concerning these areas will only be briefly mentioned in this notice. Texas has submitted, or has agreed to submit, additional information concerning the Texas lead SIP for the Dallas and El Paso areas. In its letter of October 14, 1982, Texas had committed to submit schedules to EPA for the development of a lead control plan for both Dallas and El Paso. In a letter dated January 28, 1983, Texas submitted the schedules for the development of lead control plans for both areas. The State is diligently working to complete these plans for submittal in the upcoming months to EPA for approval. The lead control plans for the two areas and EPA's action on the Texas lead SIP for Dallas and El Paso areas will be fully discussed in a future rulemaking.

III. Public Comments

One public comment letter was received which provided comments on EPA's proposed rulemaking of January 4, 1983. A letter from PPG Industries provided information that its facility in Beaumont, Texas, would cease production of lead compounds in early 1983. The comment letter requested that the facility be removed from the "National Inventory for Lead Air Emissions." The Beaumont facility will have its emission inventory for lead adjusted to agree with the current information that production of lead compounds has ceased at the facility, which was confirmed by correspondence with the PPG facility in Beaumont. But since recycling of materials containing lead, plus some production of elemental lead, will continue in the near future as part of the clean-up at the facility, and since some emissions of lead (although reduced) could occur, the facility should remain listed in the Texas lead SIP emission inventory until all operations which emit lead are shutdown. The comment and request by PPG will be fulfilled by an adjustment that will be made to EPA's national inventory for lead air emissions for the Beaumont facility and by a future adjustment to the lead emission inventory in the Texas lead SIP. No other public comments were received concerning EPA's proposed actions on the Texas lead SIP.

EPA's Action

As explained in EPA's proposed rulemaking on January 4, 1983, EPA has evaluated the Texas lead SIP and determined that with the exceptions of the Dallas and El Paso areas, it meets the requirements of Section 110(a) of the CAA and 40 CFR Part 51, Subparts B and E. EPA believes that the SIP is adequate to attain and maintain the lead NAAQS and is approving the Texas lead SIP, except for the areas of Dallas and El Paso, Texas. Those two areas will be addressed and acted on in a future rulemaking. EPA finds that the Texas SIPs that have been approved for other NAAQS's contain regulations that satisfy general regulations not specifically mentioned in this lead SIP, and that these general regulations can be incorporated into the lead SIP.

Also as explained in the proposed rulemaking, the attainment date for lead for the Texas lead SIP addressed by this action is November 5, 1982. The two year extension of the attainment date is not granted by EPA for the Texas lead SIP addressed by this action, since the SIP has demonstrated that the lead NAAQS is being attained for the areas of the State affected by this action.

The public should be advised that this action will be effective on the date listed in the **EFFECTIVE DATE** section of this rulemaking. 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 within 60 days of the date of publication. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Under 5 U.S.C. 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Incorporation by reference of the SIP for the State of Texas was approved by the Director of the Office of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, and Intergovermental Relations.

Dated: September 26, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52, Subpart SS—Texas, of the Code of Federal Regulations is amended to include the following:

1. Section 52.2270 is amended by adding paragraph (c)(41) as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(41) The Texas Lead SIP was submitted to EPA on June 12, 1980, by the Governor of Texas, as adopted by the Texas Air Control Board on March 21, 1980. Additional information was submitted in letters dated January 29, 1982, March 15, 1982, June 3, 1982, June 15, 1982, August 23, 1982, and October 14, 1982. Also additional information and Board Order 82–11 were submitted in a letter dated December 3, 1982. No action is taken regarding the Dallas and El Paso areas.

2. Section 52.2279 is amended by adding to the table the pollutant "lead" in a new column in the table as follows:

§ 52.2279 Attainment dates for national standards

Air quality control region	Pollutant	Lead
Abilene-Wichita Falls Intrastate		e
Amarillo-Lubbock Intrastate		e
Austin-Waco Intrastate		e
Brownsville-Laredo Intrastate (except Cameron County).		e
Brownsville-Laredo Intrastate (Cameron County only).		e
Corpus Christi-Victoria Intrastate (except Nueces and Victoria Counties).		e
Corpus Christi-Victoria Intrastate (Nueces County only).		e
Corpus Christi-Victoria Intrastate (Victoria County only).		e
Midland-Odessa-San Angelo Intrastate (except Ector County).		e
Midland-Odessa San Angelo Intrastate (Ector County only).		e
Metropolitan Houston-Galveston Intrastate (except Brazoria, Harris and Galveston Counties).		e
Metropolitan Houston-Galveston Intrastate (Brazoria and Galveston Counties only).		e
Metropolitan Houston-Galveston Intrastate (Harris County only).		e
Metropolitan Dallas-Fort Worth Intrastate (except Dallas and Tarrant Counties).		e
Metropolitan Dallas-Fort Worth Intrastate (Tarrant County only).		e
Metropolitan Dallas-Fort Worth Intrastate (Dallas County only).		f
Metropolitan San Antonio Intrastate (except Bexar County).		e
Metropolitan San Antonio Intrastate (Bexar County only).		e
Southern Louisiana-Southeast Texas Interstate (except Jefferson and Orange Counties).		e
Southern Louisiana-Southeast Texas Interstate (Jefferson and Orange Counties only).		e
El Paso-Las Cruces-Alamogordo Interstate (except El Paso County).		e
El Paso-Las Cruces-Alamogordo Interstate (El Paso County only).		g
Shreveport-Texarkana-Tyler Interstate (except Gregg County).		e
Shreveport-Texarkana-Tyler Interstate (Gregg County only).		e

* * * * *

e. November 5, 1982.
f. EPA taking no action until additional information and/or compliance strategy developed.
g. EPA taking no action until additional information and/or compliance strategy developed.

[FR Doc. 83-26878 Filed 10-3-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 469

[OW-FRL 2424-8]

Electrical and Electronic Components Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule and request for comments.

SUMMARY: EPA is amending the compliance deadline for the best available technology economically achievable (BAT) effluent limitations guidelines for flouride in the electronic crystals subcategory. The latest possible compliance date, as determined by the permit writer, is now November 8, 1985, instead of July 1, 1984. In addition, EPA is correcting formatting errors and typographical errors in 40 CFR Part 469.

DATES: Comments are due November 3, 1983. In accordance with 40 CFR 100.01 (45 FR 26048), this interim final regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on October 18, 1983.

This regulation shall become effective on November 17, 1983.

ADDRESS: Send comments to Mr. David Pepson, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Electrical and Electronic Components Phase I. The administrative record, including all comments, will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear) (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Pepson, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW., telephone (202) 382-7157.

SUPPLEMENTARY INFORMATION:

I. Purpose of Amendment

On April 8, 1983, EPA promulgated Clean Water Act effluent limitations guidelines, pretreatment standards, and new source performance standards for semiconductor and electronic crystal manufacturing plants. 48 FR 15382. These plants comprise two subcategories within the electrical and electronics components point source category.

Among the limitations EPA established was a best available technology economically achievable (BAT) limitation for fluoride for electronic crystal manufacturing plants. 40 CFR 469.25. EPA set a compliance deadline of "as soon as possible as determined by the permit writer, but in no event later than July 1, 1984" for this limitation. 40 CFR 469.21. EPA did not extend the compliance deadline beyond July 1, 1984 because, based on the available data in the record, EPA determined that all the direct dischargers in the subcategory had fluoride treatment in place. 48 FR 15387.

The Monsanto Company, one of the direct dischargers in the electronic crystal subcategory, notified EPA after promulgation that one of its plants does not have the necessary treatment in place for fluoride. The company indicated that it cannot meet a July 1, 1984 compliance deadline but rather will need the 31 months EPA stated may be necessary for the installation of precipitation/clarification treatment technology. 48 FR 15386. Monsanto did not bring this situation to EPA's attention during the comment period on the proposed regulation because EPA proposed that the compliance deadline would be three years from promulgation of the regulation.

Since it now appears that EPA's determination regarding compliance with the fluoride limitation was erroneous with respect to Monsanto's Spartanburg, South Carolina plant, we are amending 40 CFR 469.21 to change the BAT compliance date for fluoride to "as soon as possible as determined by the permit writer, but in no event later than November 8, 1985." This would afford Monsanto up to 31 months from promulgation of the regulation to come into compliance if the permit writer determines that Monsanto needs additional time to install precipitation/clarification technology. This is the same compliance deadline that would have been established for the electronic crystals subcategory had EPA been aware of Monsanto's status pre-promulgation. It is also the same deadline that would be established for compliance with the identical best practicable technology currently available (BPT) effluent limitations guidelines for fluoride. (When a facility has a "best engineering judgment" BPT permit, as Monsanto does, and a BPT guideline is subsequently promulgated, any reissued permit is written to require compliance with the guideline limitation as soon as possible. An "as soon as possible" BPT deadline may not extend beyond the BAT compliance deadline.)

As amended, 40 CFR 469.21 now authorizes the permit writer to extend the compliance deadline for any of the six direct dischargers in the crystals subcategory. As a practical matter, however, the amendment will not affect the other plants in the subcategory. These plants have already installed the necessary treatment technology and will not need additional time to come into compliance. Even in Monsanto's case, the permit writer retains the discretion to set the compliance deadline at any time up to November 8, 1985 if earlier compliance is achievable.

Section 469.21 also has been amended to delete the sentence containing the compliance dates for the regulated toxic and conventional pollutants. Because the compliance deadlines are established by the Clean Water Act there is no need to include these dates in the regulation. The reference to the Consent Decree in *NRDC* v. *Train* in § 469.21 is also being deleted since the Court approved the motion described in the last three sentences of the section.

II. Corrections

The following corrections are being made to 40 CFR Part 469 as it was printed in 48 FR 15382 *et seq.* First, the list of toxic organics which comprise total toxic organics (TTO) is formatted incorrectly in §§ 469.12 and 469.22. This notice corrects the format for the TTO list. In addition, EPA is correcting the typographical errors in the section headings for PSES, NSPS, PSNS, and BCT in the electronic crystal subcategory. These errors all appear on 48 FR 15396.

III. Interim Final Rule

EPA believes that use of advance notice and comment procedures would be unnecessary and contrary to the public interest. The changes made today are minor and designed to correct errors in the final regulation. Immediate promulgation will allow Monsanto's NPDES permit to be reissued in a timely manner. Therefore, EPA finds that good cause exists for adopting the amendment in interim final form.

The amendment to 40 CFR 469.21 will take effect 44 days after promulgation. EPA will consider any comments in promulgating a "final" regulation.

IV. Executive Order 12291 and Regulatory Flexibility Analysis

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. The primary purpose of the Executive Order (E.O.) is the ensure that regulatory agencies carefully evaluate the need for taking regulatory action. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This amendment is not a major rule because its annualized cost is less than $100 million and it

meets none of the other criteria specified in paragraph (b) of the E.O.

Pub. L. 96–354 requires EPA to prepare an Initial Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. This analysis may be done in conjunction with or as a part of any other analysis conducted by the Agency. The economic impact analysis done for the April 8, 1983 regulation indicates that this amendment would not have a significant impact on any segment of the regulated population. Therefore, a formal regulatory flexibility analysis is not required.

V. OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This amendment does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 469

Electrical and electronic equipment, Water pollution control, Waste treatment and disposal.

Dated: September 27, 1983.

William D. Ruckelshaus,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 469 is amended as follows:

1. **Authority:** Sec. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 469.21 is revised to read as follows:

§ 469.21 Compliance dates.

The compliance date for the BAT fluoride limitation is as soon as possible as determined by the permit writer but in no event later than November 8, 1985. The compliance date for PSES for TTO is July 1, 1984 and for arsenic is November 8, 1985.

§§ 469.12 and 469.22 [amended]

3. The toxic organic compounds listed on 48 FR 15394, 15395, 15396 (April 8, 1983), 40 CFR 469.12(a) and 469.22(a) are revised as follows:

(a) The term "total toxic organics (TTO)" means the sum of the concentrations for each of the following toxic organic compounds which is found in the discharge at a concentration greater than ten (10) micrograms per liter:

1.2.4 trichlorobenzene
chloroform
1.2 dichlorobenzene
1.3. dichlorobenzene
1.4. dichlorobenzene
ethylbenzene
1.1.1 trichloroethane
methylene chloride
naphthalene
2 nitrophenol
phenol
bis (2-ethylhexyl) phthalate
tetrachloroethylene
toluene
trichloroethylene
2 chlorophenol
2,4 dichlorophenol
4 nitrophenol
pentachlorophenol
di-n-butyl phthalate
anthracene
1,2 diphenylhydrazine
isophorone
butyl benzyl pthalate
1,1 dichloroethylene
2,4,6 trichlorophenol
carbon tetrachloride
1,2 dichloroethane
1,1,2 trichloroethane
dichlorobromomethane

§ 469.26 [Corrected]

4. On 48 FR 15396, column two (April 8, 1983), the heading in 40 CFR 469.25 is corrected to read § 469.26 and the heading in 40 CFR 436.26 is corrected to read § 496.27

§§ 469.28 and 469.29 [Corrected]

5. On 48 FR 15396, column three (April 8, 1983), the heading in 40 CFR 469.27 is corrected to read § 469.28 and the heading in 40 CFR 469.28 is corrected to read § 469.29.

[FR Doc. 83-26877 Filed 10-3-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Health Maintenance Organizations

AGENCY: Public Health Service, HHS.

ACTION: Final rule; confirmation of interim rule.

SUMMARY: This document finalizes, without change, the interim rule published on January 12, 1983, that amends the Public Health Service regulations on Federal qualification of health maintence organizations (HMOs) to provide for greater flexibility for already existing prepaid health care delivery systems to become transitionally qualified HMOs.

EFFECTIVE DATE: This rule was effective on January 12, 1983, with the publication in the **Federal Register** of the interim final rule.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D., Acting Associate Bureau Director for Health Maintenance Organizations, 301 443–4106.

SUPPLEMENTARY INFORMATION: On January 12, 1983 (48 FR 1301), the Department issued an interim rule with request for comments that made a minor change in 42 CFR 110.603(b)(2)(i) by providing greater flexibility for operating prepaid health care delivery systems to meet the requirements for Federal transitional qualification.

One comment on the interim rule was received. The comment was fully supportive of the regulatory amendment and offered no suggestions for revision. Accordingly, the Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, hereby adopts as a final rule the interim rule as published on January 12, 1983.

Costs to existing prepaid health care delivery systems seeking transitional qualification are somewhat lessened as a result of this rule, because it will no longer be necessary for these entities to reorganize their legal structure to receive transitional qualification. There will be no cost increases to applicants, States or local governments. Therefore, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities and an analysis under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) is not required. Further, since these regulations do not meet any criteria for a major regulation under Executive Order 12291, a regulatory impact analysis is not required.

List of Subjects in 42 CFR Part 110

Grant programs—health, Health care, Health facilities, Health Insurance, Health maintenance organizations, Loan programs—health.

Authority: Section 215 of the Public Health Service Act, as amended, 58 Stat. 690 (42 U.S.C. 216); secs. 1301–1318, as amended, Pub. L. 97–35, 95 Stat. 572–578 (42 U.S.C. 300e–300e–17).

Dated: August 3, 1983.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: September 12, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-26941 Filed 10-3-83; 8:45 am]

BILLING CODE 4160-16-M

Office of the Secretary

45 CFR Part 13

Implementation of the Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: These regulations implement the Equal Access to Justice Act, 5 U.S.C. 504 and 504 note, for the Department of Health and Human Services. They describe the circumstances under which the Department may award attorney fees and certain other expenses to eligible individuals and entities who prevail over the Department in specified administrative proceedings where the Department's position in the proceeding was not substantially justified.

DATE: This final regulation will become effective November 3, 1983.

FOR FURTHER INFORMATION CONTACT: Darrel J. Grinstead, Assistant General Counsel, Business and Administrative Law Division, Room 5362 HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone: (202) 245-7752.

SUPPLEMENTARY INFORMATION: These rules implement Section 203 of the Equal Access to Justice Act (EAJA), Pub. L. 96-481, for agency proceedings of the Department of Health and Human Services. HHS published interim final regulations, with an invitation of comments, on March 12, 1982 (47 FR 10834). We received comments from a home health agency, a hospital, a legal services organization that represents Social Security claimants, a hospital trade association, a trade association of home health agencies, a federal employees union, and two lawyers whose firm represents home health agencies. A summary of their comments and the Department's evaluation of those comments follows:

Covered proceedings. Several commenters disagreed with the Department's determination, incorporated in § 13.3(a) and in Appendix A to the rule, that proceedings before the Provider Reimbursement Review Board (PRRB) are not covered by the EAJA except where HHS itself acts as the fiscal intermediary in the adjudication. HHS adheres to its original determination since, as we stated in the preamble to the interim rule, the Department does not control the conduct of the adjudication by a private fiscal intermediary.

For a similar reason, we have rejected other suggestions that intermediary hearings under 42 CFR 405.1801 *et seq.* are covered. The EAJA provides for fee awards only when the agency is "a party to the proceeding" (5 U.S.C. 504(a)(1)), but the Health Care Financing Administration is not a party to such intermediary hearings (42 CFR 405.1815).

One comment argued that Medicare Part B hearings are covered. However, we believe these hearings are not "adjudication[s] under [5 U.S.C. 554]" as required by the EAJA, 5 U.S.C. 504(b)(1)(C).

One comment suggested that the review of PRRB decisions by the Secretary was covered. However, this review, which is made pursuant to 42 U.S.C. 1395oo(f)(1), is not an "adjudication under [5 U.S.C. 554]" as required by the EAJA.

In the preamble to the interim final rule, we explained that adjudications of claims under the Social Security programs are not covered because the Department is not represented in these proceedings. We also wish to clarify that a second reason why these proceedings are not covered is that they are not "required to be under 5 U.S.C. 554" as required by § 13.3. Thus, the EAJA does not apply to any Social Security claims adjudications, whether or not the Government is represented.

One comment questioned the limitation in § 13.3(a) to proceedings where an agency representative "enters an appearance and participates." The commenter maintained that where (as in certain Social Security adjudications) the proceeding is a review of an agency's written determination, that determination satisfies the EAJA requirement that the proceeding be one where "the position of the United States is represented by counsel or otherwise." We have retained the limitation in the final rule. The phrase "or otherwise" does not extend the EAJA, as the commenter suggested, to cover proceedings involving a review of a written determination unless a Government representative enters an appearance and participates in the review proceeding. (Moreover, this phrase does not affect the EAJA requirement that the proceeding be an "adjudication under section 554," and, as noted above, this category does not include Social Security claims adjudications.)

One comment suggested that we adopt provisions for proceedings involving two agencies. However, the example cited by the comment, unfair labor practice complaints issued against HHS by the Federal Labor Relations Authority (FLRA), are proceedings before the FLRA, not before HHS. *See* 5 U.S.C. 7118. Thus HHS rules would not apply.

One comment asked about the statement, in § 13.3(a) of the interim rule, that parties can file applications in proceedings not listed in Appendix A, and that the issue of coverage would be resolved in the proceedings on the application. Referring to PRRB proceedings, the commenter asked what standards the PRRB would use to decide the question, whether the PRRB had authority to decide it, and whether any other means of obtaining judicial review of the rule are available. To avoid these problems, and to avoid requiring the parties to brief the question (and requiring the adjudicative officer to decide it) in every case, the Department has deleted this provision from the rule. As for judicial review of the Department's determination that a particular class of proceedings is not covered, it is not the province of a regulation to provide for means of judicial review.

Eligible applicants. One comment contended that § 13.4(b)(3)-(4) of the interim rule is wrong in applying the 500-employee limit to Section 501(c)(3) tax-exempt organizations and to agricultural cooperatives. The Department believes its position is compelled by the language of the Act and by the legislative history, both of which are specific in excepting such organizations from the net worth limitation but state the 500-employee limit without noting any exceptions. *See* H.R. Rep. No. 96-1418 at 11, 15 (1980), reprinted in [1980] U.S.C.C.A.N. 4990, 4994.

Standards for awards. One comment questioned the provision (§ 13.5(a)) that the Department's position must be substantially justified "at the time the proceeding was initiated," suggesting that circumstances might occur or facts become known during the proceeding that would make the Department's position unjustified as of that later date, and that fees and expenses incurred after that date should be recoverable. While there is theoretical merit to the comment, administrative proceedings are generally fairly brief, and it would generally be impractical to judge that the agency's position became not substantially justified in the course of a

proceeding. Thus the Department has left the language as it stands.

Another comment suggests that § 13.5(a) define what standard of knowledge the agency will be held to in evaluating the justification of its position. The reasonableness standard incorporated in the last sentence of that subsection is adequate for that purpose and Department officials would be held to know those facts that reasonable persons in their positions would know or ascertain.

One comment suggests that § 13.5(b) be clarified so that if a party prevails on some but not all of several different joined claims, but the successful claims fall short of the jurisdictional minimum amount for the particular proceeding (specifically, the $10,000 minimum for PRRB proceedings), fees could still be awarded. We have clarified the rule accordingly. The intent of the interim rule was as stated in the preamble, to preclude awards for prevailing on merely ancillary matters or on an interlocutory procedural issue. The revised language preserves that intent.

Allowable fees. One comment argued that § 13.6(a) is wrong in limiting awards to the applicant's actual expenses. However, we believe the statutory language, "fees and other expenses incurred," does not allow awards greater than the amounts the party has paid or is obligated to pay.

Three comments questioned the exclusion in § 13.6(a) of expenses reimbursable under another statute or program. We have left this provision as it stands, since the EAJA was not intended to afford parties the windfall of double reimbursement. One of those comments notes that under the Medicare program providers' legal expenses are only partially reimbursed, in a fraction depending on their Medicare utilization rates. Under the language of § 13.6(a), the EAJA award in such a case would be reduced only by that portion of the expenses that are or would be reimbursed by Medicare.

Another of those comments notes that the Medicare program subjects many providers to overall cost limits, and argues that a provider should have the option of seeking reimbursement of legal expenses under EAJA so as to escape the constraint of those limits. We have not accepted this comment because adopting its suggestion would conflict with basic principles of Medicare reimbursement. If a provider's costs exceed the cost limits, it would be inconsistent with Medicare accounting principles to assume that the excess was due to some particular expense incurred by the provider. Instead, Medicare accounting treats all expenses comparably, and any excess over the cost limits would be attributed to the totality of expenses rather than specific items. If a provider obtains an EAJA award that is to be reduced by virtue of the provider's eligibility for Medicare reimbursement, the amount of the reduction will, however, taken into account the effect of the cost limits. The cost limits will be assumed to limit all the provider's costs comparably, and thus the reduction will be adjusted to reflect the proportionate effect of the cost limits.

Procedures for considering application. One comment argued that § 13.22(a) should provide for extension of time for good cause as does § 13.23(a). However, the thirty-day limit set by the statute, 5 U.S.C. 504(a)(2), is jurisdictional, as is the analogous limit on applications in judicial proceedings, 28 U.S.C. 2412(d)(1)(B). Thus, HHS has no authority to provide for extensions.

Two comments on § 13.23(a) ask what would be the consequences of the agency's failure to file an answer within 30 days as required. A default provision such as was included in the model rules of the Administrative Conference of the United States is generally not appropriate against the Government. *Cf.* Fed. R. Civ. P. 55(e). However, the preamble to the interim rules made clear that the sanctions provision (§ 13.25(c)) applies to the agency as well as to the applicant. We have clarified that provision to make this application explicit in the rule.

A final comment suggests that § 13.27 is internally inconsistent, requiring on the one hand review by the agency head or designee before an award becomes final (§ 13.27(a)), and allowing on the other hand an award decision to become final after 30 days if no review is sought (§ 13.27(b)). We are amending § 13.27(b) to make clear that review is required to make an award final, but that the thirty-day limit cuts off a party's right to file exceptions.

Other changes. We have made clear in § 13.6(a) that only federal government payments will offset EAJA awards. We have deleted § 13.8, since delegations of authority can be made more efficiently and flexibly by memorandum.

We have revised the requirement as to the contents of an EAJA application (§§ 13.11, 13.12) to follow more closely the rule of the Justice Department. We have made clear in § 13.11(b) (now § 13.11(c)) that this regulation is not a basis for a confidentiality guarantee.

We have made clear in § 13.30 that if the previous presiding officer is not available, another person can be designated the adjudicative officer. Finally, we have amended the Appendix to reflect the transfer of civil money penalty proceedings to the Office of Inspector General.

Impact of Regulations. The Secretary certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, that this regulation will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's certification is that, although small entities are eligible to apply for awards, the regulation applies only to a small number of proceedings held by the Department each year, and in many of those proceedings the Department's position will be substantially justified.

The Secretary has also determined, in accordance with Executive Order 11291, that the proposed rule does not constitute a "major rule" because it will not have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, any industries, any governmental agencies or geographic regions; or have any governmental agencies or geographic regions; or have significant and adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. A regulatory analysis is not required.

List of Subjects in 45 CFR Part 13

Claims, Equal access to justice, Lawyers.

Dated: July 12, 1983.

Margaret M. Heckler,

Secretary.

Title 45 of the Code of Federal Regulations is amended by revising Part 13 to read as follows:

PART 13—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Subpart A—General Provisions

Sec.

Subpart B—Information Required from Applicants

Sec.

Subpart C—Procedures for Considering Applications

Authority: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

Subpart A—General Provisions

§ 13.1 Purpose of these rules.

These rules implement section 203 of the Equal Access to Justice Act, 5 U.S.C. 504 and 504 note, for the Department of Health and Human Services. They describe the circumstances under which the Department may award attorney fees and certain other expenses to eligible individuals and entities who prevail over the Department in certain administrative proceedings (called "adversary adjudications"). The Department may reimburse parties for expenses incurred in adversary adjudications if the party prevails in the proceeding and if the Department's position in the proceeding was not substantially justified. These rules explain how to apply for an award. They also describe what proceedings constitute adversary adjudications covered by the Act, what types of persons and entities may be eligible for an award, and what procedures and standards the Department will use to make a determination as to whether a party may receive an award.

§ 13.2 When these rules apply.

These rules apply to adversary adjudications pending before the Department between October 1, 1981 and September 30, 1984.

§ 13.3 Proceedings covered.

(a) These rules apply only to adversary adjudications. For the purpose of these rules, only an adjudication required to be under 5 U.S.C. 554, in which the position of the Department or one of its components is represented by an attorney or other representative ("the agency's litigating party") who enters an appearance and participates in the proceeding, constitutes an adversary adjudication. These rules do not apply to proceedings for the purpose of establishing or fixing a rate or for the purpose of granting, denying, or renewing a license. Department proceedings covered by these rules, if the agency's litigating party enters an appearance and participates, are listed in Appendix A.

(b) If a proceeding is covered by these rules, but also involves issues excluded under paragraph (a) of this section from the coverage of these rules, reimbursement is available only for fees and expenses resulting from covered issues.

§ 13.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under these regulations, the applicant must be a party, as defined in 5 U.S.C. 551(3), to the adversary adjudication for which it seeks an award. An applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The categories of eligible applicants are as follows:

(1) Individuals with a net worth of not more than $1 million;

(2) Sole owners of unincorporated businesses if the owner has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) Charitable or other tax-exempt organizations described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) Cooperative associations as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees, and

(5) All other partnerships, corporations, associations or public or private organizations with a net worth of not more than $5 million and with not more than 500 employees.

(c) For the purpose of determining eligibility, the net worth and number of employees of an applicant is calculated as of the date the proceeding was initiated. The net worth of an applicant is determined by generally accepted accounting principles.

(d) Whether an applicant who owns an unincorporated business will be considered as an "individual" or a "sole owner of an unincorporated business" will be determined by whether the applicant's participation in the proceeding is related primarily to individual interests or to business interests.

(e) The employees of an applicant include all those persons regularly providing services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant is not eligible if it appears from the facts and circumstances that it has participated in the proceedings only or primarily on behalf of other persons or entities that are ineligible.

§ 13.5 Standards for awards.

(a) Awards will not be made for fees and expenses where the Department's position in the proceeding was substantially justified at the time the proceeding was initiated. The fact that a party has prevailed in a proceeding does not create a presumption that the Department's position was not substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency's litigating party, which may avoid an award by showing that its position was reasonable in law and fact.

(b) When two or more matters are joined together for one hearing, each of which could have been heard separately (without regard to laws or rules fixing a jurisdictional minimum amount for claims), and an applicant has prevailed with respect to one or several of the matters, an eligible applicant may receive an award for expenses associated only with the matters on which it prevailed if the Department's position on those matters was not substantially justified.

(c) Awards for fees and expenses incurred before the date on which a proceeding was initiated will be made only if the applicant can demonstrate that they were reasonably incurred in preparation for the proceeding.

(d) Awards will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if other special circumstances make an award unjust.

§ 13.6 Allowable fees and expenses.

(a) Awards will be limited to the rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses. Awards will not be made for more than the applicant's actual expenses. If a party has already received, or is eligible to receive, reimbursement for any expenses under another statutory provision or another program allowing reimbursement, its award under these rules must be reduced by the amount the prevailing party has already received, or is eligible to receive, from the federal government.

(b) An award for the fees of an attorney or agent may not exceed $75.00 per hour, regardless of the actual rate charged by the attorney or agent. An award for the fees of an expert witness may not exceed the highest rate at which the Department pays expert witnesses, which is $24.09 per hour, regardless of the actual rates charged by the witness. These limits apply only to fees; an award may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges separately for such expenses.

(c) In determining the reasonableness of the fees sought for attorneys, agents or expert witnesses, the adjudicative officer must consider factors bearing on the request, which include, but are not limited to:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for like services; if the attorney, agent or witness is an employee of the applicant, the fully allocated cost of service;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

§ 13.7 Studies, exhibits, analyses, engineering reports, tests and projects.

The reasonable cost (or the reasonable portion of the cost) for any study, exhibit, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that:

(a) The charge for the service does not exceed the prevailing rate payable for similar services,

(b) The study or other matter was necessary to the preparation for the administrative proceeding, and

(c) The study or other matter was prepared for use in connection with the administrative proceeding. No award will be made for a study or other matter which was necessary to satisfy statutory or regulatory requirements, or which would ordinarily be conducted as part of the party's business irrespective of the administrative proceeding.

Subpart B—Information Required From Applicants

§ 13.10 Contents of application.

(a) Applications for an award of fees and expenses must include:

(1) The name of the applicant and the identification of the proceeding;

(2) A declaration that the applicant believes it has prevailed, and an identification of the position of the Department that the applicant alleges was not substantially justified at the time of the initiation of the proceeding;

(3) Unless the applicant is an individual, a statement of the number of its employees on the date on which the proceeding was initiated, and a brief description of the type and purpose of its organization or business;

(4) A description of any affiliated individuals or entities, as the term "affiliate" is defined in § 13.4(f), or a statement that none exist;

(5) A statement that the applicant's net worth as of the date on which the proceeding was initiated did not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualified under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(6) A statement of the amount of fees and expenses for which an award is sought;

(7) A declaration that the applicant has not received, has not applied for, and does not intend to apply for reimbursement of the cost of items listed in the Statement of Fees and Expenses under any other program or statute; or if the applicant has received or applied for or will receive or apply for reimbursement of those expenses under another program or statute, a statement of the amount of reimbursement received or applied for or intended to be applied for; and

(8) Any other matters the applicant wishes the Department to consider in determining whether and in what amount an award should be made.

(b) All applications must be signed by the applicant or by an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(Approved by the Office of Management & Budget under control number 0990-0118)

§ 13.11 Net worth exhibits.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 13.4(f) of this part) when the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information

from public disclosure.The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, the officer will omit the material from the public record. In that case, any decision regarding disclosure of the material (whether in response to a request from an agency or person outside the Department or on the Department's own initiative) will be made in accordance with applicable statutes and Department rules and procedures for commercial and financial records which the submitter claims are confidential or privileged. In particular, this regulation is not a basis for a promise or obligation of confidentiality.

(Approved by the Office of Management & Budget under control number 0990–0118)

§ 13.12 Documentation of fees and expenses.

(a) All applicants must be accompanied by full documentation of the fees and expenses, including the cost of any study, exhibit, analysis, report, test or other similar item, for which the applicant seeks reimbursement.

(b) The documentation shall include an affidavit from each attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended, the rate at which fees and other expenses were computed, a description of the specific services performed, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. Where the adversary adjudication includes covered proceedings (as described in § 13.3) as well as excluded proceedings, or two or more matters, each of which could have been heard separately, the fees and expenses shall be shown separately for each proceeding or matter, and the basis for allocating expenses among the proceedings or matters shall be indicated.

(1) The affidavit shall itemize in detail the services performed by the date, number of hours per date and the services performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide affidavits from two attorneys or agents with similar experience, who perform similar work, stating the hourly rate which they bill and are paid by the majority of their clients during a comparable time period.

(c) If the applicant seeks reimbursement of any expenses not covered by the affidavit described in paragraph (b), the documentation must also include an affidavit describing all such expenses and stating the amounts paid or payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(Approved by the Office of Management & Budget under control number 0990–0118)

Subpart C—Procedures for Considering Applications

§ 13.21 Filing and service of pleading.

All pleadings, including applications for an award of fees, answers, comments, and other pleadings related to the applications, shall be filed in the same manner as other pleadings in the proceeding and served on all other parties and participants, except as provided in § 13.11(b) of this part concerning confidential financial information.

§ 13.22 When an application may be filed.

(a) The applicant must file and serve its application no later than 30 calendar days after the Department's final disposition of the proceeding which makes the applicant a prevailing party.

(b) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final; (2) issuance of an order disposing of any petitions for reconsideration of the Department's final order in the proceeding; (3) if no petition for reconsideration is filed, the last date on which such a petition could have been filed; or (4) issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

(c) For purposes of this rule, an applicant has prevailed when the agency has made a final disposition favorable to the applicant with respect to any matter which could have been heard as a separate proceeding, regardless of whether it was joined with other matters for hearing.

(d) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

§ 13.23 Responsive pleadings.

(a) Within 30 calendar days after service of the application, the agency's litigating party shall file an answer either consenting to the award or explaining in detail any objections to the award requested, and identifying the facts relied on in support of its position. The adjudicative officer may for good cause grant an extension of time for filing an answer.

(b) Within 15 calendar days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 13.25.

(c) Any party to or participant in a proceeding may file comments on an application within 30 calendar days, or on an answer within 15 calendar days after service of the application or answer.

§ 13.24 Settlements.

The applicant and the agency's litigating party may agree on a proposed settlement of the award at any time prior to final action on the application. If the parties agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. All settlements must be approved by the adjudicative officer and the head of the agency or office or his or her designee before becoming final.

§ 13.25 Further proceedings.

(a) Ordinarily, a decision on an application will be made on the basis of the hearing record and pleadings related to the application. However, at the request of either the applicant or the agency's litigating party, or on his or her

own initiative, the adjudicative officer may order further proceedings, including an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order additional written submissions or oral testimony shall identify the information sought and shall explain why the information is necessary to decide the issues.

(c) The adjudicative officer may impose sanctions on any party for failure to comply with his or her order to file pleadings, produce documents, or present witnesses for oral examination. These sanctions may include but are not limited to granting the application partly or completely, dismissing the application, and diminishing the award granted.

§ 13.26 Decisions.

The adjudicative officer shall issue an initial decision on the application as promptly as possible after the filing of the last document or conclusion of the hearing. The decision must include written findings and conclusions on the applicant's eligibility and status as a prevailing party, including a finding on the net worth of the applicant. Where the adjudicative officer has determined under § 13.11(b) that the applicant's net worth information is exempted from disclosure under the Freedom of Information Act, the finding on net worth shall be kept confidential. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, an explanation of any difference between the amount requested and the amount awarded, and whether any special circumstances make the award unjust.

§ 13.27 Agency review.

(a) The head of the agency or office, or his or her designee, shall review any award granted under this part whether or not the parties request such review, and issue a final decision. No award shall be made under this subpart without approval of the head of the agency or office or his or her designee.

(b) If either the applicant or the agency's litigating party seeks review of the adjudicative officer's decision on the fee application, it shall file and serve exceptions within 30 days after issuance of the initial decision. The head of the agency or office or his or her designee shall issue a final decision on the application as soon as possible or remand the application to the adjudicative officer for further proceedings. Any party that does not file and serve exceptions within the stated time limit loses the opportunity to do so.

§ 13.28 Judicial review.

Judicial review of final agency decisions on awards may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 13.29 Payment of award.

The notification to an applicant of a final decision that an award will be made shall contain the name and address of the appropriate Departmental finance office that will pay the award. An applicant seeking payment of an award shall submit to that finance officer a copy of the final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The Department will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceedings.

§ 13.30 Designation of adjudicative officer.

Upon the filing of an application pursuant to § 13.11(a), the officer who presided over the taking of evidence in the proceeding which gave rise to the application will, if available, be automatically designated as the adjudicative officer for the handling of the application.

APPENDIX A

Proceedings covered	Statutory authority	Applicable regulations
Office of the Inspector General		
Proceeding to impose civil monetary penalties or assessments for fraudulent claims under Medicare, Medicaid, and Title V.	42 U.S.C. 1320a-7a	
Health Care Financing Administration		
Proceedings to suspend or revoke licenses of clinical laboratories	42 U.S.C. 263a(e), (g)	
Proceedings provided to a fiscal intermediary before assigning or reassigning Medicare providers to a different fiscal intermediary.	42 U.S.C. 1395h	
Proceedings before the Provider Reimbursement Review Board when HCFA acts as fiscal intermediary	42 U.S.C. 1395oo	42 CFR Part 405, Subpart R
Food and Drug Administration		
Proceedings to withdraw approval of new drug applications	21 U.S.C. 355(d), (e)	21 CFR Part 12, 21 CFR 314.200
Proceedings to withdraw approval of new animal drug applications and medicated feed applications	21 U.S.C. 360b(d), (e), (m)	21 CFR Part 12, 21 CFR Part 514, Subpart B
Proceedings to withdraw approval of medical device premarket approval applications	21 U.S.C. 360e(d), (e), (g)	21 CFR Part 12.
Office of Civil Rights		
Proceedings to enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.	42 U.S.C. 2000d-1	45 CFR 80.9.
Proceedings to enforce Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap by recipients of Federal financial assistance.	29 U.S.C. 794	45 CFR 84.61.
Proceedings to enforce the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age by recipients of Federal financial assistance.	42 U.S.C 6101, 6104(a)	45 CFR 90.47.
Proceedings to enforce Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in certain education programs by recipients of Federal financial assistance.	20 U.S.C. 1681, 1682	45 CFR 86.71.

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Rock Island and Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Fifty-first Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad and Transition Employee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 12:01 a.m., September 30, 1983, and continuing in effect until 11:59 p.m., November 30, 1983, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840 or 275–1559.

SUPPLEMENTARY INFORMATION:

Decided: September 27, 1983.

Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for those operations.

In view of the urgent need for continued rail service over RI's lines pending the implementation of long-range solutions, this order permits carriers to provide service to shippers which may otherwise be deprived of essential rail transportation.

Appndix A, to the previous order , is revised by deleting at Item 4., all authority for the Chicago and North Western Transportation Company (CNW), except their operation at Omaha, Nebraska, now Item 4.A., in this order. Pursuant to Finance Docket No. 29518, the CNW purchased most of the trackage covered in Appendix A of the previous order with the exception of their continuing operation at Omaha. Appendix A is revised further by deleting at Item 19., the authority for the South Central Arkansas Railway, Inc. (SCK), to operate between Dubach and Ruston, Louisiana; and at Item 20., for the Burlington Northern Railroad (BN) to operate betwen Amarillo and Bushland, Texas, as this property has been purchased by BN.

Appendix A is revised in this order, by adding at Item 11., the authority for the La Salle and Bureau County Railroad Company (LSBC) to operate additional trackage between Blue Island and Mokena, Illinois.

Appendix B of Forty-Third Revised Service Order No. 1473 is unchanged and is incorporated into this order by reference.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the named appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Car service orders 1473.

(a) Various Railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee). Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Pub. L. 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least (30) thirty days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(1) In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., September 30, 1983.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1983, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96–254.

This order shall be served upon the association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

Appendix A—RI Lines Authorized To Be Operated by Interim Operators

1. *Peoria and Pekin Union Railway Company (PPU):*

A. Mossville, Illinois (milepost 148.23) to Peoria, Illinois (milepost 161.0) including the Keller Branch (milepost 1.55 to 6.15).

2. *Union Pacific Railroad Company (UP):*

A. Beatrice, Nebraska.

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI milepost 581.5 north of Hallam, Nebraska.

3. *Toledo, Peoria and Western Railroad Company (TPW):*

A. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois.

4. Chicago and North Western Transportation Company (CNW):

*A. At Omaha, Nebraska, 0.1 miles of industrial trackage in the vicinity of 19th and Pierce Streets.

5. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW):*

A. From Newport, Minnesota to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.

B. From Davenport (milepost 182.35) to Iowa City, Iowa (milepost 237.01).

6. *Missouri Pacific Railroad Company (MP):*

A. From Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5).

B. From Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0).

C. From Hot Springs Junction (milepost 0.0) to and including Rock Island (milepost 4.7.)

7. *Norfolk and Western Railway Company (NW):* Is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railraod Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track, for the purpose of serving industries located adjacent to such tracks. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

8. *Cadillac and Lake City Railway Company (CLK):*

A. From Limon, Colorado (milepost 530.75) to Caruso, Kansas (milepost 430.0) a distance of 100.75 miles.

B. Overhead rights from Caruso, Kansas (milepost 430.0) to Colby, Kansas (milepost 387.0), a distance of approximately 43 miles, in order to effect interchange with the Union Pacific Railroad.

9. *Baltimore and Ohio Railroad Company (BO):*

A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.

B. From Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.

10. *Keota Washington Transportation Company (KWTR):*

A. From Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

+B. At Vinton, Iowa (milepost) 120.0 to 123.0).

C. From Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).

11. *The La Salle and Bureau County Railroad Company (LSBC):*

A. From Chicago (milepost 0.60) to Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.

B. From Blue Island, Illinois (milepost 16.61), to Mokena, Illinois (milepost 29.6).

C. From Western Avenue (subdivision 1A, milepost 16.6) to 119th Street (subdivision 1A, milepost 14.8), at Blue Island, Illinois.

D. From Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) at Chicago, Illinois.

E. From Pullman Junction, Chicago, Illinois, (milepost 13.2) running southerly to the entrance of the Chicago International Port, a distance of approximately five miles, for the purpose of bridge rights and to effect interchange at the Kensington and Eastern Yard.

12. *The Atchison, Topeka and Santa Fe Railway Company (ATSF):*

A. At Alva, Oklahoma.

B. At St. Joseph, Missouri.

13. *Iowa Northern Railroad Company (IANR):*

A. From Cedar Rapids, Iowa (milepost 100.5), to Manly, Iowa, (milepost 225.1).

B. At Vinton, Iowa (milepost 23.4), and west on the Iowa Falls Line to Dysart, Iowa (milepost 40.37).

14. *Iowa Railroad Company (IRRC):*

A. From Council Bluffs (milepost 490.15) to West Des Moines, Iowa (milepost 364.34) a distance of approximately 126.81 miles.

B. From Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 465.1) a distance of approximately 24.4 miles.

C. From Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3) a distance of approximately 5.9 miles.

D. Overhead rights from West Des Moines, Iowa (milepost 364.34) to East Des Moines, Iowa (milepost 350.8). [This trackage was sold to CNW, however, the RI trustee holds rights for overhead use.]

E. From East Des Moines, Iowa (milepost 350.8.) to Iowa City, Iowa (milepost 237.01), a distance of approximately 113.79 miles.

F. Overhead rights from Iowa City, Iowa (milepost 237.01) to Davenport, Iowa (milepost 182.35), including interchange with the Cedar Rapids and Iowa City Railway. [This trackage is currently leased to the MILW, see Item 5.B.]

G. From Bureau, Illinois (milepost 114.2) to Davenport, Iowa (milepost 182.35).

H. From Rock Island, Illinois through Milan, Illinois, to a point west of Milan sufficient to serve the Rock Island Industrial Complex.

I. At Rock Island, Illinois including 26th Street Yard.

J. From Altoona to Pella, Iowa.

15. *Missouri-Kansas-Texas Railroad Company (MKT):*

A. From Oklahoma City, Oklahoma (milepost 496.4) to McAlester, Oklahoma (milepost 365.0), a distance of approximately 131.4 miles.

16. *Chicago Short Line Railway Company (CSL):*

A. From Pullman Junction easterly for approximately 1000 feet to serve Clear-View Plastics, Inc., all in the vicinity of the Calumet switching district.

B. From Rock Island Junction westerly for approximately 3000 feet to Irondale Wye.

17. *Kyle Railroad Company (Kyle):*

A. From Belleville (milepost 187.0) to Caruso, Kansas (milepost 430.0), a distance of approximately 243 miles. KYLE will be responsible for the maintenance of the jointly used track between Colby and Caruso as mutually agreed upon with CLK, and for coordinating operations.

B. From Belleville (milepost 187.0) to Mahaska, Kansas (milepost 170.0) a distance of approximately 17 miles.

C. From Belleville (milepost 225.34) to Clay Center, Kansas (milepost 178.37) a distance of approximately 47 miles.

18. *North Central Oklahoma Railway, Inc. (NCOK)*

A. From Mangum, Oklahoma (milepost 97.2) to Anadarko, Oklahoma (milepost 18.14).

B. From El Reno, Oklahoma (milepost 515.0) to Hydro, Oklahoma (milepost 553.0) a distance of approximately 38 miles.

C. From Geary, Oklahoma (milepost 0.0) to Homestead, Oklahoma (milepost 42.8) a distance of approximately 43 miles.

D. From North Enid, Oklahoma (milepost 0.30) to Ponca City, Oklahoma (milepost 54.8) a distance of approximately 54.5 miles.

19. *South Central Arkansas Railway, Inc. (SCK)*

*A. From El Dorado, Arkansas (milepost 99) to Dubach, Louisiana (milepost 142.3).

20. *Burlington Northern Railroad Company (BN):*

A. At Burlington, Iowa (milepost 0 to milepost 2.06).

B. At North Fort Worth, Texas (milepost 603.0 to milepost 611.4).

21. *Omaha, Lincoln and Beatrice Railway Company (OLB):*

A. At Lincoln, Nebraska (milepost 559.16 to milepost 561.37).

22. *Texas North Western Railway Company (TNW):*

A. From Hardesty, Oklahoma (milepost 119.20) to Liberal, Kansas (milepost 152.35) a distance of approximately 33.15 miles.

23. *Colorado and Eastern Railway Company (COE):*

A. From Colorado Springs, Colorado (milepost 602.7) to Limon, Colorado (milepost 530.75) a distance of approximately 72 miles.

24. *Farmrail Corporation (FMRC):*

A. From west of Elk City (milepost 615.0) to west of Erick, Oklahoma (milepost 642.0), a distance of approximately 27 miles.

*Changed.
+Added.

[FR Doc. 83-26964 Filed 10-3-83; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates trade in certain wild animal and plant species. Appendices I, II, and III to this treaty contain lists of species for which trade is controlled. The nations participating in CITES, including the United States, recently adopted amendments to Appendices I and II. This document incorporates the amendments into the Service's regulations implementing CITES.

DATE: The amendments set forth in this notice entered into effect on July 29, 1983, under the terms of CITES. Therefore, this rule is effective immediately upon publication.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. CITES documents related to the amendments are available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, room 537, 1717 H Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Jachowski (202) 653-5948.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and interested intergovernmental bodies and communicate their responses to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

The Fourth Meeting of the Conference of the Parties to CITES occurred on April 19–30, 1983, in Gaborone, Botswana. At the meeting, the Parties considered proposals to amend the appendices. The proposals that were adopted by the Conference of the Parties were announced in the **Federal Register** (48 FR 30732; July 5, 1983), together with a request for comments from the public on whether the Service should recommend that the United States enter a reservation on any of the amendments. The effect of a reservation would be to exempt this country from implementing CITES for a particular species.

The Service received no comments during the comment period on the notice of July 5, 1983. In the absence of convincing arguments, the Service decided not to recommend that the United States reserve on any of the recent amendments. As stated in the notice of July 5, 1983, the U.S. delegation either voted in favor of the adopted amendments, or in a few cases abstained from voting, but did not vote against any of them.

In addition to adopting amendments to Appendices I and II, the Parties adopted various resolutions for improving the implementation of CITES. One of the resolutions closely linked to the appendices is a recommendation on the regulation of trade in parts and derivatives of plant species listed in Appendix II and III and animal species listed in Appendix III. The Parties recommended that all readily recognizable parts and derivatives of Appendix II and III plants be subject to CITES except for seeds, spores and tissue cultures. Another recommended exception to trade controls concerns the cut flowers of Appendix II orchids (Orchidaceae spp.). The Service is developing plans to implement this recommendation, and will describe them in a forthcoming **Federal Register** notice.

This notice was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service.

Note.—The Department has determined that the amendments resulting from proposals made by the United States are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. The Department also has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This rule implements changes in the list of species in the CITES appendices that already have been agreed on by the Parties, and to which the United States now is bound according to the terms of CITES. The period of time during which the United States could have entered a reservation on any of these amendments ended on July 29, 1983. Earlier **Federal Register** notices informed the public about these amendments and allowed an opportunity for comment on them. Therefore, the Department has determined that good

cause exists for making this rule effective upon publication (5 U.S.C. 553(d)).

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Dated: September 13, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks

Regulation Promulgation

For reasons set out in the preamble of this notice, Part 23 of Title 50, Code of Federal Regulations, is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 reads as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43.

§ 23.23 [Amended]

2. Amend paragraph (b) of § 23.23 by adding to the list the following species or other groups of animals and plants in alphabetical order under the appropriate taxonomic categories:

(b) * * *

Species	Common name	Appendix	Date listed (month/day/year)
Class mammalia:	Mammals:		
* * *	* *	*	*
Order Primates:	Primates: Monkeys, Apes, etc:		
* * *	* *	*	*
Lagothrix flavicauda	Yellow-tailed woolly monkey	I	2/4/77
* * *	* *	*	*
Order Cetacea:	Whales, Porpoises, Dolphins		
* * *	* *	*	*
Balaenoptera acutorostrata (all populations except that of West Greenland: entry into force as App. I on 1/1/86).	Minke Whale	I	6/28/79
* * *	* *	*	*
Balaenoptera edeni	Brydes whale	I	6/28/79
* * *	* *	*	*
Berardius spp	Beaked whales	I	6/28/79
* * *	* *	*	*
Caperia marginata (entry into force as App. I on 1/1/86.	Pygmy right whale	I	6/28/79
* * *	* *	*	*
Hyperoodon spp	Bottle-nosed whales	I	6/28/79
* * *	* *	*	*
Order Carnivora:	Carnivores: Cats, Bears, etc:		
* * *	* *	*	*
Ursus arctos (European population, USSR excepted).	Brown Bear	II	7/29/83
* * *	* *	*	*
Order Perissodactyla *Equus africanus*	African wild ass	I	7/29/83
* * *	* *	*	*
"Order Artiodactyla"			
Cephalophus dorsalis	Bay duiker	II	7/29/83
* * *	* *	*	*
Cephalopus jentinki	Jentink's duiker	II	7/29/83
* * *	* *	*	*
Cephalophus ogilbyi	Ogilby's duiker	II	7/29/83
* * *	* *	*	*
Cephalophus sylvicultor	Yellow-backed duiker	II	7/29/83
* * *	* *	*	*
Cephalophus zebra	Zebra-banded duiker	II	7/29/83
* * *	* *	*	*
Gazella dama	Dama gazelle	I	7/29/83
* * *	* *	*	*
Moschus spp. (populations of Afghanistan, Bhutan, Burma, India, Nepal and Pakistan).	Musk deer	I	7/1/75
* * *	* *	*	*
CLASS AVES:	BIRDS:		
Order Struthioniformes:	Ostriches:		
Struthio camelus (populations of Algeria, Central African Republic, Chad, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Sudan, Cameroon, and Upper Volta).	Ostrich	I	7/29/83
* * *	* *	*	*
Order Ciconiiformes:	Herons, Storks, Ibises, Flamingos:		
* * *	* *	*	*
Phoenicopteridae spp. (all species except those with earlier date in App. II).	Flamingos	II	7/29/83
* * *	* *	*	*
Order Anseriformes:	Ducks, Geese, Swans, Screamers:		
* * *	* *	*	*
Oxyura leucocephala	White-headed duck	II	7/29/83
* * *	* *	*	*
Order Gruiformes:	Cranes, Rails Bustards:		
Anthropoides virgo	Demoiselle crane	II	7/29/83

Species	Common name	Appendix	Date listed (month/day/year)
* * *	* *	*	*
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories:		
* * *	* *	*	*
Ara glaucogularis	Caninde macaw	I	6/6/81
* * *	* *	*	*
Ara rubrogenys	Red-fronted macaw	I	6/6/81
* * *	* *	*	*
Ognorhynchus icterotis	Yellow-cheeked conure	I	6/6/81
* * *	* *	*	*
CLASS REPTILIA:	REPTILES:		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
* * *	* *	*	*
Crocodylus niloticus (population of Zimbabwe resulting from ranching).	Nile Crocodile	II	7/1/75
* * *	* *	*	*
Order Squamata:	Snakes, Lizards:		
* * *	* *	*	*
Epicrates monensis	Mona boa	I	2/4/77
* * *	* *	*	*
PHYLUM MOLLUSCA:	MOLLUSCS:		
Class Pelecypoda (=Bivalvia):	Clams, Mussels:		
* * *	* *	*	*
Tridacna derasa	Giant clam	II	7/29/83
Tridacna gigas	Giant clam	II	7/29/83
* * *	* *	*	*
PLANT KINGDOM:	PLANTS:		
Family Agavaceae:	Agaves:		
Agave arizonica	New river agave	I	7/29/83
Agave parviflora	Santa Cruz striped agave	I	7/29/83
Agave victoriae-reginae	Queen Victoria agave	II	7/29/83
Nolina interrata	Dehesa beargrass	I	7/29/83
* * *	* *	*	*
Family Cactaceae:	Cacti:		
* * *	* *	*	*
Ancistrocactus tobuschii	Tobusch's fishhook cactus	I	7/1/75
* * *	* *	*	*
Ariocarpus Trigonus	Chaute	I	7/1/75
* * *	* *	*	*
Backebergia militaris	Teddy-bear cactus, military cap	I	7/1/75
Coryphantha minima	Nellie's cory cactus	I	7/1/75
Coryphantha sneedii	Pincushion cactus	I	7/1/75
Corphantha werdermannii	Jabali pincushion cactus	I	7/1/75
* * *	* *	*	*
Leuchtenbergia principis	Agave cactus, prism cactus	I	7/1/75
Lobeira macdougallii	MacDougall's cactus, prism cactus	I	7/1/75
Mammillaria pectinifera (=*Solisia pectinata*).	Conchilinque	I	7/1/75
Mammillaria plumosa	Feather cactus	I	7/1/75
Mammillaria solisioides	Pitayita	I	7/1/75
Neolloydia erectocentra		I	7/1/75
Neolloydia mariposensis	Mariposa cactus	I	7/1/75
* * *	* *	*	*
Pediocactus bradyi	Brady's pincushion cactus	I	7/1/75
Pediocactus despainii	San Rafael Swell cactus	I	7/1/75
Pediocactus knowltonii	Knowlton's cactus	I	7/1/75
Pediocactus papyracanthus	Grama grass cactus	I	7/1/75
Pediocactus paradinei	Houserock Valley cactus	I	7/1/75
Pediocactus peeblesianus	Peebie's Navajo cactus	I	7/1/75
Pediocactus sileri	Siler's pincushion cactus	I	7/1/75
Pediocactus winkleri	Winkler's cactus	I	7/1/75
* * *	* *	*	*
Sclerocactus glaucus	Uinta Basin hookless cactus	I	7/1/75
Sclerocactus mesae-verdae	Mesa Verde cactus	I	7/1/75
Sclerocactus pubispinus	Great Basin fishhook cactus	I	7/1/75
Sclerocactus wrightiae	Wright's fishhook cactus	I	7/1/75
Strombocactus disciformis	Disc cactus, top cactus	I	7/1/75
Turbinicarpus spp.	Turbinicarpus	I	7/1/75
Wilcoxia schmollii	Lamb's-tail cactus	I	7/1/75
* * *	* *	*	*
Family Crassulaceae:			
Dudleya stolonifera	Laguna Beach dudleya	I	7/29/83
Dudleya traskiae	Santa Barbara Island dudleya	I	7/29/83
Family Cupressaceae:	Cypresses:		
* * *	* *	*	*
Fitzroya cupressoides (coastal population of Chile).	Fitzroya, Alerce	II	7/1/75
* * *	* *	*	*
Family Diapensiaceae:			
Shortia galacifolia	Oconee bells	II	7/29/83
* * *	* *	*	*
Family Ericaceae:			
Kalmia cuneata	White wicky	II	7/29/83
* * *	* *	*	*
Family Fouquieriaceae:			
Fouquieria columnaris	Boojum tree	II	7/29/83
Fouquieria faciculata	Abrol de Barril	I	7/29/83
Fouquieria purpusii	n.c.n.	I	7/29/83
* * *	* *	*	*
Family Portulacaceae:	Portulacas:		
Lewisia cotyledon	Siskiyou lewisia	II	7/29/83
Lewisia maguirei	Maguire's lewisia	II	7/29/83
Lewisia serrata	Saw-toothed lewisia	II	7/29/83

Species	Common name	Appendix	Date listed (month/day/year)
Lewisia tweedyi	Tweedy's lewisia	II	7/29/83

3. Amend Paragraph (b) of § 23.23 by revising the existing entries for particular species on the list to read as follows:

(b) * * *

Species	Common name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
* * *	* *	*	*
Order Carnivora:	Carnivores:		
* * *	* *	*	*
Ursus arctos (Italian population)	European brown bear	II	7/1/75
* * *	* *	*	*
Order Artiodactyla:	Even-toed Ungulates:		
Addax nasomaculatus	Addax	I	7/1/75
Ammotragus lervia	Barbary sheep, Aoudad	II	4/22/76
* * *	* *	*	*
Oryx dammah	Scimitar-horned oryx	I	7/1/75
* * *	* *	*	*
Ovis canadensis (Mexican population)	Bighorn sheep	II	7/1/75
* * *	* *	*	*
CLASS AVES:	BIRDS:		
* * *	* *	*	*
Order Pelecaniformes:	Pelicans:		
Pelecanus crispus	Dalmatian pelican	I	7/1/75
* * *	* *	*	*
Order Charadriiformes:	Shorebirds, Gulls, Auks:		
Numenius tenuirostris	Slender-billed curlew	I	7/1/75
* * *	* *	*	*
CLASS OSTEICHTHYES:	BONY FISHES:		
Order Acipenseriformes:	Sturgeons:		
* * *	* *	*	*
Acipenser sturio	Baltic sturgeon	I	7/1/75

4. Amend paragraph (b) of § 23.23 by removing the existing entries for particular species on the list as follows:

(b) * * *

Species	Common name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
* * *	* *	*	*
Order Carnivora:	Carnivores:		
* * *	* *	*	*
Vulpes velox hebes	Swift fox	I	7/1/75
* * *	* *	*	*
Order Artiodactyla:	Even-toed ungulates:		
* * *	* *	*	*
Moschus moschiferus (Himalayan population)	Musk deer	I	7/1/75
* * *	* *	*	*
CLASS AVES:	BIRDS:		
* * *	* *	*	*
Order Anseriformes:	Ducks, Geese, Swans, Screamers:		
* * *	* *	*	*
Anser albifrons gambelli	Tule goose	II	7/1/75
* * *	* *	*	*
CLASS OSTEICHTHYES:	BONY FISHES:		
Order Acipenseriformes:	Sturgeons:		
* * *	* *	*	*
Acipenser fulvescens	Lake sturgeon	II	7/1/75
* * *	* *	*	*
Order Salmoniformes:	Salmon, Trout:		
Coregonus alpenae	Longjaw cisco	I	7/1/75
* * *	* *	*	*
Order Perciformes:	Perch-like fishes:		
* * *	* *	*	*
Stizostedion vitreum glaucum	Blue pike	I	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
* * *	* * *	*	*
PLANT KINGDOM:	PLANTS:		
* * *	* * *	*	*
Family Chloanthaceae: Populations of all species in Australia	Lambs tails		
* * *	* * *	*	*
		II 7/1/75	
Family Myrtaceae:	Myrtles:		
Verticordia spp.	Feather flowers	II	6/28/79
* * *	* * *	*	*
Family Pinaceae:	Pines, Firs:		
Abies nebrodensis	Tronco nudo	I	7/1/75
* * *	* * *	*	*
Family Rutaceae:	Boronias, Rues:		
Boronia spp.	Boronia	II	6/28/79
* * *	* * *	*	*
Family Saxifragaceae (Grossulariaceae):	Saxifrages, Currents, Gooseberries:		
Ribes sardoum		I	7/1/75
Family Solanaceae:	Nightshades		
Solanum sylvestre		II	7/1/75
* * *	* * *	*	*
Family Ulmaceae:	Elms:		
Celtis aetherasis		I	7/1/75

[FR Doc. 83-26652 Filed 10-3-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 30909-187]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Final rule.

SUMMARY: NOAA issues final regulations for the 1983 amendment to the fishery management plan (FMP) for the commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California. Specific management measures in these regulations vary by fishery and area, but generally establish fishing seasons, quotas, necessary inseason management modifications, daily catch limits for recreational fisheries, and minimum size limits for salmon. The intended effect of these regulations is to prevent overfishing, to apportion equitably the ocean harvest between the commercial and recreational fisheries, to allow more salmon to survive the ocean fisheries and reach the various inside fisheries, to meet the U.S. obligations to treaty Indian fisheries, and to achieve the 1983 salmon spawning escapement goals.

EFFECTIVE DATE: 0001 hours Pacific Standard Time, October 31, 1983.

ADDRESS: Copies of the 1983 amendment, and accompanying report which includes the regulatory impact review/regulatory flexibility analysis and the final environmental impact statement, are available from the Pacific Fishery Management Council, 526 SW. Mill Street, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bin C-15700, Seattle, Washington 98115, telephone (206) 527-6150.

SUPPLEMENTARY INFORMATION:

Background

The fishery management plan (FMP) for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, prepared by the Pacific Fishery Management Council (Council), was approved by the NOAA Assistant Administrator for Fisheries (Assistant Administrator), on March 2, 1978. Regulations to implement the FMP were first published on April 14, 1978 (43 FR 15629). The FMP was amended in 1979, 1980, 1981, and 1982 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.* The amended FMP specifies management measures that vary by fishery and area; in general, it establishes fishing seasons, provides seasonal harvest quotas and other inseason management measures, sets minimum fish sizes, and establishes daily catch limits for the recreational fisheries.

On May 5, 1983, the Assistant Administrator filed emergency regulations to manage the 1983 ocean salmon fisheries under Section 305(e)(2) of the Magnuson Act, which authorizes the Secretary of Commerce to promulgate emergency regulations to address a fishery emergency. The emergency interim rule was effective on May 23, 1983, for ninety days (48 FR 21135) and was extended (48 FR 36823) for a second ninety-day period effective August 21, 1983. A notice of availability of the 1983 Amendment, and request for public comment, were published on June 9, 1983 (48 FR 26653). Proposed regulations to implement the 1983 Amendment, identical to the emergency interim rule, were published in the **Federal Register** on July 11, 1983 (48 FR 31677). The Assistant Administrator has reviewed the 1983 amendment and proposed regulations in light of comments submitted during the public comment periods. He has determined that the amended FMP is consistent with the Magnuson Act and other applicable law. He now adopts as final those regulations issued as a proposed rule at 48 FR 31677, without republishing them to save public expense and reduce the volume of printed matter. This final rule supersedes the emergency interim rule.

Comments

In the preamble of the emergency interim rule there was a discussion of the current status of the coastwide salmon stocks and a presentation of the Council's rationale for selecting this year's fishing regulations. The preamble of the proposed rule contained a presentation of comments that were received by the Council and the Secretary regarding the emergency interim rule.

Comments on the proposed regulations were received from 4 sources and are discussed below:

1. U.S. Department of the Interior (DOI):

a. The escapement goals for the Upper Sacramento and Klamath Rivers, as stated in the FMP prior to the 1983 amendment, are appropriate and should be retained. Since the 1983 amendment states the Klamath River goals as in-river run size rather than spawning escapement, that goal should be increased to account for in-river harvests, in addition to the 115,000 fish spawning goal.

b. Quotas for the California ocean chinook troll fisheries should be 385,000 fish south of Cape Vizcaino, California, and 150,000 fish between Cape Vizcaino and Cape Blanco, Oregon.

c. The commercial troll season south of Cape Vizcaino, California, opened on April 22 rather than May 1 as provided in the 1983 regulations. An adjustment should be made during the 1983 season to account for the additional nine fishing