requires each operator of a coal mine or former operator in any State

which does meet the requirements prescribed by the Secretary pursuant to section 411 of part C of title IV of the Act to self-insure or obtain a policy or contract of insurance to guarantee the payment of benefits for which such operator may be adjudicated liable under section 422 of the Act. In enacting sections 422 and 423 of the Act Congress has unambiguously expressed its intent that coal mine operators bear the cost of providing the benefits established by part C of title IV of the Act. Section 3 of the Act defines an ''operator'' as any owner, lessee, or other person who operates, controls, or supervises a coal mine.

(b) Section 422(i) of the Act clearly recognizes that any individual or business entity who is or was a coal mine operator may be found liable for the payment of pneumoconiosis benefits after December 31, 1973. Within this framework it is clear that the Secretary has wide latitude for determining which operator shall be liable for the payment of part C benefits. Comprehensive standards have been promulgated in subpart G of part 725 of this subchapter for the purpose of guiding the Secretary in making such determination. It must be noted that pursuant to these standards any parent or subsidiary corporation, any individual or corporate partner, or partnership, any lessee or lessor of a coal mine, any joint venture or participant in a joint venture, any transferee or transferor of a corporation or other business entity, any former, current, or future operator or any other form of business entity which has had or will have a substantial and reasonably direct interest in the operation of a coal mine may be determined liable for the payment of pneumoconiosis benefits after December 31, 1973. The failure of any such business entity to self-insure or obtain a policy or contract of insurance shall in no way relieve such business entity of its obligation to pay pneumoconiosis benefits in respect of any case in which such business entity's responsibility for such payments has been properly adjudicated. Any business entity described in this section shall take appropriate steps to insure that any liability imposed by part C of the Act on such business entity shall be dischargeable.

§ 726.5 Effective date of insurance coverage.

Pursuant to section 422(c) of part C of title IV of the Act, no coal mine operator shall be responsible for the payment of any benefits whatsoever for any period prior to January 1, 1974. However, coal mine operators shall be liable as of January 1, 1974, for the payment of benefits in respect of claims which were filed under section 415 of part B of title IV of the Act after July 1, 1973. Section 415(a)(3) requires the Secretary to notify any operator who may be liable for the payment of benefits under part C of title IV beginning on January 1, 1974, of the pendency of a section 415 claim. Section 415(a)(5) declares that any operator who has been notified of the pendency of a section 415 claim shall be bound by the determination of the Secretary as to such operator's liability and as to the claimant's entitlement to benefits as if the claim were filed under part C of title IV of the Act and section 422 thereof had been applicable to such operator. Therefore, even though no benefit payments shall be required of an operator prior to January 1, 1974, the liability for these payments may be finally adjudicated at any time after July 1, 1973. Neither the failure of an operator to exercise his right to participate in the adjudication of such a claim nor the failure of an operator to obtain insurance coverage in respect of claims filed after June 30, 1973, but before January 1, 1974, shall excuse such operator from his liability for the payment of benefits to such claimants under part C of title IV of the Act.

§ 726.6 The Office of Workers' Compensation Programs.

The Office of Workers' Compensation Programs (hereinafter the Office or OWCP) is that subdivision of the Employment Standards Administration of the U.S. Department of Labor which has been empowered by the Secretary of Labor to carry out his functions under section 415 and part C of title IV of the Act. As noted throughout this part 726 the Office shall perform a number of functions with respect to the regulation of both the self-insurance and commercial insurance programs. All correspondence with or submissions to the Office should be addressed as follows:

Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210

§ 726.7 Forms, submission of information.

Any information required by this part 726 to be submitted to the Office of Workmen's Compensation Programs or any other office or official of the Department of Labor, shall be submitted on such forms or in such manner as the Secretary deems appropriate and has authorized from time to time for such purposes.

§ 726.8 Definitions.

In addition to the definitions provided in part 725 of this chapter, the following definitions apply to this part:

(a) *Director* means the Director, Office of Workers' Compensation Programs, and includes any official of the Office of Workers' Compensation Programs authorized by the Director to perform any of the functions of the Director under this part and part 725 of this chapter.

(b) *Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

(c) *Secretary* means the Secretary of Labor or such other official as the Secretary shall designate to carry out any responsibility under this part.

(d) The terms *employ* and *employment* shall be construed as broadly as possible, and shall include any relationship under which an operator retains the right to direct, control, or supervise the work performed by a miner, or any other relationship under which an operator derives a benefit from the work performed by a miner. Any individuals who participate with one or more persons in the mining of coal, such as owners, proprietors, partners, and joint venturers, whether they are compensated by wages, salaries, piece rates, shares, profits, or by any other means, shall be deemed employees.

Subpart B—Authorization of Self-Insurers

§ 726.101 Who may be authorized to self-insure.

(a) Pursuant to section 423 of part C of title IV of the Act, authorization to self-insure against liability incurred by coal mine operators on account of the total disability or death of miners due to pneumoconiosis may be granted or denied in the discretion of the Secretary. The provisions of this subpart describe the minimum requirements established by the Secretary for determining whether any particular coal mine operator shall be authorized as a self-insurer.

(b) The minimum requirements which must be met by any operator seeking authorization to self-insure are as follows:

(1) Such operator must, at the time of application, have been in the business of mining coal for at least the 3 consecutive years prior to such application; and,

(2) Such operator must demonstrate the administrative capacity to fully service such claims as may be filed against him; and,

(3) Such operator's average current assets over the preceding 3 years (in computing average current assets such operator shall not include the amount of any negotiable securities which he may be required to deposit to secure his obligations under the Act) must exceed current liabilities by the sum of—

(i) The estimated aggregate amount of black lung benefits (including medical benefits) which such operator may expect to be required to pay during the ensuing year; and,

(ii) The annual premium cost for any indemnity bond purchased; and

(4) Such operator must obtain security, in a form approved by the Office (see § 726.104) and in an amount to be determined by the Office (see § 726.105); and

(5) No operator with fewer than 5 full-time employee-miners shall be permitted to self-insure.

(c) No operator who is unable to meet the requirements of this section should apply for authorization to self-insure and no application for self-insurance shall be approved by the Office until such time as the amount prescribed by the Office has been secured as prescribed in this subpart.

§ 726.102 Application for authority to become a self-insurer; how filed; information to be submitted.

(a) *How filed.* Application for authority to become a self-insurer shall be addressed to the Office and be made on a form provided by the Office. Such application shall be signed by the applicant over his typewritten name and if the applicant is not an individual, by the principal officer of the applicant duly authorized to make such application over his typewritten name and official designation and shall be sworn to by him. If the applicant is a corporation, the corporate seal shall be affixed. The application shall be filed with the Office in Washington, D.C.

(b) *Information to be submitted.* Each application for authority to self-insure shall contain:

(1) A statement of the employer's payroll report for each of the preceding 3 years;

(2) A statement of the average number of employees engaged in employment within the purview of the Act for each of the preceding 3 years;

(3) A list of the mine or mines to be covered by any particular self-insurance agreement. Each such mine or mines listed shall be described by name and reference shall be made to the Federal Identification Number assigned such mine by the Bureau of Mines, U.S. Department of the Interior;

(4) A certified itemized statement of the gross and net assets and liabilities of the operator for each of the 3 preceding years in such manner as prescribed by the Office;

(5) A statement demonstrating the applicant's administrative capacity to provide or procure adequate servicing for a claim including both medical and dollar claims; and

(6) In addition to the aforementioned, the Office may in its discretion, require the applicant to submit such further information or such evidence as the Office may deem necessary to have in order to enable it to give adequate consideration to such application.

(c) *Who may file.* An application for authorization to self-insure may be filed by any parent or subsidiary corporation, partner or partnership, party to a joint venture or joint venture, individual, or other business entity which may be determined liable for the payment of black lung benefits under part C of title IV of the Act, regardless of whether such applicant is directly engaged in the business of mining coal. However, in each case for which authorization to self-insure is granted, the agreement and undertaking filed pursuant to § 726.110 and the security deposit shall be respectively filed by and deposited in the name of the applicant only.

§ 726.103 Application for authority to self-insure; effect of regulations contained in this part.

As appropriate, each of the regulations, interpretations and requirements contained in this part 726 including those described in subpart C of this part shall be binding upon each applicant hereunder and the applicant's consent to be bound by all requirements of the said regulations shall be deemed to be included in and a part of the application, as fully as though written therein.

§ 726.104 Action by the Office upon application of operator.

(a) Upon receipt of a completed application for authorization to self-insure, the Office shall, after examination of the information contained in the application deny the applicant's request for authorization to self-insure or, determine the amount of security which must be given by the applicant to guarantee the payment of benefits and the discharge of all other obligations which may be required of such applicant under the Act.

(b) The applicant shall thereafter be notified that he may give security in the amount fixed by the Office (see § 726.105):

(1) In the form of an indemnity bond with sureties satisfactory to the Office;

(2) By a deposit of negotiable securities with a Federal Reserve Bank in compliance with §§ 726.106(c) and 726.107;

(3) In the form of a letter of credit issued by a financial institution satisfactory to the Office (except that a letter of credit shall not be sufficient by itself to satisfy a self-insurer's obligations under this part); or

(4) By funding a trust pursuant to section 501(c)(21) of title 26 of the United States Code.

(c) Any applicant who cannot meet the security deposit requirements imposed by the Office should proceed to obtain a commercial policy or contract of insurance. Any applicant for authorization to self-insure whose application has been rejected or who believes that the security deposit requirements imposed by the Office are excessive may, in writing, request that the Office review its determination. A request for review should contain such information as may be necessary to support the request that the amount of security required be reduced.

(d) Upon receipt of any such request the Office shall review its previous determination in light of any new or additional information submitted and inform the applicant whether or not a reduction in the amount of security initially required is warranted.

§ 726.105 Fixing the amount of security.

The amount of security to be fixed and required by the Office shall be such as the Office shall deem to be necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an operator by the Act. In determining the amount of security required, the factors that the Office will consider include, but are not limited to, the operator's net worth, the existence of a guarantee by a parent corporation, and the operator's existing liability for benefits. Other factors such as the Office may deem relevant to any particular case shall be considered. The amount of security which shall be required may be increased or decreased when experience or changed conditions so warrant.

§ 726.106 Type of security.

(a) The Office shall determine the type or types of security which an applicant shall or may procure. (See § 726.104(b).)

(b) In the event the indemnity bond option is selected such indemnity bond shall be in such form and contain such provisions as the Office may prescribe: *Provided,* That only corporations may act as sureties on such indemnity bonds. In each case in which the surety on any such bond is a surety company, such company must be one approved by the

U.S. Treasury Department under the laws of the United States and the applicable rules and regulations governing bonding companies (see Department of Treasury's Circular–570).

(c) An applicant for authorization to self-insure authorized to deposit negotiable securities to secure his obligations under the Act in the amount fixed by the Office shall deposit any negotiable securities acceptable as security for the deposit of public moneys of the United States under regulations issued by the Secretary of the Treasury. (See 31 CFR part 225.) The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States.

§ 726.107 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; authority to sell such securities; interest thereon.

Deposits of securities provided for by the regulations in this part shall be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by the Office, or the Treasurer of the United States, and shall be held subject to the order of the Office with power in the Office, in its discretion in the event of default by the said self-insurer, to collect the interest as it may become due, to sell the securities or any of them as may be required to discharge the obligations of the self-insurer under the Act and to apply the proceeds to the payment of any benefits or medical expenses for which the self-insurer may be liable. The Office may, however, whenever it deems it unnecessary to resort to such securities for the payment of benefits, authorize the self-insurer to collect interest on the securities deposited by him.

§ 726.108 Withdrawal of negotiable securities.

No withdrawal of negotiable securities deposited by a self-insurer, shall be made except upon authorization by the Office. A self-insurer discontinuing business, or discontinuing operations within the purview of the Act, or providing security for the payment of benefits by commercial insurance under the provisions of the Act may apply to the Office for the withdrawal of securities deposited under the regulations in this part. With such application shall be filed a sworn statement setting forth:

(a) A list of all outstanding cases in which benefits are being paid, with the names of the miners and other beneficiaries, giving a statement of the amounts of benefits paid and the periods for which such benefits have been paid; and

(b) A similar list of all pending cases in which no benefits have as yet been paid. In such cases withdrawals may be authorized by the Office of such securities as in the opinion of the Office may not be necessary to provide adequate security for the payment of outstanding and potential liabilities of such self-insurer under the Act.

§ 726.109 Increase or reduction in the amount of security.

Whenever in the opinion of the Office the amount of security given by the self-insurer is insufficient to afford adequate security for the payment of benefits and medical expenses under the Act, the self-insurer shall, upon demand by the Office, file such additional security as the Office may require. At any time upon application of a self-insurer, or on the initiative of the Office, when in its opinion the facts warrant, the amount of security may be reduced. A self-insurer seeking such reduction shall furnish such information as the Office may request relative to his current affairs, the nature and hazard of the work of his employees, the amount of the payroll of his employees engaged in coal mine employment within the purview of the Act, his financial condition, and such other evidence as may be deemed material, including a record of payment of benefits made by him.

§ 726.110 Filing of agreement and undertaking.

(a) In addition to the requirement that adequate security be procured as set forth in this subpart, the applicant for the authorization to self-insure shall as a condition precedent to receiving authorization to act as a self-insurer, execute and file with the Office an agreement and undertaking in a form prescribed and provided by the Office in which the applicant shall agree:

(1) To pay when due, as required by the provisions of said Act, all benefits payable on account of total disability or death of any of its employee-miners within the purview of the Act;

(2) In such cases to furnish medical, surgical, hospital, and other attendance, treatment, and care as required by the provisions of the Act;

(3) To provide security in a form approved by the Office (see § 726.104) and in an amount established by the Office (see § 726.105), accordingly as elected in the application;

(4) To authorize the Office to sell any negotiable securities so deposited or any part thereof and from the proceeds thereof to pay such benefits, medical, and other expenses and any accrued penalties imposed by law as it may find to be due and payable.

(b) At such time when an applicant has provided the requisite security, such applicant shall send a completed agreement and undertaking together with satisfactory proof that his obligations and liabilities under the Act have been secured to the Office in Washington, D.C.

§ 726.111 Notice of authorization to self-insure.

Upon receipt of a completed agreement and undertaking and satisfactory proof that adequate security has been provided an applicant for authorization to self-insure shall be notified by the Office in writing, that he is authorized to self-insure to meet the obligations imposed upon such applicant by section 415 and part C of title IV of the Act.

§ 726.112 Reports required of self-insurer; examination of accounts of self-insurer.

(a) Each operator who has been authorized to self-insure under this part shall submit to the Office reports containing such information as the Office may from time to time require or prescribe.

(b) Whenever it deems it to be necessary, the Office may inspect or examine the books of account, records, and other papers of a self-insurer for the purpose of verifying any financial statement submitted to the Office by the self-insurer or verifying any information furnished to the Office in any report required by this section, or any other section of the regulations in this part, and such self-insurer shall permit the Office or its duly authorized representative to make such an inspection or examination as the Office shall require. In lieu of this requirement the Office may in its discretion accept an adequate report of a certified public accountant.

(c) Failure to submit or make available any report or information requested by the Office from an authorized self-insurer pursuant to this section may, in appropriate circumstances result in a revocation of the authorization to self-insure.

§ 726.113 Disclosure of confidential information.

Any financial information or records, or other information relating to the business of an authorized self-insurer or applicant for the authorization of self-insurance obtained by the Office shall be exempt from public disclosure to the extent provided in 5 U.S.C. 552(b) and the applicable regulations of the

Department of Labor promulgated thereunder. (See 29 CFR part 70.)

§ 726.114 Period of authorization as self-insurer; reauthorization.

(a) No initial authorization as a self-insurer shall be granted for a period in excess of 18 months. A self-insurer who has made an adequate deposit of negotiable securities in compliance with §§ 726.106(c) and 726.107 will be reauthorized for the ensuing fiscal year without additional security if the Office finds that his experience as a self-insurer warrants such action. If it is determined that such self-insurer's experience indicates a need for the deposit of additional security, no reauthorization shall be issued for the ensuing fiscal year until such time as the Office receives satisfactory proof that the requisite amount of additional securities have been deposited. A self-insurer who currently has on file an indemnity bond, will receive from the Office each year a bond form for execution in contemplation of reauthorization, and the submission of such bond duly executed in the amount indicated by the Office will be deemed and treated as such self-insurer's application for reauthorization for the ensuing Federal fiscal year.

(b) In each case for which there is an approved change in the amount of security provided, a new agreement and undertaking shall be executed.

(c) Each operator authorized to self-insure under this part shall apply for reauthorization for any period during which it engages in the operation of a coal mine and for additional periods after it ceases operating a coal mine. Upon application by the operator, accompanied by proof that the security posted by the operator is sufficient to secure all benefits potentially payable to miners formerly employed by the operator, the Office shall issue a certification that the operator is exempt from the requirements of this part based on its prior operation of a coal mine. The provisions of subpart D of this part shall be applicable to any operator that fails to apply for reauthorization in accordance with the provisions of this section.

§ 726.115 Revocation of authorization to self-insure.

The Office may for good cause shown suspend or revoke the authorization of any self-insurer. Failure by a self-insurer to comply with any provision or requirement of law or of the regulations in this part, or with any lawful order or communication of the Office, or the failure or insolvency of the surety on his indemnity bond, or impairment of financial responsibility of such self-insurer, may be deemed good cause for such suspension or revocation.

Subpart C—Insurance Contracts

§ 726.201 Insurance contracts—generally.

Each operator of a coal mine who has not obtained authorization as a self-insurer shall purchase a policy or enter into a contract with a commercial insurance carrier or State agency. Pursuant to authority contained in sections 422(a) and 423 (b) and (c) of part C of title IV of the Act, this subpart describes a number of provisions which are required to be incorporated in a policy or contract of insurance obtained by a coal mine operator for the purpose of meeting the responsibility imposed upon such operator by the Act in respect of the total disability or death of miners due to pneumoconiosis.

§ 726.202 Who may underwrite an operator's liability.

Each coal mine operator who is not authorized to self-insure shall insure and keep insured the payment of benefits as required by the Act with any stock company or mutual company or association, or with any other person, or fund, including any State fund while such company, association, person, or fund is authorized under the law of any State to insure workmen's compensation.

§ 726.203 Federal Coal Mine Health and Safety Act endorsement.

(a) The following form of endorsement shall be attached and applicable to the standard workmen's compensation and employer's liability policy prepared by the National Council on Compensation Insurance affording coverage under the Federal Coal Mine Health and Safety Act of 1969, as amended:

It is agreed that: (1) With respect to operations in a State designated in item 3 of the declarations, the unqualified term ''workmen's compensation law'' includes part C of title IV of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. section 931–936, and any laws amendatory thereto, or supplementary thereto, which may be or become effective while this policy is in force, and definition (a) of Insuring Agreement III is amended accordingly; (2) with respect to such insurance as is afforded by this endorsement, (a) the States, if any, named below, shall be deemed to be designated in item 3 of the declaration; (b) Insuring Agreement IV(2) is amended to read ''by disease caused or aggravated by exposure of which the last day of the last exposure, in the employment of the insured, to conditions causing the disease occurs during the policy period, or occurred prior to (effective date) and claim based on such disease is first filed against the insured during the policy period.''

(b) The term ''effective date'' as used in the enforcement provisions contained in paragraph (a) of this section shall be construed to mean the effective date of the first policy or contract of insurance procured by an operator for purposes of meeting the obligations imposed on such operator by section 423 of part C of title IV of the Act.

(c) The Act contains a number of provisions and imposes a number of requirements on operators which differ in varying degrees from traditional workmen's compensation concepts. To avoid unnecessary administrative delays and expense which might be occasioned by the drafting of an entirely new standard workmen's compensation policy specially tailored to the Act, the Office has determined that the existing standard workmen's compensation policy subject to the endorsement provisions contained in paragraph (a) of this section shall be acceptable for purposes of writing commercial insurance coverage under the Act. However, to avoid undue disputes over the meaning of certain policy provisions and in accordance with the authority contained in section 423(b)(3) of the Act, the Office has determined that the following requirements shall be applicable to all commercial insurance policies obtained by an operator for the purpose of insuring any liability incurred pursuant to the Act:

(1) *Operator liability*. (i) Section 415 and part C of title IV of the Act provide coverage for total disability or death due to pneumoconiosis to all claimants who meet the eligibility requirements imposed by the Act. Section 422 of the Act and the regulations duly promulgated thereunder (part 725 of this chapter) set forth the conditions under which a coal mine operator may be adjudicated liable for the payment of benefits to an eligible claimant for any period subsequent to December 31, 1973.

(ii) Section 422(c) of the Act prescribes that except as provided in 422(i) (see paragraph (c)(2) of this section) an operator may be adjudicated liable for the payment of benefits in any case if the total disability or death due to pneumoconiosis upon which the claim is predicated arose at least in part out of employment in a mine in any period during which it was operated by such operator. The Act does not require that such employment which contributed to or caused the total disability or death due to pneumoconiosis occur subsequent to

any particular date in time. The Secretary in establishing a formula for determining the operator liable for the payment of benefits (see subpart D of part 725 of this chapter) in respect of any particular claim, must therefore, within the framework and intent of title IV of the Act find in appropriate cases that an operator is liable for the payment of benefits for some period after December 31, 1973, even though the employment upon which an operator's liability is based occurred prior to July 1, 1973, or prior to the effective date of the Act or the effective date of any amendments thereto, or prior to the effective date of any policy or contract of insurance obtained by such operator. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate these requirements in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(2) *Successor liability.* Section 422(i) of part C of title IV of the Act requires that a coal mine operator who after December 30, 1969, acquired his mine or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, shall be liable for and shall secure the payment of benefits which would have been payable by the prior operator with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine. In the case of an operator who is determined liable for the payment of benefits under section 422(i) of the Act and part 725 of this subchapter, such liability shall accrue to such operator regardless of the fact that the miner on whose total disability or death the claim is predicated was never employed by such operator in any capacity. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate this requirement in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(3) *Medical eligibility.* Pursuant to section 422(h) of part C of title IV of the Act and the regulations described therein (see subpart D of part 410 of this title) benefits shall be paid to eligible claimants on account of total disability or death due to pneumoconiosis and in cases where the miner on whose death a claim is predicated was totally disabled by pneumoconiosis at the time of his death regardless of the cause of such death. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate these requirements in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(4) *Payment of benefits, rates.* Section 422(c) of the Act by incorporating section 412(a) of the Act requires the payment of benefits at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS–2, who is totally disabled is entitled at the time of payment under Chapter 81 of title 5, United States Code. These benefits are augmented on account of eligible dependents as appropriate (see section 412(a) of part B of title IV of the Act). Since the dollar amount of benefits payable to any beneficiary is required to be computed at the time of payment such amounts may be expected to increase from time to time as changes in the GS–2 grade are enacted into law. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act, the requirement that the payment of benefits to eligible beneficiaries shall be made in such dollar amounts as are prescribed by section 412(a) of the Act computed at the time of payment.

(5) *Compromise and waiver of benefits.* Section 422(a) of part C of title IV of the Act by incorporating sections 15(b) and 16 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 915(b) and 916) prohibits the compromise and/or waiver of claims for benefits filed or benefits payable under section 415 and part C of title IV of the Act. The enforcement provisions contained in paragraph (a) of this section shall be construed to incorporate these prohibitions in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(6) *Additional requirements.* In addition to the requirements described in paragraphs (c) (1) through (5) of this section, the enforcement provisions contained in paragraph (a) of this section shall, to the fullest extent possible, be construed to bring any policy or contract of insurance entered into by an operator for the purpose of insuring such operator's liability under part C of title IV of the Act into conformity with the legal requirements placed upon such operator by section 415 and part C of title IV of the Act and parts 720 and 725 of this subchapter.

(d) Nothing in this section shall relieve any operator or carrier of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this section.

§ 726.204 Statutory policy provisions.

Pursuant to section 423(b) of part C of title IV of the Act each policy or contract of insurance obtained to comply with the requirements of section 423(a) of the Act must contain or shall be construed to contain—

(a) A provision to pay benefits required under section 422 of the Act, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments; and,

(b) A provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments.

§ 726.205 Other forms of endorsement and policies.

Forms of endorsement or policies other than that described in § 726.203 may be entered into by operators to insure their liability under the Act. However, any form of endorsement or policy which materially alters or attempts to materially alter an operator's liability for the payment of any benefits under the Act shall be deemed insufficient to discharge such operator's duties and responsibilities as prescribed in part C of title IV of the Act. In any event, the failure of an operator to obtain an adequate policy or contract of insurance shall not affect such operator's liability for the payment of any benefits for which he is determined liable.

§ 726.206 Terms of policies.

A policy or contract of insurance shall be issued for the term of 1 year from the date that it becomes effective, but if such insurance be not needed except for a particular contract or operation, the term of the policy may be limited to the period of such contract or operation.

§ 726.207 Discharge by the carrier of obligations and duties of operator.

Every obligation and duty in respect of payment of benefits, the providing of medical and other treatment and care, the payment or furnishing of any other benefit required by the Act and in respect of the carrying out of the administrative procedure required or imposed by the Act or the regulations in this part or 20 CFR part 725 upon an operator shall be discharged and carried out by the carrier as appropriate. Notice to or knowledge of an operator of the occurrence of total disability or death

due to pneumoconiosis shall be notice to or knowledge of such carrier. Jurisdiction of the operator by a district director, administrative law judge, the Office, or appropriate appellate authority under the Act shall be jurisdiction of such carrier. Any requirement under any benefits order, finding, or decision shall be binding upon such carrier in the same manner and to the same extent as upon the operator.

Reports by Carrier

§ 726.208 Report by carrier of issuance of policy or endorsement.

Each carrier shall report to the Office each policy and endorsement issued, canceled, or renewed by it to an operator. The report shall be made in such manner and on such form as the Office may require.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.209 Report; by whom sent.

The report of issuance, cancellation, or renewal of a policy and endorsement provided for in § 726.208 shall be sent by the home office of the carrier, except that any carrier may authorize its agency or agencies to make such reports to the Office.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.210 Agreement to be bound by report.

Every carrier seeking to write insurance under the provisions of this Act shall be deemed to have agreed that the acceptance by the Office of a report of the issuance or renewal of a policy of insurance, as provided for by § 726.208 shall bind the carrier to full liability for the obligations under this Act of the operator named in said report. It shall be no defense to this agreement that the carrier failed or delayed to issue, cancel, or renew the policy to the operator covered by this report.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.211 Name of one employer only shall be given in each report.

A separate report of the issuance or renewal of a policy and endorsement, provided for by §726.208, shall be made for each operator covered by a policy. If a policy is issued or renewed insuring more than one operator, a separate report for each operator so covered shall be sent to the Office with the name of only one operator on each such report.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.212 Notice of cancellation.

Cancellation of a contract or policy of insurance issued under authority of the Act shall not become effective otherwise than as provided by 33 U.S.C. 936(b); and notice of a proposed cancellation shall be given to the Office and to the operator in accordance with the provisions of 33 U.S.C. 912(c), 30 days before such cancellation is intended to be effective (see sec. 422(a) of part C of title IV of the Act).

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

§ 726.213 Reports by carriers concerning the payment of benefits.

Pursuant to 33 U.S.C. 914(c) as incorporated by section 422(a) of part C of title IV of the Act and §726.207 each carrier issuing a policy or contract of insurance under the Act shall upon making the first payment of benefits and upon the suspension of any payment in any case, immediately notify the Office in accordance with a form prescribed by the Office that payment of benefit has begun or has been suspended as the case may be. In addition, each such carrier shall at the request of the Office submit to the Office such additional information concerning policies or contracts of insurance issued to guarantee the payment of benefits under the Act and any benefits paid thereunder, as the Office may from time to time require to carry out its responsibilities under the Act.

(Approved by the Office of Management and Budget under control number 1215–0059)

(Pub. L. No. 96–511)

Subpart D—Civil Money Penalties

§ 726.300 Purpose and Scope.

Any operator which is required to secure the payment of benefits under section 423 of the Act and § 726.4 and which fails to secure such benefits shall be subject to a civil penalty of not more than $1,000 for each day during which such failure occurs. If the operator is a corporation, the president, secretary, and treasurer of the operator shall also be severally liable for the penalty based on the operator's failure to secure the payment of benefits. This subpart defines those terms necessary for administration of the civil money penalty provisions, describes the criteria for determining the amount of penalty to be assessed, and sets forth applicable procedures for the assessment and contest of penalties.

§ 726.301 Definitions.

In addition to the definitions provided in part 725 of this chapter and § 726.8, the following definitions apply to this subpart:

(a) Division Director means the Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, or such other official authorized by the Division Director to perform any of the functions of the Division Director under this subpart.

(b) President, secretary, or treasurer means the officers of a corporation as designated pursuant to the laws and regulations of the state in which the corporation is incorporated or, if that state does not require the designation of such officers, to the employees of a company who are performing the work usually performed by such officers in the state in which the corporation's principal place of business is located.

(c) Principal means any person who has an ownership interest in an operator that is not a corporation, and shall include, but is not limited to, partners, sole proprietors, and any other person who exercises control over the operation of a coal mine.

§ 726.302 Determination of penalty.

(a) The following method shall be used for determining the amount of any penalty assessed under this subpart.

(b) The penalty shall be determined by multiplying the daily base penalty amount or amounts, determined in accordance with the formula set forth in this section, by the number of days in the period during which the operator is subject to the security requirements of section 423 of the Act and § 726.4, and fails to secure its obligations under the Act. The period during which an operator is subject to liability for a penalty for failure to secure its obligations shall be deemed to commence on the first day on which the operator met the definition of the term ''operator'' as set forth in § 725.101 of this chapter. The period shall be deemed to continue even where the operator has ceased coal mining and any related activity, unless the operator secured its liability for all previous periods through a policy or policies of insurance obtained in accordance with subpart C of this part or has obtained a certification of exemption in accordance with the provisions of § 726.114.

(c)(1) A daily base penalty amount shall be determined for all periods up to and including the 10th day after the operator's receipt of the notification sent by the Director pursuant to § 726.303, during which the operator failed to

secure its obligations under section 423 of the Act and § 726.4.

(2)(i) The daily base penalty amount shall be determined based on the number of persons employed in coal mine employment by the operator, or engaged in coal mine employment on behalf of the operator, on each day of the period defined by this section, and shall be computed as follows:

Employees	Penalty (per day)
Less than 25	$100
25–50	200
51–100	300
More than 100	400

(ii) For any period after the operator has ceased coal mining and any related activity, the daily penalty amount shall be computed based on the largest number of persons employed in coal mine employment by the operator, or engaged in coal mine employment on behalf of the operator, on any day while the operator was engaged in coal mining or any related activity. For purposes of this section, it shall be presumed, in the absence of evidence to the contrary, that any person employed by an operator is employed in coal mine employment.

(3) In any case in which the operator had prior notice of the applicability of the Black Lung Benefits Act to its operations, the daily base penalty amounts set forth in paragraph (b) shall be doubled. Prior notice may be inferred where the operator, or an entity in which the operator or any of its principals had an ownership interest, or an entity in which the operator's president, secretary, or treasurer were employed:

(i) Previously complied with section 423 of the Act and § 726.4;

(ii) Was notified of its obligation to comply with section 423 of the Act and § 726.4; or

(iii) Was notified of its potential liability for a claim filed under the Black Lung Benefits Act pursuant to § 725.407 of this chapter.

(4) Commencing with the 11th day after the operator's receipt of the notification sent by the Director pursuant to § 726.303, the daily base penalty amounts set forth in paragraph (b) shall be increased by $100.

(5) In any case in which the operator, or any of its principals, or an entity in which the operator's president, secretary, or treasurer were employed, has been the subject of a previous penalty assessment under this part, the daily base penalty amounts shall be increased by $300, up to a maximum daily base penalty amount of $1,000. The maximum daily base penalty amount applicable to any violation of § 726.4 that takes place after [effective date of the final rule] shall be $1,100.

(d) The penalty shall be subject to reduction for any period during which the operator had a reasonable belief that it was not required to comply with section 423 of the Act and § 726.4 or a reasonable belief that it had obtained insurance coverage to comply with section 423 of the Act and § 726.4. A notice of contest filed in accordance with § 726.307 shall not be sufficient to establish a reasonable belief that the operator was not required to comply with the Act and regulations.

§ 726.303 Notification; investigation.

(a) If the Director determines that an operator has violated the provisions of section 423 of the Act and § 726.4, he or she shall notify the operator of its violation and request that the operator immediately secure the payment of benefits. Such notice shall be sent by certified mail.

(b) The Director shall also direct the operator to supply information relevant to the assessment of a penalty. Such information, which shall be supplied within 30 days of the Director's request, may include:

(1) The date on which the operator commenced its operation of a coal mine;

(2) The number of persons employed by the operator since it began operating a coal mine and the dates of their employment; and

(3) The identity and last known address:

(i) In the case of a corporation, of all persons who served as president, secretary, and treasurer of the operator since it began operating a coal mine; or

(ii) In the case of an operator which is not incorporated, of all persons who were principals of the operator since it began operating a coal mine;

(c) In conducting any investigation of an operator under this subpart, the Division Director shall have all of the powers of a district director, as set forth at § 725.351(a) of this chapter. For purposes of § 725.351(c) of this chapter, the Division Director shall be considered to sit in the District of Columbia.

§ 726.304 Notice of initial assessment.

(a) After an operator receives notification under § 726.303 and fails to secure its obligations for the period defined in § 726.302(b), and following the completion of any investigation, the Director may issue a notice of initial penalty assessment in accordance with the criteria set forth in § 726.302.

(b)(1) A copy of such notice shall be sent by certified mail to the operator. If the operator is a corporation, a copy shall also be sent by certified mail to each of the persons who served as president, secretary, or treasurer of the operator during any period in which the operator was in violation of section 423 of the Act and § 726.4.

(2) Where service by certified mail is not accepted by any person, the notice shall be deemed received by that person on the date of attempted delivery. Where service is not accepted, the Director may exercise discretion to serve the notice by regular mail.

§ 726.305 Contents of notice.

The notice required by § 726.304 shall:

(a) Identify the operator against whom the penalty is assessed as well as the name of any other person severally liable for such penalty;

(b) Set forth the determination of the Director as to the amount of the penalty and the reason or reasons therefor;

(c) Set forth the right of each person identified in paragraph (a) of this section to contest the notice and request a hearing before the Office of Administrative Law Judges;

(d) Set forth the method for each person identified in paragraph (a) to contest the notice and request a hearing before the Office of Administrative Law Judges; and

(e) Inform any affected person that in the absence of a timely contest and request for hearing received within 30 days of the date of receipt of the notice, the Director's assessment will become final and unappealable as to that person.

§ 726.306 Finality of administrative assessment.

Except as provided in § 726.307(c), if any person identified as potentially liable for the assessment does not, within 30 days after receipt of notice, contest the assessment, the Director's assessment shall be deemed final as to that person, and collection and recovery of the penalty may be instituted pursuant to § 726.320.

§ 726.307 Form of notice of contest and request for hearing.

(a) Any person desiring to contest the Director's notice of initial assessment shall request an administrative hearing pursuant to this part. The notice of contest shall be made in writing to the Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, United States Department of Labor. The notice of contest must be received no later than 30 days after the date of receipt of the notice issued under

§ 726.304. No additional time shall be added where service of the notice is made by mail.

(b) The notice of contest shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific issues to be contested. In particular, the person must indicate his agreement or disagreement with:

(i) The Director's determination that the person against whom the penalty is assessed is an operator subject to the requirements of section 423 of the Act and § 726.4, or is the president, secretary, or treasurer of an operator, if the operator is a corporation.

(ii) The Director's determination that the operator violated section 423 of the Act and § 726.4 for the time period in question; and

(iii) The Director's determination of the amount of penalty owed.

(4) Be signed by the person making the request or an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) A notice of contest filed by the operator shall be deemed a notice of contest on behalf of all other persons to the Director's determinations that the operator is subject to section 423 of the Act and § 726.4 and that the operator violated those provisions for the time period in question, and to the Director's determination of the amount of penalty owed. An operator may not contest the Director's determination that a person against whom the penalty is assessed is the president, secretary, or treasurer of the operator.

(d) Failure to specifically identify an issue as contested pursuant to paragraph (b)(3) of this section shall be deemed a waiver of the right to contest that issue.

§ 726.308 Service and computation of time.

(a) Service of documents under this part shall be made by delivery to the person, an officer of a corporation, or attorney of record, or by mailing the document to the last known address of the person, officer, or attorney. If service is made by mail, it shall be considered complete upon mailing. Unless otherwise provided in this subpart, service need not be made by certified mail. If service is made by delivery, it shall be considered complete upon actual receipt by the person, officer, or attorney; upon leaving it at the person's, officer's or attorney's office with a clerk or person in charge; upon leaving it at a conspicuous place in the office if no one is in charge; or by leaving it at the person's or attorney's residence.

(b) If a complaint has been filed pursuant to § 726.309 of this part, two copies of all documents filed in any administrative proceeding under this subpart shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Black Lung Benefits Division, Room N–2605, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210, and one copy on the attorney representing the Department in the proceeding.

(c) The time allowed a party to file any response under this subpart shall be computed beginning with the day following the action requiring a response, and shall include the last day of the period, unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period shall include the next business day.

§ 726.309 Referral to the Office of Administrative Law Judges.

(a) Upon receipt of a timely notice of contest filed in accordance with § 726.307, the Director, by the Associate Solicitor for Black Lung Benefits or the Regional Solicitor for the Region in which the violation occurred, may file a complaint with the Office of Administrative Law Judges. The Director may, in the complaint, reduce the total penalty amount requested. A copy of the notice of initial assessment issued by the Director and all notices of contest filed in accordance with § 726.307 shall be attached. A notice of contest shall be given the effect of an answer to the complaint for purposes of the administrative proceeding, subject to any amendment that may be permitted under this subpart and 29 CFR part 18.

(b) A copy of the complaint and attachments thereto shall be served by counsel for the Director on the person who filed the notice of contest.

(c) The Director, by counsel, may withdraw a complaint filed under this section at any time prior to the date upon which the decision of the Department becomes final by filing a motion with the Office of Administrative Law Judges or the Secretary, as appropriate. If the Director makes such a motion prior to the date on which an administrative law judge renders a decision in accordance § 726.313, the dismissal shall be without prejudice to further assessment against the operator for the period in question.

§ 726.310 Appointment of Administrative Law Judge and notification of hearing date.

Upon receipt from the Director of a complaint filed pursuant to § 726.309, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall notify all interested parties of the time and place of the hearing.

§ 726.311 Evidence.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) Notwithstanding 29 CFR 18.1101(b)(2), subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges shall apply to administrative proceedings under this part, except that documents contained in Department of Labor files and offered on behalf of the Director shall be admissible in proceedings under this subpart without regard to their compliance with the Rules of Practice and Procedure.

§ 726.312 Burdens of proof.

(a) The Director shall bear the burden of proving the existence of a violation, and the time period for which the violation occurred. To prove a violation, the Director must establish:

(1) That the person against whom the penalty is assessed is an operator, or is the president, secretary, or treasurer of an operator, if such operator is a corporation.

(2) That the operator violated section 423 of the Act and § 726.4. The filing of a complaint shall be considered *prima facie* evidence that the Director has searched the records maintained by OWCP and has determined that the operator was not authorized to self-insure its liability under the Act for the time period in question, and that no insurance carrier reported coverage of the operator for the time period in question.

(b) The Director need not produce further evidence in support of his burden of proof with respect to the issues set forth in paragraph (a) if no party contested them pursuant to § 726.307(b)(3).

(c) The Director shall bear the burden of proving the size of the operator as required by § 726.302, except that if the Director has requested the operator to supply information with respect to its size under § 726.303 and the operator has not fully complied with that request, it shall be presumed that the

operator has more than 100 employees engaged in coal mine employment. The person or persons liable for the assessment shall thereafter bear the burden of proving the actual number of employees engaged in coal mine employment.

(d) The Director shall bear the burden of proving the operator's receipt of the notification required by § 726.303, the operator's prior notice of the applicability of the Black Lung Benefits Act to its operations, and the existence of any previous assessment against the operator, the operator's principals, or the operator's officers.

(e) The person or persons liable for an assessment shall bear the burden of proving the applicability of the mitigating factors listed in § 726.302(d).

§ 726.313 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall render a decision on the issues referred by the Director.

(b) The decision of the Administrative Law Judge shall be limited to determining, where such issues are properly before him or her:

(1) Whether the operator has violated section 423 of the Act and § 726.4;

(2) Whether other persons identified by the Director as potentially severally liable for the penalty were the president, treasurer, or secretary of the corporation during the time period in question; and

(3) The appropriateness of the penalty assessed by the Director in light of the factors set forth in § 726.302. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and bases therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, reverse, or modify, in whole or in part, the determination of the Director.

(d) The Administrative Law Judge shall serve copies of the decision on each of the parties by certified mail.

(e) The decision of the Administrative Law Judge shall be deemed to have been issued on the date that it is rendered, and shall constitute the final order of the Secretary unless there is a request for reconsideration by the Administrative Law Judge pursuant to paragraph (f) or a petition for review filed pursuant to § 726.314.

(f) Any party may request that the Administrative Law Judge reconsider his or her decision by filing a motion within 30 days of the date upon which the decision of the Administrative Law Judge is issued. A timely motion for reconsideration will suspend the running of the time for any party to file a petition for review pursuant to § 726.314.

(g) Following issuance of the decision and order, the Chief Administrative Law Judge shall promptly forward the complete hearing record to the Director.

§ 726.314 Review by the Secretary.

(a) The Director or any party aggrieved by a decision of the Administrative Law Judge may petition the Secretary for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Any other party may file a cross-petition for review within 15 days of its receipt of a petition for review or within 30 days of the date on which the decision was issued, whichever is later. Copies of any petition or cross-petition shall be served on all parties and on the Chief Administrative Law Judge.

(b) A petition filed by one party shall not affect the finality of the decision with respect to other parties.

(c) If any party files a timely motion for reconsideration, any petition for review, whether filed prior to or subsequent to the filing of the timely motion for reconsideration, shall be dismissed without prejudice as premature. The 30-day time limit for filing a petition for review by any party shall commence upon issuance of a decision on reconsideration.

§ 726.315 Contents.

Any petition or cross-petition for review shall:

(a) Be dated;

(b) Be typewritten or legibly written;

(c) State the specific reason or reasons why the party petitioning for review believes the Administrative Law Judge's decision is in error;

(d) Be signed by the party filing the petition or an authorized representative of such party; and

(e) Attach copies of the Administrative Law Judge's decision and any other documents admitted into the record by the Administrative Law Judge which would assist the Secretary in determining whether review is warranted.

§ 726.316 Filing and Service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210.

(b) *Number of copies.* An original and four copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(d) *Manner and proof of service.* A copy of each document filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 726.317 Discretionary Review.

(a) Following receipt of a timely petition for review, the Secretary shall determine whether the decision warrants review, and shall send a notice of such determination to the parties and the Chief Administrative Law Judge. If the Secretary declines to review the decision, the Administrative Law Judge's decision shall be considered the final decision of the agency. The Secretary's determination to review a decision by an Administrative Law Judge under this subpart is solely within the discretion of the Secretary.

(b) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed; and

(2) The schedule for submitting arguments, in the form of briefs or such other pleadings as the Secretary deems appropriate.

(c) Upon receipt of the Secretary's notice, the Director shall forward the record to the Secretary.

§ 726.318 Final decision of the Secretary.

The Secretary's review shall be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Secretary's review of conclusions of law shall be *de novo.* Upon review of the decision, the Secretary may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Secretary's final decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

§ 726.319 Retention of official record.

The official record of every completed administrative hearing held pursuant to this part shall be maintained and filed under the custody and control of the Director.

§ 726.320 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final, in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in, or following the decision of the Secretary, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor on behalf of the Black Lung Disability Trust Fund. The person against whom such penalty has been assessed or imposed shall promptly remit the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of U.S. Department of Labor, Black Lung Program. Such remittance shall be delivered or mailed to the Director.

(b) If such remittance is not received within 30 days after it becomes due and payable, it may be recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor.

PART 727—[REMOVED]

6. Under the authority of sections 932 and 936 of the Black Lung Benefits Act, part 727 is proposed to be removed.

[FR Doc. 97–44 Filed 1–21–97; 8:45 am]
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federal register

Wednesday
January 22, 1997

Part III

The President

Notice of January 21, 1997—Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

Federal Register
Vol. 62, No. 14
Wednesday, January 23, 1997

Presidential Documents

Title 3—

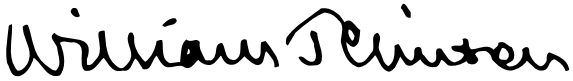
The President

Notice of January 21, 1997

Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process. By Executive Order 12947 of January 23, 1995, I blocked the assets in the United States, or in the control of United States persons, of foreign terrorists who threaten to disrupt the Middle East peace process. I also prohibited transactions or dealings by United States persons in such property. Because terrorists activities continue to threaten the Middle East peace process and vital interests of the United States in the Middle East, the national emergency declared on January 23, 1995, and the measures that took effect on January 24, 1995, to deal with that emergency must continue in effect beyond January 23, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,
January 21, 1997.

[FR Doc. 97–1742
Filed 1–21–97; 12:45 pm]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

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Commodity Credit Corporation

Loan and purchase programs:

Tobacco; budget deficit marketing assessment; published 1-22-97

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; published 12-23-96

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:

Radiofrequency radiation; environmental effects; evaluation guidelines; published 1-22-97

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Fish and Wildlife Service

Endangered and threatened species:

Spring Creek bladderpod; published 12-23-96

PERSONNEL MANAGEMENT OFFICE

Employment:

Presidential management intern program; published 1-22-97

Prevailing rate systems; published 12-23-96

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Comptroller of the Currency

Practice and procedure:

Civil money penalty inflation adjustments; published 1-22-97

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AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Wildlife Habitat Incentives Program; comments due by 1-27-97; published 12-13-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Fresh market tomatoes; comments due by 1-29-97; published 12-30-96

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Wildlife Habitat Incentives Program; comments due by 1-27-97; published 12-13-96

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Alaska scallop; comments due by 1-30-97; published 1-15-97

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone--

Bering Sea and Aleutian Islands groundfish; comments due by 1-31-97; published 12-2-96

Caribbean, Gulf, and South Atlantic fisheries--

South Atlantic Fishery Management Council; hearing; comments due by 1-27-97; published 1-21-97

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Beverage containers and resource recovery facilities; management guidelines--

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Toxic substances:

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Common carrier services--

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Surface Mining Reclamation and Enforcement Office

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Comptroller of the Currency

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Non-lead banks; lower assessments; comments due by 1-31-97; published 12-2-96

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Economic Growth and Regulatory Paperwork Reduction Act; implementation; comments due by 1-27-97; published 11-27-96