

may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the interested persons of his/her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's decision shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his/her own motion or upon written request from the Appellant, permit applicant or Permittee, stating the reason(s) therefor.

[FR Doc. 83-32539 Filed 12-8-83; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 125, 225, and 356

[Docket No. RM83-40-000]

Retention of Records by Natural Gas Companies, Public Utilities, Licensees, and Oil Pipeline Companies

Issued: December 5, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rules; notice of effective date and corrections.

SUMMARY: This document gives notice of the effective date of a final rule in Docket No. RM83-40-000 (Order No. 335), issued September 27, 1983, amending regulations on the retention of records. The Commission is also correcting an error made in the final rule.

DATE: Order No. 335 is effective on December 9, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of the General Counsel, 825 North Capitol Street, NE., Washington, D.C. 20426; (202) 357-8033.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C.

3501-3520 (Supp. V 1981) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1983), require that OMB review certain information collection requirements imposed by agency rule. Upon approval, OMB issues a control number.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued a final rule in Docket No. RM83-40-000 (Order No. 335) amending its regulations on retention of records by public utilities, licensees, natural gas companies, and oil pipeline companies. Revisions to Regulations on Retention of Records by Natural Gas Companies, Public Utilities, Licensees and Oil Pipeline Companies, 48 FR 44477 (September 29, 1983). The Commission therein stated that the rule would be effective on November 28, 1983, unless the Commission did not receive OMB's approval by that time, in which case the Commission would temporarily suspend the effective date of the rule.

The Commission did not receive OMB's approval sufficiently prior to the effective date of the rule to avoid the necessity of publishing a suspension notice. The Commission, therefore, suspended the effective date of this rule until it received notice of OMB's approval. 48 FR 53694 (November 29, 1983).

The Commission has received notice that OMB approved this rule and assigned it OMB control number 1902-0098. Accordingly, this rule will now become effective on the date that this notice is published in the Federal Register.

In addition, the following corrections are made in FR Doc 83-7866, appearing on page 44484 of the September 29, 1983 issue of the Federal Register (Mimeo page 33).

1. Ordering paragraph 11 should read as follows:

11. Section 356.11 (Schedules of Records and Periods of Retention) is amended by removing entirely the following categories of records and their retention periods: A.3, A.4(e), A.5, A.6(d)-A.6(f), B.1, B.2(b)-B.2(g), B.3-B.7, C.3, C.4(c), C.4(d), C.5(b)-C.5(d), D. note, D.1(g), D.1(j), D.2(b), E.1, E.2(c)-E.2(j), F., G.2, G.3, H.1(b), H.2(b), H.2(c), H.3, H.4, I., J.1-J.11, K.2, K.6, L.1(b), L.1(c), L.2-L.5, and M.

2. A new ordering paragraph 14 should be added on page 44485 to read as follows:

12. The OMB control number is added parenthetically after each of the table of contents to Parts 125, 225, and 356, to read as follows:

(OMB Control Number 1902-0098)

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-32705 Filed 12-8-83; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM80-10-001]

Incremental Pricing Program; Order Extending Stay of Effective Date of Order No. 80

Issued December 1, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order extending stay of effective date of Order No. 80.

SUMMARY: On May 6, 1980, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 80, 45 FR 31,622 (May 13, 1980)) to implement Phase II of the incremental pricing program. That rule, which expands the scope of incremental pricing in accordance with section 202 of the Natural Gas Policy Act of 1978, was due to become effective October 5, 1983. On October 5, 1983, the Commission issued an order to stay the effective date for sixty days and proposed to extend the stay for an additional 120 days or until the Commission completes its reconsideration of Order No. 80, whichever is earlier. (48 FR 45,758 and 45,787 (Oct. 7, 1983).) After consideration of comments received, the Commission adopts its proposal and extends the stay of Order No. 80 until April 12, 1984, or until the Commission completes reconsideration of Order No. 80 whichever is earlier.

EFFECTIVE DATE: This order is effective December 1, 1983.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this order to extend the stay of the effective date of the final regulations in Order No. 80¹ for 120 days or until the Commission completes reconsideration of the regulations in Order No. 80, whichever is earlier. Those regulations expand the scope of the incremental pricing program in accordance with section 202

¹ Final Rule, Docket No. RM80-10, issued May 6, 1980, 45 FR 31,622 (May 13, 1980).

of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1981). Absent this Commission action, the regulations in Order No. 80 would become effective December 14, 1983.

II. Background

Title II of the NGPA requires the Commission to establish an incremental pricing program as a means of shifting part of the natural gas price increases resulting from the incentive pricing scheme established by the NGPA from residential and commercial users of natural gas to certain industrial users. Section 201 requires the Commission to issue an incremental pricing rule covering boiler fuel users of natural gas by November 9, 1979 (Phase I rule).² Section 202(a) requires the Commission to amend this rule within eighteen months in order to extend incremental pricing to other industrial users (Phase II rule).

On May 6, 1980, the Commission issued the Phase II rule (Order No. 80) as required by the NGPA. Order No. 80 was submitted to Congress pursuant to section 202(c) of the NGPA, and was to become effective ninety days following the expiration of a thirty-day review period if neither House of Congress passed a resolution of disapproval. On May 20, 1980, the House of Representatives passed a resolution of disapproval of the Phase II rule.

After the Phase II rule was disapproved by Congress, the Commission issued an order revoking the rule,³ stating that, in the event the legislative veto provision of section 202(c) was held unconstitutional, the Phase II rule should not become effective.⁴

In *Consumer Energy Council of America v. Federal Energy Regulatory Commission (CECA)*,⁵ the United States Court of Appeals for the District of Columbia Circuit held that the legislative veto provision of section 202(c) of the NGPA is severable from section 202 and unconstitutional. The court also held that the Commission's revocation of the Phase II rule was invalid because the Commission did not

provide adequate notice and opportunity for comment. As a result of this decision, which was affirmed by the United States Supreme Court,⁶ the Phase II rule was due to become effective October 15, 1983.

On October 5, 1983, the Commission stayed the effective date of Order No. 80 until December 14, 1983, and proposed to continue the stay for an additional 120 days or until it completes reconsideration of Order No. 80, whichever is earlier.⁷ The Commission invited written comments on its proposal and provided an opportunity for the oral presentation of data, views, and arguments on the stay and the proposal to extend the stay.

The Commission received 31 written comments, all of which support the proposal.⁸ Upon consideration of these comments, the Commission is adopting its proposal to extend the stay of the Order No. 80 regulations. Accordingly, the effective date of Order No. 80 is April 12, 1984, or the date on which the Commission completes reconsideration of the Phase II rule, whichever is earlier.

III. Discussion

In the October 5th order, the Commission announced its intention to reconsider the Phase II rule "in light of the relevant judicial opinions and a complete and updated record, as well as current market conditions."⁹ To this end, the Commission today is also issuing a Notice of Proposed Rulemaking in this docket (Docket No. RM80-10-002) to reopen the Phase II rulemaking proceeding.¹⁰

As previously stated in the October 5th stay order and reiterated by all the comments, the administrative burden to pipelines, distributors, and end users that would result if the rule becomes effective while it is being reconsidered may be unwarranted if the rule is ultimately modified or revoked. Furthermore, it appears that implementation of the Phase II rule at this time would not result in a counterbalancing benefit to the residential and commercial users that the incremental pricing program was designed to protect.

In addition, many commenters noted that postponement of the effective date is consistent with the alternatives discussed by the D.C. Circuit in the *CECA* decision. There, the court stated that the Commission may amend the substance of the rule or, in order to allow time for a thorough reconsideration, the Commission may postpone the effective date of Order No. 80.¹¹

Some commenters request that the Commission postpone the effective date of the Phase II rule indefinitely. They are concerned that, if the Commission's reconsideration of the rule is not completed by April 12, 1984, Order No. 80 may become effective. This result, the commenters argue, is inconsistent with the reasons given by the Commission for temporarily staying the effective date.

The Commission denies this request as unnecessary. The Commission intends to complete reconsideration of the Phase II rule before the expiration of the stay. The Commission does not wish to prolong the uncertainty as to the final outcome of this proceeding any longer than necessary. Of course, the Commission will consider issuing a further stay of the Phase II rule if it appears that final action in this docket will not be taken by April 12, 1984.

Accordingly, for the reasons discussed above, the Commission stays the effective date of the Phase II rule promulgated in Order No. 80 until April 12, 1984, or until it completes reconsideration of the rule, whichever is earlier. For the same reasons, the Commission finds good cause to make this order effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-32734 Filed 12-8-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 81N-0340]

GRAS Status of Thiamine Hydrochloride and Thiamine Mononitrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that

² Those regulations were issued September 28, 1979, in Docket Nos. RM79-14 and RM79-21, 44 FR 57,728 (Oct. 5, 1979).

³ Order Denying Rehearing and Revoking Amendments Made by Order No. 80, issued August 1, 1980, Docket No. RM80-10, 45 FR 54,741 (Aug. 18, 1980).

⁴ For a more detailed discussion of the background of the proceeding in this docket, see Order Granting a Stay of Effective Date of Order No. 80 for 60 Days and Proposing Continuation of Stay for an Additional 120 Days, issued October 5, 1983, Docket no. RM80-10, 48 FR 45,758 and 45,767 (Oct. 7, 1983).

⁵ 673 F.2d 425 (D.C. Cir. 1982).

⁶ *Aff'd mem. sub nom. Process Gas Consumers Group v. Consumer Energy Council of America*, 51 U.S.L.W. 3935 (U.S. July 6, 1983), *reh. denied* 52 U.S.L.W. 3187 (U.S. Sept. 9, 1983).

⁷ Order Granting a Stay of Effective Date of Order No. 80 for 60 Days and Proposing Continuation of Stay for an Additional 120 Days, *supra* note 4.

⁸ No one requested an opportunity for the oral presentation of comments.

⁹ 48 FR at 45,768.

¹⁰ The Notice proposes not to implement the Phase II rule by granting an exemption under section 206(d) of the NGPA to all industrial non-boiler fuel users.

¹¹ 673 F.2d at 434, 479.

thiamine hydrochloride and thiamine mononitrate are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective January 9, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1875 and 184.1878 effective on January 9, 1984.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 26, 1982 (47 FR 47438), FDA published a proposal to affirm that thiamine hydrochloride and thiamine mononitrate are GRAS for use as direct human food ingredients. FDA published the proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on thiamine hydrochloride and thiamine mononitrate are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of thiamine hydrochloride and thiamine mononitrate, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of thiamine hydrochloride and thiamine mononitrate recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal

would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for thiamine hydrochloride or thiamine mononitrate were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of thiamine hydrochloride or thiamine mononitrate under conditions different from those set forth in this final rule has been waived.

Two comments were received in response to the agency's proposal on these ingredients. A summary of the comments and the agency's response to them follow:

1. One comment reported that thiamine mononitrate has a diuretic effect when added to foods. However, the comment included no information to document or to substantiate that claim.

The Select Committee did not cite this effect in its 1978 report on thiamine hydrochloride and thiamine mononitrate. FDA is aware that diuresis is observed in edematous patients receiving thiamine hydrochloride or thiamine mononitrate for the treatment of beri-beri. However, a search of the scientific literature published between 1978 and 1983 have revealed no information that suggests that thiamine hydrochloride or thiamine mononitrate exhibits diuretic action in individuals who are not deficient in vitamin B₁. Therefore, the agency has concluded that diuresis is not likely to result from exposure to thiamine hydrochloride or thiamine mononitrate at exposure levels that are likely to occur from their addition to foods and has not modified the proposed regulations in response to this comment.

2. One comment reported that benfotiamine [N-[(4-amino-2-methyl-5-pyrimidinyl)methyl]-N-(4-hydroxy-2-mercapto-1-methyl-1-butenyl)formamide-S-thiobenzoate dihydrogen phosphate, CAS Reg. No. 22457-89-2] exhibits thiamine activity roughly equivalent to that of thiamine hydrochloride when administered orally. The comment requested that the agency include benfotiamine in its regulations for use as a direct human food ingredient. The comment contained scientific information to support this request.

On the basis of the information submitted with this comment, FDA concludes that benfotiamine has no history of use in foods and is a significantly different product both structurally and chemically from thiamine hydrochloride and thiamine mononitrate. Thus review of the safety of this substance is beyond the scope of the review of the GRAS status of

thiamine hydrochloride and thiamine mononitrate. Therefore, the agency is not modifying the proposal in response to this comment. Interested parties may obtain agency evaluation of the use of benfotiamine as a food ingredient through the GRAS or food additive petition procedures described in § 170.35 or § 171.1 (21 CFR 170.35 or 171.1).

The agency is thus issuing the proposed rule as a final rule without change.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency has previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, the agency has previously considered the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by that Order. FDA has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348,

371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§§ 182.8875 and 182.8878 (Removed)

1. Part 182 is amended by removing § 182.8875 *Thiamine hydrochloride* and § 182.8878 *Thiamine mononitrate*.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1875, to read as follows:

§ 184.1875 *Thiamine hydrochloride*.

(a) Thiamine hydrochloride ($C_{12}H_{17}ClN_4OS \cdot HCl$, CAS Reg. No. 67-03-8) is the chloride-hydrochloride salt of thiamine. It occurs as hygroscopic white crystals or a white crystalline powder. The usual method of preparing this substance is by linking the preformed thiazole and pyrimidine ring systems.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 324, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, D.C. 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter or as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Thiamine hydrochloride may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in

this section do not exist or have been waived.

b. By adding new § 184.1878, to read as follows:

§ 184.1878 *Thiamine mononitrate*.

(a) Thiamine mononitrate ($C_{12}H_{17}N_5O_4S$, CAS Reg. No. 532-43-4) is the mononitrate salt of thiamine. It occurs as white crystals or a white crystalline powder and is prepared from thiamine hydrochloride by dissolving the hydrochloride salt in alkaline solution followed by precipitation of the nitrate half-salt with a stoichiometric amount of nitric acid.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 325, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, D.C. 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Thiamine mononitrate may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective January 9, 1984.

(Secs. 201(a), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(a), 348, 371(a)))

Dated: November 2, 1983.

William F. Randolph,

Acting Associate Commissioner for
Regulatory Affairs.

(FR Doc. 83-32771 Filed 12-6-83; 8:45 am)

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Programs

AGENCY: United States Information Agency.

ACTION: Announcement of effective date; OMB Approval Number.

SUMMARY: By publication of an interim rule in 48 FR 50707 November 3, 1983, the United States Information Agency modified 22 CFR Part 514. The interim rule became effective on that date. However, the effective date for § 514.13(b)(12) regarding teenager-exchange visitors was to be published at a later date. The purpose of this publication is to notify the public of the November 3, 1983 effective date, that the OMB Approval Number is 3116-0170, and to modify the interim rule accordingly.

EFFECTIVE DATE: The effective date for 22 CFR § 514.13(b)(12) is November 3, 1983.

FOR FURTHER INFORMATION CONTACT: Richard L. Fruchterman, Assistant General Counsel, United States Information Agency, 400 "C" Street, S.W., Room 700, Washington, D.C. 20547, (202) 485-7976.

SUPPLEMENTARY INFORMATION: The Agency published an interim rule November 3, 1983 at 48 FR 50707 modifying 22 CFR Part 514. The Agency is now amending that interim rule by inserting the OMB approval number for information collection in § 514.13(b)(12). The following is added to at the end of § 514.13:

(OMB Approval Number 3116-0170)

Dated: December 5, 1983.

Jonathan W. Sloat,
General Counsel and Congressional Liaison,
United States Information Agency.

(FR Doc. 83-32787 Filed 12-6-83; 8:45 am)

BILLING CODE 8230-01-M

22 CFR Part 514

Exchange Visitor Programs

AGENCY: United States Information Agency.

ACTION: Interim rule; Extension of time for comment.

SUMMARY: By notice published in 48 FR 50707, November 3, 1983, the due date for comments for the interim rules regarding Exchange Visitors at 22 CFR Part 514 was set for December 5, 1983.

This notice extends the due date for comments to January 5, 1984.

DATE: Comments are due January 5, 1984.

ADDRESS: Send comments to: Richard L. Fruchterman, Assistant General Counsel, United States Information Agency, 400 "C" Street, S.W., Room 700, Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Richard L. Fruchterman, (202) 485-7976.

SUPPLEMENTARY INFORMATION: By notice published in 48 FR 50707, November 3, 1983 the due date for comments for the interim rules regarding Exchange Visitors at 22 CFR Part 514 was set for December 5, 1983. This notice extends the due date for comments to January 5, 1984.

Dated: December 5, 1983.

Jonathan W. Sloat,
General Counsel and Congressional Liaison,
United States Information Agency.

[FR Doc. 83-32786 Filed 12-8-83; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340-21]

Privacy Act of 1974; Personal Privacy and Rights of Individuals Regarding Personal Records

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Army hereby deletes exemption rules for systems of records A0201.08aDACS, A0201.08cOSA, and A0727.050SA and adopts exemption rule for system of records A0241.01HQDA.

EFFECTIVE DATE: December 9, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of the Adjutant General, Headquarters, Department of the Army (DAAG-AMR-S), 2461 Eisenhower Avenue, Alexandria, VA 22331; telephone: 703/325-6163.

SUPPLEMENTARY INFORMATION: At 48 FR 50775, November 3, 1983, the Army proposed to delete exemptions pertaining to systems of records A0201.08aDACS, A0201.08cOSA and A0727.050SA and to adopt an exemption rule for system of records, A0241.01HQDA, entitled: "HQDA Control/Central File System".

List of Subjects in 32 CFR Part 505

Privacy.

PART 505—[AMENDED]

In that no comments were received concerning these proposed amendments, the rules are adopted as proposed and § 505.9 of 32 CFR is amended by removing Exempted Record Systems A0201.08aDACS, A0201.08cOSA, and A0727.050SA and by adding the following:

§ 505.9 Exemption rules for Army systems of records.

(b) . . .
Exempted Record System
(Specific Exemptions)
ID-A0241.01HQDA

SYSNAME—HQDA Correspondence and Control/Central File System.

EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(k) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7).

REASON—Documents are generated by other elements of the Army or are received from other agencies and individuals. Because of the broad scope of the contents of this system and since the introduction of documents is largely unregulated, specific portions or documents that may require an exemption cannot be predetermined. Therefore, and to the extent that such material is received and maintained, selected individual documents may be exempted from disclosure under any of the provisions of sections (k)(1) through (k)(7) of 5 U.S.C. 552a.

M. S. Healy,

OSD Federal Register Liaison Officer,
Department of Defense.

December 6, 1983.

[FR Doc. 83-32802 Filed 12-8-83; 8:45 am]

BILLING CODE 3710-08-M

POSTAL SERVICE

39 CFR Part 952

Rules of Practice in Proceedings Relative to False Representation and Lottery Orders

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Public Law 98-186 of November 30, 1983 authorizes the Postal Service to issue orders requiring that persons or their representatives who have been found in proceedings under 39 CFR Part 952 to be engaged in a scheme or device to obtain money or property through the mails by means of false representations or by the conduct of a lottery or gift enterprise, cease and desist from engaging in any such scheme, device, lottery or gift enterprise

(39 U.S.C. 3005(a)(3)). The following rule amends the existing Rules of Practice to reflect this additional authority.

EFFECTIVE DATE: December 9, 1983.

FOR FURTHER INFORMATION CONTACT: James A. Cohen (202) 245-4912.

SUPPLEMENTARY INFORMATION: 39 U.S.C. 3005(a), as amended by Public Law 98-186, provides that upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device to obtain money or property through the mail by means of false representations, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which (1) directs the postmaster serving that person's address to return to senders mail addressed to such person or to his representative marked as in violation of 39 U.S.C. 3005(a); (2) forbids the payment by the postmaster of money orders drawn to such person or to his representative; and (3) requires such person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise. Orders authorized by this section are issued by the Judicial Officer of the Postal Service following administrative hearings prescribed in the Rules of Practice at 39 CFR Part 952. At present, Part 952 reflects the authority of the Judicial Officer to issue the orders described in 39 U.S.C. 3005(a) (1) and (2). This rule amends the Rules of Practice to reflect the cease and desist order described in 39 U.S.C. 3005(a)(3).

In substance, the rule amends Part 952 to reflect the cease and desist order authority conferred by 39 U.S.C. 3005(a)(3); to provide that orders pursuant to this authority may be proposed by the parties to the administrative hearings; to require the Administrative Law Judge presiding over such hearings to include in their Initial Decisions recommended cease and desist orders; to provide that cease and desist orders may be issued by the Judicial Officer; and to provide that any cease and desist order issued by the Judicial Officer shall be served upon the Respondent or his agent.

The Postal Service will not exercise the authority conferred by 39 U.S.C. 3005(a)(3) prior to the effective date of this rule. Only complaints and petitions filed after the effective date of this rule, and requesting orders authorized by 39 U.S.C. 3005(a)(3), will be considered by the Judicial Officer as subject to the authority conferred by 39 U.S.C.

3005(a)(3). Because the rule is hereby made inapplicable to cases pending prior to its effective date, and is a rule of practice (5 U.S.C. 553(b)), not a substantive rule (5 U.S.C. 553(d)), its effective date need not be deferred. Accordingly, this rule is published as a final rule.

List of Subjects in 39 CFR Part 952

Administrative practice and procedure, Fraud, Lotteries.

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

Accordingly, 39 CFR is amended as follows:

1. Revise § 952.5 to read as follows:

§ 952.5 Complaints.

When the General Counsel of the Postal Service or his designated representative believes that a person is using the mails in a manner requiring formal administrative action under 39 U.S.C. 3005, he shall prepare and file with the Recorder a complaint which names the person involved; states the name, address and telephone number of the attorney representing Complainant; states the legal authority and jurisdiction under which the proceeding is initiated; states the facts in a manner sufficient to enable the person named therein to make answer thereto; and requests the issuance of an appropriate order or orders. Complainant shall attach to the complaint a copy of the order or orders requested which may, at any time during the proceedings, be modified. The person named in the complaint shall be known as the "Respondent", and the General Counsel shall be known as the "Complainant."

The term "person" (1 U.S.C. 1) shall include any name, address, number or other designation under or by use of which the Respondent seeks remittances of money or property through the mail.

2. Revise paragraph (b) of § 952.7 to read as follows:

§ 952.7 Notice of answer and hearing.

(b) Where a complaint is filed against a Respondent whose mailing address is not within the United States, the Judicial Officer shall review the complaint and any supporting information and determine whether a prima facie showing has been made that Respondent is engaged in conduct warranting issuance of the orders authorized by 39 U.S.C. 3005(a). Where he concludes that a prima facie showing has not been made he shall dismiss the

complaint. Where he concludes that a prima facie showing has been made, he shall issue a tentative decision and orders which: set forth findings of fact and conclusions of law; direct Respondent to cease and desist from engaging in conduct warranting the issuance of an order authorized by 39 U.S.C. 3005(a); direct that postal money orders drawn to the order of Respondent not be paid for 45 days from date of the tentative decision; direct that mail addressed to Respondent be forwarded to designated facilities and detained for 45 days from the date of the tentative decision subject to survey by Respondent and release of mail unrelated to the matter complained of; and provide that unless Respondent presents, within 45 days of the date of the tentative decision, good cause for dismissing the complaint, or modifying the tentative decision and orders, the tentative decision and orders shall become final. The Judicial Officer may, upon a showing of good cause made within 45 days of the date of the tentative decision, hold a hearing to determine whether the tentative decision and orders should be revoked, modified or allowed to become final. Should a hearing be granted, the Judicial Officer may modify the tentative decision and orders to extend the time during which the payment of postal money orders payable to Respondent is suspended and mail addressed to Respondent is detained.

3. Revise § 952.11 to read as follows:

§ 952.11 Default.

(a) If the Respondent fails to file an answer within the time specified in the notice of answer and hearing, he shall be deemed in default, and to have waived hearing and further procedural steps. The Judicial Officer shall thereafter issue orders without further notice to the Respondent.

(b) If the Respondent files an answer but fails to appear at the hearing, the Respondent may, unless timely indications to the contrary are received, be deemed to have abandoned the intention to present a defense to the charges of the complaint, and the Judicial Officer, without further notice to Respondent, may issue the orders sought in the complaint.

4. Revise § 952.23 to read as follows:

§ 952.23 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to answer the complaint or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to

appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

(c) Except when presented orally before the close of the hearing, proposed orders shall state the statutory basis of the order and, with respect to orders proposed to be issued pursuant to 39 U.S.C. 3005(a)(3), shall be set forth in serially numbered paragraphs stating with particularity the representations Respondent and its representatives shall cease and desist from using for the purpose of obtaining money or property through the mail.

5. Revise § 952.24 to read as follows:

§ 952.24 Decisions.

(a) *Initial decision by Administrative Law Judge.* A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The initial decision shall become the final Agency decision unless an appeal is taken in accordance with § 952.25.

(b) *Tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing he shall issue a final or a tentative decision. Such decision shall include findings and conclusions with the reasons therefor

upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The tentative decision shall become the final Agency decision unless exceptions are filed in accordance with § 952.25.

(c) *Oral decisions.* The presiding Officer may render an oral decision (an initial decision by an Administrative Law Judge, or a tentative or final decision by the Judicial Officer) at the close of the hearing when the nature of the case and the public interest warrant. A party who desires an oral decision shall notify the presiding officer and the opposing party at least 5 days prior to the date set for the hearing. Either party may submit proposed findings, conclusions, and proposed orders either orally or in writing at the conclusion of the hearing.

6. Revise § 952.25(e)(3) to read as follows:

§ 952.25. Exceptions to initial decision or tentative decision.

(e) * * *

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

7. Redesignate existing text of § 952.28 as paragraph (a) and add new paragraph (b) to read as follows:

§ 952.28 Orders

(b) If an order is issued which requires the Respondent to cease and desist from using certain representations for the purpose of obtaining money or property through the mail, it shall be incorporated in the record of the proceeding and a copy thereof shall be served upon the Respondent or his agent by certified mail or by personal service, or if no person can be found to accept service, service shall be accomplished by ordinary mail to the last known address of Respondent or his agent. If service is not accomplished by certified mail, a statement, showing the time and place of delivery, signed by the postal employee who delivered the order, shall be forwarded to the Recorder.

8. Revise § 952.29 to read as follows:

§ 952.29 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or

revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply within 10 days after filing or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

9. Revise § 952.30 to read as follows:

§ 952.30 Supplemental orders.

When the General Counsel or his designated representative shall have reason to believe that a person is evading or attempting to evade the provisions of any such orders by conducting the same or a similar enterprise under a different name or at a different address he may file a petition with accompanying evidence setting forth the alleged evasion or attempted evasion and requesting the issuance of a supplemental order or orders against the name or names allegedly used. Notice shall then be given by the Recorder to the person that the order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

10. Revise § 952.33 to read as follows:

§ 952.33 Public Information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tentative and final Agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

(39 U.S.C. 204, 401, 3005)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

(PR Doc. 83-32811 Filed 12-8-83; 8:45 am)

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[WH-FRL-2478-8]

West Virginia Department of Natural Resources; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of West Virginia has submitted an application under Sections 1422 and 1425 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for Classes I, III, IV, and V injection wells meets the requirements of Section 1422 of the Act, and that the State's injection well program for Class II oil and natural gas related wells meets the requirements of Section 1425 of the Act. Therefore, this application covering Classes I-V injections is approved.

EFFECTIVE DATE: This approval is effective January 9, 1984.

FOR FURTHER INFORMATION CONTACT:

S. Stephen Platt, (3WM42), Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. PH: (215) 597-9017.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the Federal Register each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The SDWA was amended on December 5, 1980, to include Section 1425, which establishes an alternative method by which a State may obtain primary enforcement responsibility for those portions of its UIC program

related to the recovery and production of oil and natural gas (Class II wells). Specifically, instead of meeting the Federal Regulations (40 CFR Parts 124, 144 and 145) and related Technical Criteria and Standards (40 CFR 146), a State may demonstrate that its program meets the more general statutory requirements of Section 1421(b)(1) (A) through (D) and represents an effective program to prevent endangerment of underground sources of drinking water.

The State of West Virginia was listed as needing a UIC program on September 25, 1978 (43 FR 43420). The State submitted an application under Sections 1422 and 1425 on March 21, 1983, for a UIC program to be administered by the West Virginia Department of Natural Resources (WVDNR). On April 14, 1983, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the WVDNR (48 FR 16079). Neither requests for public hearing nor requests to offer testimony at such hearing were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest. After careful review of the application and the Responsiveness Summary, I have determined that the West Virginia UIC program for Classes I, II, III, IV, and V injection wells submitted by the WVDNR meets the requirements established by the Federal regulations pursuant to Sections 1422 and 1425 of the SDWA and, hereby, approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of West Virginia. The requirements of this program include state statutes and regulations set forth at: West Virginia Code, Chapter 20, Article 5A; Chapter 22, Articles 4, 4A, and 7; Chapter 29A, and Chapter 29B; and West Virginia Administrative Regulations, State Water Resources Board, Series IX and X; West Virginia Administrative Regulations, Director, Department of Natural Resources, Series XV; West Virginia Administrative Regulations, Department of Mines, Series I and V; and West Virginia Administrative Regulations, Oil and Gas Conservation Commission, Series I.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 145, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program

is a part. These terms may not all apply to this particular notice.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the West Virginia Department of Natural Resources will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

List of Subjects in 40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Water supply, Confidential business information.

Dated: December 6, 1983.
William D. Ruckelshaus,
Administrator.
[FR Doc. 83-32797 Filed 12-8-83; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 434, 435, and 447

State Medicaid Contracts

Correction

In FR Doc. 83-31585 beginning on page 54013 in the issue of Wednesday, November 30, 1983, make the following corrections:

1. On page 54014, the first column, the eighth line, the word "prepared" should read "prepaid".
2. On page 54021, in § 434.1(a), the middle column, the tenth line, the word "for" should read "forth".
3. On the same page, on § 434.2, under the definition for "Health insuring organization", in paragraph (a), the third line, the word "changes" should read "charge".
4. On page 54024, in § 434.50(b), the middle column, the second line, the word "servies" should read "services".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-9)]

Abandonment of Railroad Lines and Discontinuance of Service; Offers of Financial Assistance

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is modifying its regulations at 49 CFR 1152.27 which govern offers of financial assistance under 49 U.S.C. 10905 to reduce the amount of information required to be submitted with the offer of financial assistance. The revised rules (proposed at 48 FR 27269, June 14, 1983) modify the content and filing requirements for submissions to the Commission, the procedures to be followed with requests to set terms and conditions, and the issuance of abandonment certificates following unsuccessful financial assistance proceedings. The decisions also discuss intracorporate transactions involving lines acquired or to be acquired under section 10905 and the applicability of the regulations to abandonments by the Consolidated Rail Corporation.

EFFECTIVE DATE: These rules are effective on January 9, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer (202) 275-7245
Wayne A. Michel (202) 275-7657

or

Karen Osterloh (202) 275-7483

SUPPLEMENTARY INFORMATION: This action will not have a significant effect on the quality of the human environment or energy consumption. This action will not have a significant economic impact on a substantial number of small entities because the amount of information required in an initial offer of financial assistance has been reduced.

The rules are issued under the authority of 5 U.S.C. 553 and 49 U.S.C. 10321 and 10905.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads.

Additional information is contained in the Commission's full decision. To purchase a copy of the decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4387 (D.C. Metropolitan Area) or toll free (800) 424-5403.

Decided: November 23, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

James H. Bayne,

Acting Secretary.

Appendix

PART 1152—[AMENDED]

49 CFR Part 1152 is amended by revising § 1152.27 to read as follows:

§ 1152.27 Financial assistance procedures.

(a) *Provision of information.* An applicant must provide promptly upon request to a party considering an offer of financial assistance, and concurrently to the Commission, the following:

(1) An estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(2) Its most recent reports on the physical condition of that part of the line involved in the proposed abandonment or discontinuance; and

(3) Traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line.

(b) *Federal Register Notice.* If the Commission finds that the present or future public convenience and necessity permit or require the proposed abandonment or discontinuance, the Commission will publish these findings in the *Federal Register* concurrently with the service of the decision. The *Federal Register* publication will serve as notice to persons intending to offer financial assistance to assure continued rail service under 49 U.S.C. 10905 and these regulations.

(c) *Submission of Financial Assistance Offer.*—(1) *Service and Filing:* An offeror must serve its offer of assistance on the carrier owning and operating the line and all parties to the abandonment or discontinuance proceeding. The offer must be filed concurrently with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(i) An offer may be filed and served at any time after the filing of the abandonment or discontinuance application. Once notice of the abandonment findings is published in the *Federal Register*, however, the Commission must be notified that an offer has previously been submitted.

(ii) An offer, or notification of a previously filed offer, must be filed and served no later than 10 days after the *Federal Register* publication described in paragraph (b) of this section. This

filing and service is subject to the requirements of 49 CFR 1152.25(d) (1) through (4).

(iii) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the application, the Commission will entertain petitions to toll the 10-day period for submitting offers of financial assistance under paragraph (c)(1) of this section. Petitions must be filed with the Commission within 5 days after publication in the *Federal Register* [described in paragraph (b) of this section]. Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 10 days after the publication. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Commission will issue a decision on petitions within 15 days after publication.

(2) *Contents of Offer.* The offeror shall set forth its offer in detail. The offer must:

(i) Identify the line, or the portion of the line, in question;

(ii) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations;

(iii) Explain the disparity between the offeror's purchase price or subsidy if it is less than the carrier's estimate under paragraph (a)(1) of this section, and explain how the offer of subsidy or purchase is calculated.

(d) *Access to documents.* Upon receipt by the carrier of a written comment under § 1152.25 indicating an intent to offer financial assistance or upon receipt by the carrier of an offer of financial assistance, whichever occurs earlier, the carrier must make available to that party or offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit 1 (§ 1152.36). These documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

(e) *Review of offers.* The Commission will review each offer submitted to determine if the offeror is a financially responsible person offering assistance which is likely to cover: (1) the difference between the revenues attributable to the line and the avoidable cost of providing freight service on the line plus a reasonable return on the value of the line, or (2) the acquisition cost of all or any portion of

the line. If these criteria are met, the Commission will issue a decision postponing the issuance of a certificate of abandonment or, if a certificate has been issued, postponing the effective date of the certificate. This decision will be issued within 15 days of the *Federal Register* publication described in paragraph (b) of this section [or five days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(iii) of this section].

(f) *Agreement on financial assistance.*

(1) If the carrier and a person offering financial assistance enter into a subsidy agreement designed to provide for continued rail service, the Commission will postpone the issuance of a certificate authorizing the abandonment or discontinuance. If a certificate has been issued, the Commission will postpone the effective date of the certificate. The postponement will be for as long as the subsidy agreement is in effect.

(2) If the carrier and a person offering to purchase a line enter into a purchase agreement which will result in continued rail service, the Commission will approve the transaction and dismiss the application for abandonment or discontinuance. Commission approval is not required under 49 U.S.C. 10901 or 11343 for the parties to consummate the transaction or for the purchaser to institute service and operate as a railroad subject to 49 U.S.C. 10501(a).

(g) *Failure to reach agreement on financial assistance.* (1) If the carrier and a financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Commission to establish the conditions and amount of compensation. This request must be filed with the Commission within 30 days after the offer is made and served concurrently on all parties to the proceeding.

(2) If no agreement is reached within 30 days after the offer of purchase or subsidy is made, and no request is made to the Commission to set the conditions and amount of compensation under paragraph (g)(1) of this section, the Commission will serve a certificate authorizing the abandonment or discontinuance within 10 days after the date the request to set conditions and amount of compensation was due [unless an appeal is being heard under § 1152-25(e)]. The certificate will be effective on its date of service. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 10 days after the date the request to set conditions and compensation was due [unless an

appeal is being heard under § 1152.25(e)].

(h) *Request to establish conditions and compensation for financial assistance.* (1) If the Commission is requested to establish conditions and compensation for financial assistance under paragraph (g)(1) of this section, the Commission will issue a decision within 60 days after the request is filed with the Commission.

(2) If the applicant receives multiple offers of financial assistance, requests to establish conditions and compensation will not be permitted before the applicant selects the offeror with whom it wishes to transact business. [See paragraph (l)(1) of this section].

(3) A party requesting the Commission to establish conditions and compensation for financial assistance must provide with the request, a narrative indicating the status of the negotiations between the parties and the likelihood of voluntary settlement prior to the issuance of a Commission decision setting terms. The party filing the request must also, within the time period set forth in paragraph (h)(4) of this section, provide reasons why its estimates are correct and the other negotiating party's estimates are incorrect; points of agreement and points of disagreement between the negotiating parties; and evidence substantiating these allegations. The offeror has the burden of proof as to all issues in dispute.

(4) All evidence and information supporting the request to set terms and any evidence or information contesting the suggested terms must be submitted within 30 days of the request. Replies to this evidence are due within 40 days of the request. Evidence and information submitted after these dates may be rejected.

(5) If requested, the Commission will determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line.

(6) If requested, the Commission will determine the price and other terms of sale. The Commission will not set a price of this section the fair market value of the line (including, unless otherwise agreed upon by the parties, all facilities on the line or portion necessary to provide effective transportation services). Fair market value equals constitutional minimum value which is the greater of the net liquidation value of the line or the going concern value of the line. The constitutional minimum value is computed without regard to labor protection costs.

(7) Within 10 days of the service date of the Commission's decision, the offeror must accept or reject the Commission's terms and conditions with a written notification to the Commission and all parties to the proceeding. If the offeror accepts the terms and conditions set by the Commission, the Commission's decision is binding on both parties. If the offeror withdraws its offer or does not accept the terms and conditions set by the Commission with a timely written notification, the Commission will serve, within 20 days after the service date of the Commission decision setting the terms and conditions, a certificate authorizing the abandonment or discontinuance [unless other offers are being considered under paragraph (1) of this section and unless an appeal is being heard under § 1152.25(e)]. The certificate will be effective on its date of service. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 20 days after the service date of the Commission decision setting the terms and conditions [unless other offers are being considered under paragraph (1) of this section or an appeal is being heard under § 1152.25(e)].

(i) *Substitution of purchasers and disposition after sale.* (1) Prior to the consummation of a purchase under this section, an offeror may substitute its corporate affiliate as the purchaser under an agreement, provided the Commission has determined either (i) the original offeror has guaranteed the financial responsibility of its affiliate, or (ii) the affiliate has demonstrated financial responsibility in its own right.

(2) Except as provided in paragraph (i)(3) of this section, a purchaser under this section may not (i) transfer the line or discontinue service over the line prior to the end of the second year after consummation of the original sale under these provisions, or (ii) transfer the line, except to the carrier from whom the line was purchased, prior to the end of the fifth year after consummation.

(3) Paragraph (i)(2) of this section does not preclude a purchaser under this section from transferring the line to a corporate affiliate following the consummation of the original sale. Prior Commission approval of the affiliate's acquisition and operation, however, is required under 49 U.S.C. 10901 or 11343. A corporate affiliate acquiring a line under this section is prohibited from discontinuing service over the line or transferring the line to a party that is not a corporate affiliate during the time periods prescribed in paragraph (i)(2) of this section.

(j) *Discontinuance of subsidy.* A subsidizer may discontinue a subsidy under this section by giving 60 days notice of the discontinuance to the applicant and all other parties to the proceeding. Unless another financially responsible party enters into a subsidy agreement as beneficial to the carrier as the discontinued subsidy agreement, the carrier may obtain a certificate authorizing abandonment or discontinuance of service by filing a request with the Commission and serving the request on all parties to the abandonment proceeding. The Commission will issue a certificate within 10 days after the filing and service of the request. This certificate will be effective immediately. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 10 days after the filing and service of the request.

(k) *Default on agreement.* If any party defaults on its obligations under a financial assistance agreement, any other party to the agreement may promptly inform the Commission of that default. Upon notification, the Commission will take appropriate action.

(l) *Multiple offers of financial assistance.* (1) If an applicant receives more than one offer to purchase or subsidize the line, the applicant must select the offeror with whom it wishes to transact business. Within 25 days after the **Federal Register** publication described in paragraph (b) of this section, applicant must (i) file a written notification of its selection with the Commission, and (ii) serve a copy of the notification on all parties to the proceeding.

(2) If the applicant has received multiple offers of financial assistance and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Commission to establish the conditions and amount of compensation within 40 days after the **Federal Register** publication described in paragraph (b) of this section. The request must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 40 day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request the Commission to establish the conditions and amount of compensation. This request must be filed at the Commission within 50 days of the **Federal Register** publication described in paragraph (b) of this

section and served concurrently on all parties to the proceeding. If no other request is filed, the Commission will issue a certificate authorizing abandonment or discontinuance within 60 days of the **Federal Register** publication described in paragraph (c) of this section [unless an appeal is being heard under § 1152.25(e)]. This certificate will be effective immediately. If no other request is filed and a

certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 60 days after the **Federal Register** publication described in paragraph (b) of this section [unless an appeal is being heard under § 1152.25(e)].

(3) If the Commission has established the conditions and amount of compensation, and the original offer is

withdrawn under paragraph (h)(7) of this section, any other offeror may accept the Commission's decision. If the decision is accepted by another offeror, the Commission will require the applicant to accept the terms incorporated in the Commission's decision.

[FR Doc. 83-32781 Filed 12-8-83; 8:45 am]

BILLING CODE 7035-01-M