

1-27-81  
Vol. 46—No. 17  
BOOK 1:  
Pages  
8433-8850

BOOK 2:  
Pages  
8851-9018

# federal register

Book 1 of 2 Books  
Tuesday, January 27, 1981

Bonneville Power Administration  
LIBRARY  
Portland, Oregon

## Highlights

**Briefings on How To Use the Federal Register**—For details on briefings in Washington, D.C., see announcement in the Reader Aids section at the end of this issue.

- 8942 Protection of Human Subjects** HHS/FDA issues final regulations on informed consent requirements and establishes standards for and lists review activities of institutional review boards for clinical investigations; effective 7-27-81 (Part IX of this issue) (4 documents)
- 8854 Black Lung** Labor/ESA proposes procedures for handling discrimination complaints filed by coal miners (Part II of this issue) and clarification of situations where a lessor of mining property will not be liable for payment of benefits; comments by 3-30-81 (2 documents)
- 8622 Food Relief Programs** USDA/FNS announces new income poverty guidelines to determine eligibility for free and reduced price meals and free milk in centers under the Child Care Food Program and for sponsors under the Summer Program; effective 1-27-81
- 8922 Food Stamps** USDA/FNS sets standards of eligibility for duration of an emergency; effective 1-27-81, and proposes procedures for assistance during natural disasters and modification of procedures for replacement of lost or stolen authorizations and nondelivered, stolen or destroyed coupons; comments by 3-30-81 (Part VIII of this issue) (3 documents)

CONTINUED INSIDE



**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for \$75.00 per year, or \$45.00 for six months, payable in advance. The charge for individual copies is \$1.00 for each issue, or \$1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

## Highlights

- 9008 Manpower Training Programs** Labor/ETA proposes to revise rules concerning complaints, investigations and sanctions under the Comprehensive Employment and Training Act; comments by 3-30-81 (Part XIII of this issue)
- 8608 Rural Housing** USDA/FmHA announces moratorium on transfers and assumptions of certain Section 502 loans; effective 1-30-81
- 8996 Energy Conservation** DOE/SOLAR solicits suggestions by 5-27-81, for new conservation and renewable resource measures to add to Residential Conservation Service Program (Part XII of this issue) (2nd of 3 documents)
- 8646 Petroleum Allocation** DOE/ERA issues notice of intent regarding "national domestic crude oil supply ratio" (DOSR)
- 8469 Gasohol** Treasury/BATF provides final regulations relating to denatured alcohol and rum; effective 2-26-81
- 8566 Improving Government Regulations** Commerce/Sec'y amends semi-annual agenda of proposed regulations
- 8513 Freedom of Information** GSA provides procedures for public access to records; effective 1-27-81
- 8529 Privacy Act Document** OPM
- 8823 Sunshine Act Meetings**
- Separate Parts of This Issue**
- 8854 Part II, Labor/ESA**
- 8860 Part III, EPA**
- 8890 Part IV, Labor/ESA**
- 8894 Part V, Labor/P&WBP (2 documents)**
- 8908 Part VI [DELETED]**
- 8910 Part VII, Commerce/Sec'y**
- 8922 Part VIII, USDA/FNS (3 documents)**
- 8942 Part IX, HHS/FDA (4 documents)**
- 8982 Part X, EPA**
- 8986 Part XI, EPA (2 documents)**
- 8996 Part XII, DOE/SOLAR (3 documents)**
- 9008 Part XIII, Labor/ETA**

# Contents

Federal Register

Vol. 46, No. 17

Tuesday, January 27, 1981

- ACTION RULES**
- 8520 Electoral and lobbying activities; prohibitions
- Agricultural Marketing Service**
- RULES**
- 8435 Oranges (navel) grown in Ariz. and Calif.
- PROPOSED RULES**
- 8533 Milk marketing orders; Nebraska-Western Iowa
- NOTICES**
- 8607 Committees; establishment, renewals, terminations, etc.; Hop Marketing Advisory Board
- Agricultural Stabilization and Conservation Service**
- NOTICES**
- 8607 Feed grain donations; Devils Lake Sioux and Chippewa Tribes, N. Dak.
- Agriculture Department**
- See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food and Nutrition Service; Forest Service; Soil Conservation Service.
- Alcohol, Tobacco and Firearms Bureau**
- RULES**
- 8469 Denatured alcohol and rum; automotive gasoline use; formula; final
- Animal and Plant Health Inspection Service**
- NOTICES**
- 8607 Environmental statements; availability, etc.; Biological Control Satellite Facility, Niles, Mich.; construction of greenhouse
- Antitrust Division**
- NOTICES**
- 8787 Competitive impact statements and proposed consent judgments; United Technologies Corp.
- Army Department**
- NOTICES**
- 8643 Environmental statements; availability, etc.; Fort Devens, Mass.; on-going operation
- Bonneville Power Administration**
- NOTICES**
- 8645 Environmental statements; availability, etc.; Pacific Northwest power supply system; role of BPA and participation in hydro-thermal power program
- Civil Aeronautics Board**
- RULES**
- 8444 Air taxi operators, classification and exemption; Commuter air carriers, data submission requirements for fitness determinations
- 8444 Organization, functions, and authority delegations; Fees and charges for special services; distribution responsibility for priced publications transferred to GPO
- PROPOSED RULES**
- Air carriers:**
- 8561 Oversales and denied boarding compensation, exclusions
- 8566 Air taxi operators, classification and exemption; Commuter air carriers; certification; termination of proceeding
- NOTICES**
- 8630 Free and reduced-rate transportation; bartered items, resale
- Hearings, etc.:
- 8629 Air Florida, Inc.; show-cause proceeding
- 8629 American Airlines, Inc.
- 8630 Guy-American Airways, Inc., fitness investigation
- 8630 Laker Airways Ltd.
- 8630 Munz Northern Airlines, Inc.; fair and reasonable service mail rates
- 8631 Peninsula Airways, Inc. et al.; fair and reasonable service mail rates
- 8823 Meetings; Sunshine Act (2 documents)
- Civil Rights Commission**
- NOTICES**
- Meetings:
- 8632 Inter-Regional Committees
- Meetings; State advisory committees:
- 8632 Connecticut
- 8632 Maine
- 8632 Maryland
- 8633 Minnesota
- 8633 Oklahoma
- 8633 Oregon
- 8633 Pennsylvania
- 8633 Rhode Island
- 8633 Virginia
- Commerce Department**
- See also International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.
- PROPOSED RULES**
- Improving Government regulations:
- 8566 Regulatory agenda; amendment
- 8910 Voluntary laboratory accreditation program, National; criteria for accrediting testing laboratories and to eliminate need for criteria committees
- Commodity Futures Trading Commission**
- NOTICES**
- Self-regulatory organizations; proposed rule changes:
- 8641 Chicago Mercantile Exchange; six-month U.S. Treasury bills

**Conservation and Solar Energy Office****PROPOSED RULES**

- Residential conservation service program:
- 9005 Federal standby plan for States with no approved RCS plans or with inadequately implemented plans; extension of time and hearings
- 8996 Foam insulation; material and installation standards; proposed use of urea-formaldehyde
- 9004 New energy conservation and renewable resource measures; inquiry

**Customs Service****NOTICES**

- 8820 Petroleum products, approved public gauger: Core Laboratories, Inc.

**Defense Department**

See Army Department.

**Drug Enforcement Administration****NOTICES**

- Registration applications, etc.; controlled substances:
- 8799 Dow Chemical Co.
- 8799 Eli Lilly & Co.
- 8799 Ganes Chemical Co.
- 8799 Warren, David W., D.O.

**Economic Regulatory Administration****NOTICES**

- 8646 Canadian crude oil allocation program: January through March (1981)
- Consent orders:
- 8647 Delta Refining Co.
- 8645 Manhattan & Queens Fuel Oil Corp. et al.
- 8646 Crude oil entitlements program; national domestic supply ratio
- Meetings:
- 8648 National Petroleum Council; change Natural gas; fuel oil displacement certification applications:
- 8649 American Cyanamid Co.
- 8648 Public Service Electric & Gas Co.
- Natural gas exportation and importation petitions:
- 8649 Boston Gas Co.
- 8647 Midwestern Gas Transmission Co.
- Powerplant and industrial fuel use; existing powerplant or installation; classification requests:
- 8651 Wabash Power Equipment Co.
- Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
- 8650 Anheuser-Busch, Inc.
- Public Utility Regulatory Policies Act of 1978:
- 8650 Master metering standard; proposed voluntary guideline; cancellation of hearing
- Remedial orders:
- 8648 National Distillers & Chemical Corp.

**Education Department****NOTICES**

- 8643 Grant applications and proposals, closing dates: Teacher centers program; correction

**Employment and Training Administration****PROPOSED RULES**

- Comprehensive Employment and Training Act programs:
- 9008 Complaints, investigations, and sanctions

**NOTICES**

- Unemployment compensation; extended benefit periods:
- 8801 Alabama et al.

**Employment Standards Administration****PROPOSED RULES**

- Black lung disease:
- 8570 Claims for benefits, mine lessor liability; clarification
- 8854 Discrimination complaints, handling procedures
- 8890 Longshoremen's and harbor workers' compensation and special fund assessments, claims administration

**Energy Department**

See also Bonneville Power Administration; Conservation and Solar Energy Office; Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission.

**NOTICES**

- Meetings:
- 8644 International Energy Agency Industry Advisory Board
- 8645 National Petroleum Council

**Energy Research Office****NOTICES**

- Meetings:
- 8709 Energy Research Advisory Board

**Environmental Protection Agency****RULES**

- Air programs, energy-related authority; delayed compliance orders, etc.:
- 8491 Illinois
- 8492 Virginia
- Air quality implementation plans; approval and promulgation; various States, etc.
- 8471 California
- 8472 Illinois
- 8473, 8474 Indiana (2 documents)
- 8475 Massachusetts
- 8476 Michigan
- 8477, 8480 New York (2 documents)
- 8481 Ohio
- Air quality planning purposes; designation of areas:
- 8495 New York
- Noise abatement programs:
- 8497 Medium and heavy trucks and truck-mounted solid waste compactors, deferral of effective dates
- PROPOSED RULES**
- Air pollution; standards of performance for new stationary sources:
- 8587 Bulk gasoline terminals; extension of time
- 8587 Graphic arts industry; publication rotogravure printing; clarification
- Air pollution control, new motor vehicles and engines:
- 8982 Tampering enforcement; advance notice
- Air quality implementation plans; approval and promulgation, various States, etc.:
- 8575-8583 Ohio (3 documents)

- 8586 Pennsylvania  
Air quality planning purposes; designation of areas:
- 8588 Indiana  
Hazardous waste programs, State; interim authorization:
- 8589 Kentucky  
Toxic substances:
- 8992 Environmental test standards; physical, chemical, and environmental persistence characteristics; extension of time
- 8986 Premanufacture testing policy for new chemical substances  
Water pollution; effluent guidelines for point source categories:
- 8860 Porcelain enameling
- 8590 Textile mills; best available technology, best conventional technology, and pretreatment and new source performance standards; information availability
- NOTICES**  
Air quality implementation plans; approval and promulgation:
- 8709 Regulatory Flexibility Act; criteria and control technologies; certification
- Toxic and hazardous substances control:
- 8710- Premanufacture notices receipts (6 documents)
- 8718
- Equal Employment Opportunity Commission**  
**NOTICES**
- 8823 Meetings; Sunshine Act (2 documents)
- Farmers Home Administration**  
**RULES**
- 8435 Community facilities loans; population limits for eligibility
- NOTICES**  
Loans and grant disbursement:
- 8608 Funds allocation, determination methods and amounts; 1981 FY
- Rural housing loans and grants:
- 8608 Federal Domestic Assistance; transfers and assumptions moratorium
- Federal Communications Commission**  
**PROPOSED RULES**  
Radio stations; table of assignments:
- 8600 Kentucky
- NOTICES**
- 8723 AM broadcast applications accepted for filing and notification of cut-off date  
Hearings, etc.:
- 8721 Trinity Broadcasting of Seattle et al.  
Meetings:
- 8720, Marine Services Radio Technical Commission (2 documents)
- 8723
- 8722 TV broadcast applications accepted for filing and notification of cut-off date
- Federal Election Commission**  
**NOTICES**  
Meetings:
- 8723 Clearinghouse Advisory Panel
- Federal Emergency Management Agency**  
**NOTICES**
- 8724 Nuclear weapon accidents and nuclear weapon significant incidents, response to; memorandum of agreement with DOD and DOE  
Radiological emergency; State plans:
- 8723 Alabama
- 8727 North Carolina
- Federal Energy Regulatory Commission**  
**RULES**  
Natural Gas Policy Act of 1978:
- 8454 Ceiling prices; temporary pressure buildup in qualifying stripper wells; interim rule; correction
- PROPOSED RULES**  
Natural Gas Policy Act of 1978:
- 8568 Ceiling prices; high cost natural gas produced from tight formations; Louisiana
- 8568 Gathering and compression allowances; inquiry; extension of time and technical conference
- NOTICES**  
Hearings, etc.:
- 8656 American Hydro Power Co.
- 8656 American Hydroelectric Development Corp.
- 8657, American Natural Gas Production Co. et al. (2 documents)
- 8680
- 8658 Appalachian Power Co.
- 8660 Arkansas Power & Light Co.
- 8660 Branch River Mill, Inc.
- 8661 Cascade Water Power Development Corp.
- 8662 Citizens Utilities Co.
- 8653 Cruz, Edward S., and William L. Beavers
- 8662 Delmarva Power & Light Co.
- 8675 Detroit Edison Co.
- 8676 Diamond Gas & Fuel Co.
- 8677 El Paso Electric Co.
- 8677 Energy Terminal Services, Inc.
- 8678 Florida Power & Light Co.
- 8678 Idaho Power Co.
- 8678, Indiana & Michigan Electric Co. (2 documents)
- 8681
- 8680 Iowa Public Service Co.
- 8652, Kansas Gas & Electric Co. (3 documents)
- 8680
- 8652 Kansas Power & Light Co.
- 8652 Kentucky Utilities Co.
- 8653 Maine Electric Power Co.
- 8654 Mid-Continent Power Pool
- 8654 Montana Power Co.
- 8654 Natural Gas Pipe Line Co. of America
- 8654 Navajo Refining Co.
- 8655 New England Power Co.
- 8655 Niagara Mohawk Power Corp.
- 8662 Ohio Edison Co.
- 8663 Pacific Power & Light Co.
- 8655 Producer's Gas Co.
- 8707 Southern Energy Co., et al.
- 8655 Southern Natural Gas Co. et al.
- 8708 Suncook Power Corp.
- 8670 Thrifty Rent-A-Car Inc., of California
- 8671 Trunkline Gas Co.
- 8671 Union Electric Co.
- 8671 United Gas Pipe Line Co.
- 8672 Virginia Electric & Power Co.
- 8675 West Texas Utilities Co.
- 8674 Western Area Power Administration
- 8663 Western Montana Electric Generating & Transmission Cooperative et al.

- 8675 Wisconsin Electric Power Co.  
8675 Wisconsin Public Service Corp.  
Natural gas companies:  
8676 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend  
Natural Gas Policy Act of 1978:  
8651 Alternate filing requirements application receipts  
8665, Jurisdictional agency determinations (5  
8670, documents)  
8684,  
8695,  
8704
- Federal Home Loan Bank Board**  
RULES  
Federal savings and loan system:  
8438 Debit cards; remote service unit amendments  
NOTICES  
Federal home loan bank system:  
8728 NOW accounts; collection, processing, and settlement of payment instruments; service fee schedule
- Federal Maritime Commission**  
PROPOSED RULES  
8599 Routine rate actions; exclusion from reporting requirement  
NOTICES  
8732 Agreements filed, etc.
- Federal Reserve System**  
RULES  
International banking operations (Regulation K):  
8437 Investments by United States banking organizations in foreign companies; interpretation  
NOTICES  
Applications, etc.:  
8733 Benz Holding Co.  
8736 Chittenden Corp.  
8733 Consolidated Bank Corp.  
8735 First Financial Corp.  
8735 Jayhawk Bancshares, Inc.  
8735 Mercantile Bancorporation, Inc.  
8733 Metro Bank Corp.  
8735 NBC Bancshares, Inc.  
8735 Northern Indiana Bancshares, Inc.  
8733 Peoples Savings & Investment, Inc.  
8734 Texas Commerce Bancshares, Inc. (2 documents)  
8734 Weatherford Bancshares, Inc.  
8736 Whiting Bancshares, Inc.  
Bank holding companies; proposed de novo nonbank activities:  
8732, Citicorp et al. (2 documents)  
8734  
8823 Meetings; Sunshine Act (2 documents)
- Federal Trade Commission**  
RULES  
Prohibited trade practices:  
8445 Litton Industries, Inc., et al.  
PROPOSED RULES  
Prohibited trade practices:  
8567 Owen-Corning Fiberglas Corp., correction  
NOTICES  
8824 Meetings; Sunshine Act
- Fiscal Service**  
NOTICES  
Bonds and notes, U.S. savings:  
8820 Issuing and paying agents fees, increase
- Fine Arts Commission**  
NOTICES  
8641 Meetings
- Fish and Wildlife Service**  
RULES  
Public entry and use:  
8525 Salt Plains National Wildlife Refuge, Okla., et al.  
NOTICES  
8755 Air quality; Federal class I areas; identification of integral vistas  
8760 Refuge Manual; availability
- Food and Drug Administration**  
RULES  
Animal drugs, feeds, and related products:  
8467 Ayerst Laboratories, sponsor name change  
8467 Procaine penicillin G sterile aqueous suspension (injectable)  
Color additives:  
8461 D & C Orange No. 4  
Food additives:  
8466 N-Methyl-N-(tall oil acyl) taurine, sodium salt  
8465 Polysorbate 60 and polysorbate 80  
8462 Fruit juices, canned; grapefruit juice, identity standards and fill of container  
Human subjects, protection:  
8958 Clinical investigations; institutional review boards  
8942 Informed consent requirements  
8979 Prisoners involved in clinical investigation research activities; correction  
Organization and authority delegations:  
8454 Hearing Clerk's Office renamed as Dockets Management Branch  
8454 Office of the Commissioner, reorganization and location changes  
NOTICES  
Animal drugs, feeds, and related products:  
8741 Pig Ration-Ban-250; hearing denied and application refused  
8737 Clams, fresh and frozen; memorandum of understanding with United Kingdom Health and Social Security Department  
Human subjects, protection:  
8960 Clinical investigations; expedited review procedures  
Laser variance approvals, etc.:  
8739 Heartbreak Hotel Corp.  
8740 Laser Concepts  
8740 Lightform  
Medical devices:  
8736 Combiflex hydrophilic contact lens solution; premarket approval
- Food and Nutrition Service**  
RULES  
Food stamp program:  
8922 Disaster victims; emergency food assistance  
PROPOSED RULES  
Food stamp program:  
8923 Disaster victims, emergency food assistance

- 8922 Lost or stolen food stamp authorizations and nondelivered, stolen or destroyed coupons; replacement  
NOTICES
- 8622 Child nutrition programs:  
Meals and milk, free and reduced price; income poverty guidelines for determining eligibility; mid-year change
- Forest Service**  
NOTICES
- 8626 Environmental statements; availability, etc.:  
Francis Marion National Forest, land and resource management plan, South Carolina
- 8626 Spruce Budworm Management Program, Maine; correction
- Meetings:  
8626 Fremont National Forest Grazing Advisory Board
- General Services Administration**  
*See also* National Archives and Records Service; Public Buildings Service.  
RULES
- 8513 Freedom of Information Act; implementation
- 8513 Property management:  
ADP and telecommunications; condition codes
- Geological Survey**  
NOTICES
- 8760 Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:  
Gulf Oil Exploration & Production Co.
- Health and Human Services Department**  
*See also* Food and Drug Administration; Health Resources Administration; Health Services Administration; National Institutes of Health; Public Health Service; Social Security Administration.  
NOTICES
- 8744 Organization, functions, and authority delegations:  
Human Development Services Office
- Health Resources Administration**  
NOTICES
- 8743 Committees; establishment, renewals, terminations, etc.:  
Health Planning and Development National Council
- Health Services Administration**  
NOTICES
- 8754 Medical reimbursement rates; inpatient and outpatient medical care 1981 FY
- Heritage Conservation and Recreation Service**  
NOTICES
- 8761 National Landmarks National Registry; proposed additions, deletions, etc.:  
Virgin Islands and Washington
- Interior Department**  
*See* Fish and Wildlife Service; Geological Survey; Heritage Conservation and Recreation Service; Land Management Bureau.
- International Trade Administration**  
NOTICES
- Scientific articles; duty free entry:  
8634 Bryn Mawr College  
8634 Labor Department et al.  
8634 National Bureau of Standards  
8635 Northeastern University  
8635 University of Arizona et al.  
8636 University of California  
8636 University of Illinois  
8637 University of Michigan et al.
- Steel trigger price mechanism:  
8637 Product coverage request and coverage review procedure; review and clarifications, etc.
- Interstate Commerce Commission**  
RULES
- 8525 Legal assistance referral service program for participation in Commission proceedings; CFR part removed
- Motor and water carriers, etc.:  
8524 Operating authority application procedures
- PROPOSED RULES**
- Practice and procedure:  
8601 Rail carriers; waiver of insignificant amounts and simplification of special docket proceedings
- Tariffs and schedules:  
8604 Motor carriers; elimination of certificates as measure of 'holding out'
- NOTICES**
- 8779 Hearing assignments
- 8786 Long and short haul applications for relief
- Motor carriers:  
8761, Finance applications (2 documents)  
8764  
8787 Fuel costs recovery, expedited procedures  
8769, Permanent authority applications (6 documents)  
8780-  
8785  
8778 Permanent authority applications; restriction removals  
8785 Rate bureau investigation (shipper-affiliation); reopening of proceeding
- Rail carriers:  
8787 Consolidated Rail Corp.; class rate prescription
- Justice Department**  
*See* Antitrust Division; Drug Enforcement Administration.
- Labor Department**  
*See also* Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office.  
NOTICES
- Adjustment assistance:  
8807 Alison Ayres et al.  
8806 B & W Shake Co., Inc. et al.  
8805 Carla Leather, Inc.  
8806 Illinois Tool Works, Inc.  
8809 Lustre Plating Co.  
8809 M & A Manufacturing Corp.  
8809 Maida Development Co.  
8805 Maxson Corp. et al.  
8804 R. C. Allen Co., Inc.  
8809 Spectator Casuals, Inc.  
8810 Standard Products Co.

- 8804 Wagner Electric Corp.  
Committees; establishment, renewals, terminations, etc.:
- 8810 Steel Tripartite Advisory Committee  
Industry study reports for adjustment assistance eligibility:
- 8803 Motor vehicles  
Meetings:
- 8804 International Labor Standards Tripartite Advisory Panel
- Land Management Bureau**  
RULES  
Public land orders:
- 8520 Montana  
8520 Oregon
- NOTICES  
Meetings:
- 8754 Craig District Advisory Council  
8754 Susanville District Advisory Council  
8755 Ukiah District Advisory Council; correction
- Mine Safety and Health Administration**  
NOTICES  
Petitions for mandatory safety standard modifications:
- 8802 Amoco Minerals Co.  
8802 Imco Services  
8802 Round Mountain Coal Co., Inc.  
8803 Sunshine Mining Co.  
8803 Triple M&K Coal Co.
- National Aeronautics and Space Administration**  
NOTICES  
8810 Aerospace contractors; awards of \$10 million or more; list
- National Archives and Records Service**  
NOTICES  
Meetings:
- 8736 Preservation Advisory Committee
- National Highway Traffic Safety Administration**  
NOTICES  
Meetings:
- 8820 Safety, Bumper, and Consumer Information Programs, cancelled
- National Institutes of Health**  
NOTICES  
Meetings:
- 8753 Cancer National Advisory Board  
8753 Research Resources National Advisory Council
- National Mediation Board**  
NOTICES  
8824 Meetings; Sunshine Act
- National Oceanic and Atmospheric Administration**  
NOTICES  
Fishery conservation and management:
- 8638 Spiny lobster; Gulf of Mexico Fishery Management Council; hearings  
8639 Spiny lobster; South Atlantic Fishery Management Council; hearings  
Meetings:
- 8638 Caribbean Fishery Management Council
- 8638 New England Fishery Management Council
- National Science Foundation**  
NOTICES  
Meetings:
- 8811 Advisory Council; correction
- National Technical Information Service**  
NOTICES  
8641 Inventions, Government-owned; availability for licensing
- National Transportation Safety Board**  
NOTICES  
8824 Meetings; Sunshine Act
- Nuclear Regulatory Commission**  
RULES  
8436 National security information program, implementation; access authorization fees  
NOTICES  
Environmental statements; availability, etc.:
- 8811 Southern California Edison Co. et al.  
8824 Meetings; Sunshine Act (2 documents)
- Oceans and Atmosphere, National Advisory Committee**  
NOTICES  
8810 Meetings
- Pension and Welfare Benefit Programs Office**  
RULES  
Employee benefit plans:
- 8894 Suspension of benefit rules  
PROPOSED RULES  
Employee benefit plans:
- 8906 Retirement benefits; suspension during reemployment  
8571 Employee retirement income security; definitions and coverage; supplemental payments
- Personnel Management Office**  
RULES  
8433 Reemployment rights; individual separated from Federal employment for specified period of service with American Institute of Taiwan  
PROPOSED RULES  
8529 Personnel records, establishment of Employee Performance Folder (EPF)  
NOTICES  
Committees; establishment, renewals, terminations, etc.:
- 8813 White House Fellowships, President's Commission  
8812 Privacy Act; systems of records
- Public Buildings Service**  
NOTICES  
8736 Environmental statements; availability, etc.:
- Post office and courthouse, annex; construction, repair and alteration; Charleston, S.C.; meeting
- Public Health Service**  
RULES  
Fellowships, internships, training:
- 8518 Health education assistance loan program



**Securities and Exchange Commission****RULES**

Employee benefit plans:

- 8446 Application of Securities Act, interpretation

**PROPOSED RULES**

Brokers and dealers; securities net capital requirements:

- 8568 Alternative net capital requirements and percentage deductions increase to reflect market value fluctuations; extension of time

**NOTICES**

Hearings, etc.:

- 8814 Centennial Capital Special Fund, Inc. (2 documents)
- 
- 8815 Lexington Tax Free Daily Income Fund, Inc.
- 
- 8818 Southwestern Electric Power Co.

8825 Meetings; Sunshine Act  
Self-regulatory organizations; proposed rule changes:

- 8814 Boston Stock Exchange, Inc.
- 
- 8817 New York Stock Exchange, Inc.

**Small Business Administration****RULES**

Administration:

- 8441 Authority delegations to conduct program activities in field offices

**NOTICES**

Disaster areas:

- 8819 Arkansas
- 
- 8819 New Jersey
- 
- 8819 Texas

**Social Security Administration****PROPOSED RULES**

Social security benefits:

- 8569 Disability insurance; methods of computing benefits payable to family of worker; correction

**Soil Conservation Service****NOTICES**

Environmental statements; availability, etc.:

- 8627 Big Creek Watershed, Ark.
- 
- 8627 Central Sonoma Watershed Project, Spring Creek Subwatershed, Calif.
- 
- 8629 Clarksburg Flood Prevention RC&D Measure, Ohio
- 
- 8627 Eugene Covered Bridge Critical Area Treatment RC&D Measure, Ind.
- 
- 8628 Scioto Vocational School Critical Area Treatment RC&D Measure, Ohio
- 
- 8628 Spruce Street Flood Prevention RC&D Measure, Ohio

**State Department****RULES**

Passports:

- 8468 Criminal court order cases; denial of passport facilities

**NOTICES**

Meetings:

- 8820 International Radio Consultative Committee
- 
- 8820 Shipping Coordinating Committee

**Transportation Department**

See National Highway Traffic Safety Administration.

**Treasury Department**

See also Alcohol, Tobacco and Firearms Bureau; Customs Service; Fiscal Service.

**NOTICES**

Committees; establishment, renewals, terminations, etc.:

- 8821 Debt Management Advisory Committees

Notes, Treasury:

- 8821 M-1983 series

**Veterans Administration****PROPOSED RULES**

Adjudication; pensions, compensation, dependency, etc.:

- 8574 Veterans benefits; length of service requirement

**NOTICES**

Senior Executive Service:

- 8822 Bonus awards schedule

**MEETINGS ANNOUNCED IN THIS ISSUE****AGRICULTURE DEPARTMENT**

Forest Service—

- 8626 Fremont National Forest Grazing Advisory Board, Lakeview, Oreg., 3-6-81

**CIVIL RIGHTS COMMISSION**

- 8632 Maine Advisory Committee, Augusta, Maine, 2-12-81

- 8632 Midwestern, New England, Central, Rocky Mountain, Southwestern and Northwestern Regions, Minneapolis, Minn., 2-12 and 2-13-81

- 8633 Minnesota Advisory Committee, Minneapolis, Minn., 2-12-81

- 8633 Oklahoma Advisory Committee, Lawton, Okla., 2-17-81

- 8633 Oregon Advisory Committee, Klamath Falls, Oreg., 2-6-81

- 8633 Pennsylvania Advisory Committee, Philadelphia, Pa., 2-19-81

- 8633 Rhode Island Advisory Committee, Providence, R.I., 2-11-81

- 8633 Virginia Advisory Committee, Richmond, Va., 2-28-81

**COMMERCE DEPARTMENT**

National Oceanic and Atmospheric Administration—

- 8638 Caribbean Fishery Management Council, Santurce, P.R., 2-17 through 2-19-81

- 8638 New England Fishery Management Council, Scientific and Statistical Committee, Boston, Mass., 2-11-81

**ENERGY DEPARTMENT**

Environmental Conservation Committee, Land Use Task Group, Washington, D.C., 2-2-81

- 8644 International Energy Agency, Industry Advisory Board, London, England, 1-28-81; Paris, France, 1-29-81; Industry Working Party, Paris, France, 1-28-81 and 1-28 through 1-30-81

Energy Research Office—

- 8709 Energy Research Advisory Board, Geothermal Panel, Washington, D.C., 2-4-81

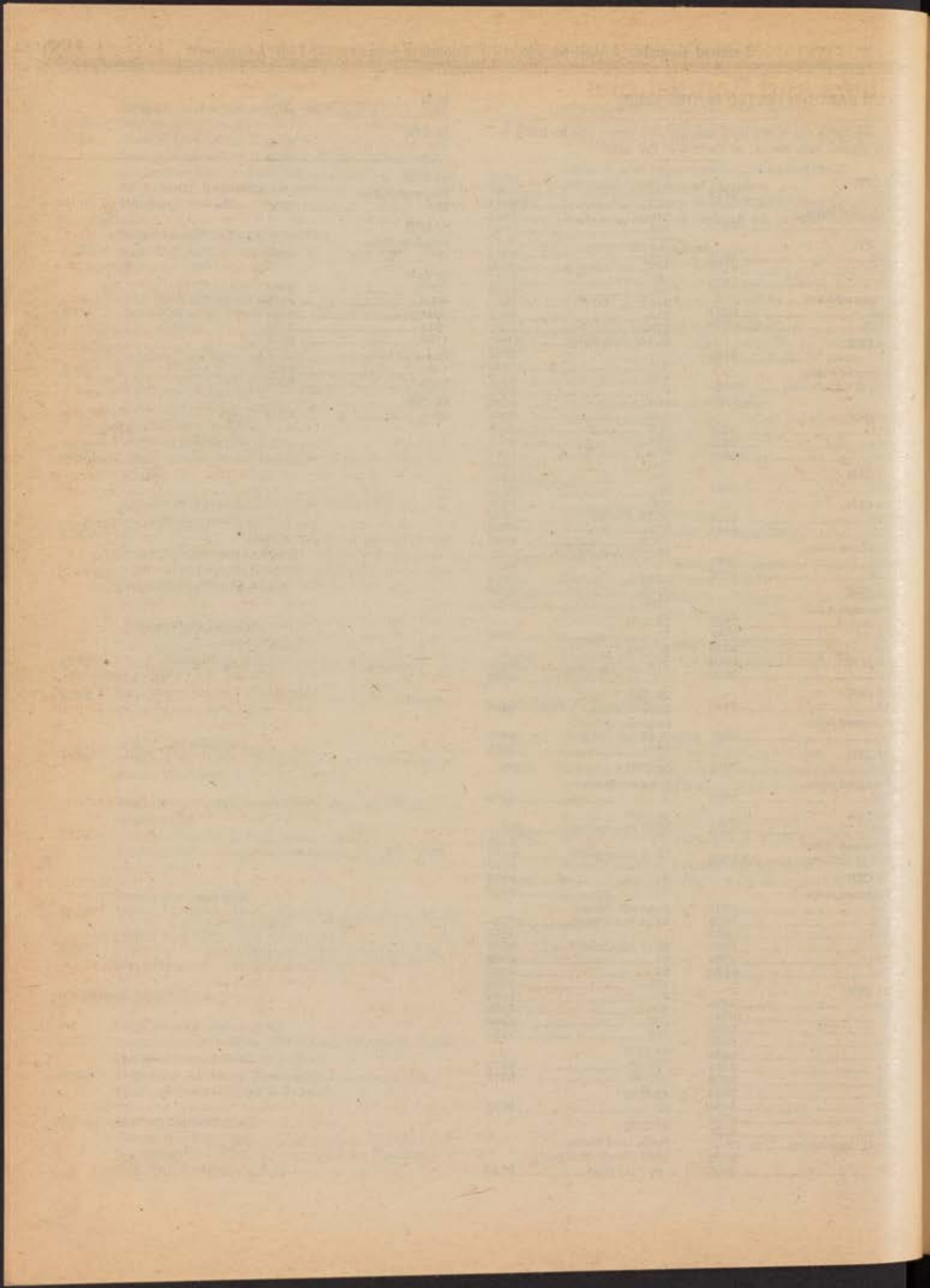
- FEDERAL COMMUNICATIONS COMMISSION**  
**8720** Marine Services Radio Technical Commission,  
**8723** Special Committee No. 74, 2-10 and 2-11-81;  
 Special Committee No. 75, 2-24-81; Special  
 Committee No. 76, 2-11-81; Special Committee No.  
 78, 2-10-81; Executive Committee, 2-19-81;  
 Washington, D.C.
- FEDERAL ELECTION COMMISSION**  
**8723** Clearinghouse Advisory Panel, Washington, D.C.,  
 2-23 and 2-24-81
- FINE ARTS COMMISSION**  
**8641** Appearance of Washington, D.C., Washington,  
 D.C., 2-10-81
- GENERAL SERVICES ADMINISTRATION**  
**8736** National Archives and Records Service—  
 Preservation Advisory Committee, Preservation of  
 Extant Documents and Artifacts Subcommittee,  
 Chicago, Ill., 2-9-81  
 Public Buildings Service—  
**8736** U.S. Post Office and Courthouse, Charleston, S.C.  
 2-5-81
- HEALTH AND HUMAN SERVICES DEPARTMENT**  
 National Institutes of Health—  
**8753** National Cancer Advisory Board, 2-2 and 2-4-81;  
 Organ Site Programs Subcommittee, 2-1-81; Special  
 Actions for Grants, Centers and Construction, and  
 Planning and Budget Subcommittees, 2-2-81;  
 Bethesda, Md.
- INTERIOR DEPARTMENT**  
 Land Management Bureau—  
**8754** Craig District Advisory Council, Craig, Colo.,  
 2-26-81  
**8754** Susanville District Advisory Council, Ravendale,  
 Calif., 2-24 and 2-25-81
- LABOR DEPARTMENT**  
**8804** International Labor Standards Tripartite Advisory  
 Panel, Washington, D.C., 2-10-81
- OCEANS AND ATMOSPHERE NATIONAL ADVISORY  
 COMMITTEE**  
**8810** Independent Area Task Force, Marine  
 Transportation Subgroup, Washington, D.C., 2-26  
 and 2-27-81
- STATE DEPARTMENT**  
**8820** International Radio Consultative Committee, Study  
 Group 5, Washington, D.C., 2-10-81  
**8820** Shipping Coordinating Committee, Safety of Life at  
 Sea Subcommittee, Washington, D.C., 2-10-81
- CHANGED MEETINGS**
- CIVIL RIGHTS COMMISSION**  
**8632** Connecticut Advisory Committee, Cromwell, Conn.,  
 changed from 2-5-81 to 1-29-81  
**8632** Maryland Advisory Committee, Annapolis, Md.,  
 changed from 1-21-81 to 1-28-81
- ENERGY DEPARTMENT**  
 Emergency Preparedness Committee, Coordinating  
 Subcommittee, 1-29-81, changed from Houston,  
 Tex., to Washington, D.C.
- ENVIRONMENTAL PROTECTION AGENCY**  
**8992** Environmental test standards, Washington, D.C.,  
 changed from 2-10-81 to 3-31-81, location change
- HEALTH AND HUMAN SERVICES DEPARTMENT**  
 National Institutes of Health—  
**8753** National Advisory Research Resources Council,  
 Bethesda, Md., 2-5 and 2-6-81, changed agenda
- INTERIOR DEPARTMENT**  
 Land Management Bureau—  
**8755** Ukiah District Advisory Council, Ukiah, Calif.,  
 changed from 2-12-81 to 2-26-81
- NATIONAL SCIENCE FOUNDATION**  
**8811** Advisory Council, Task Group No. 14, Washington,  
 D.C., changed from 2-10-81 to 2-11-81, room  
 change
- TRANSPORTATION DEPARTMENT**  
 National Highway Traffic Safety Administration—  
**8820** Safety, bumper and consumer information  
 programs, 1-28-81, cancelled
- HEARINGS**
- COMMERCE DEPARTMENT**  
 National Oceanic and Atmospheric  
 Administration—  
**8638** Gulf of Mexico Fishery Management Council, 2-10  
 through 2-12, 2-17 and 2-18-81  
**8639** South Atlantic Fishery Management Council, 2-10  
 through 2-12, 2-17 through 2-19-81
- ENVIRONMENTAL PROTECTION AGENCY**  
**8589** Kentucky hazardous waste management program,  
 2-23-81
- CHANGED HEARINGS**
- ENERGY DEPARTMENT**  
 Conservation and Solar Energy Office—  
**9005** Residential Conservation Service Program, changed  
 from 1-26 and 1-29-81 to 2-19, 2-20, 2-26, and  
 2-27-81  
 Economic Regulatory Administration—  
**8650** Master metering standard, 1-27-81, cancelled
- ENVIRONMENTAL PROTECTION AGENCY**  
**8587** Bulk gasoline terminals, 1-21-81, extended to  
 1-28-81

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR		71	8942
352	8433	74	8461
Proposed Rules:		109	8454
293	8529	110	8454
7 CFR		146	8462
280	8922	171	8942
907	8435	172	8465
1942	8435	176	8466
Proposed Rules:		180	8942
280	8923	310	8942
1065	8533	312	8942
10 CFR		314	8942
25	8436	320	8942
Proposed Rules:		330 (2 documents)	8454, 8942
456 (3 documents)	8996-9005	361	8942
12 CFR		430	8942
211	8437	431	8942
541	8438	509	8454
545	8438	510	8454
13 CFR		520	8467
101	8441	522	8467
14 CFR		524	8467
298	8444	540	8467
389	8444	601	8942
Proposed Rules:		630	8942
250	8561	808	8454
298	8566	812	8942
15 CFR		813	8942
Proposed Rules:		1003	8942
Subtitle A	8566	1010 (2 documents)	8454, 8942
Ch. IX	8566	1030	8454
7a	8910	1240	8454
7b	8910	1250	8454
7c	8910	22 CFR	
16 CFR		51	8468
13	8445	27 CFR	
Proposed Rules:		211	8469
13	8567	212	8469
17 CFR		29 CFR	
231	8446	2530	8894
Proposed Rules:		Proposed Rules:	
240	8568	2510	8571
18 CFR		2530	8906
274	8454	38 CFR	
Proposed Rules:		Proposed Rules:	
271 (2 documents)	8568	3	8574
20 CFR		40 CFR	
Proposed Rules:		52 (9 documents)	8471-8481
404	8569	55 (2 documents)	8491, 8492
675	9008	81	8495
676	9008	205	8497
702	8890	Proposed Rules:	
725	8569	52 (4 documents)	8575-8586
730	8854	60 (2 documents)	8587
21 CFR		81	8588
Ch. I	8454	85	8982
5	8454	123	8589
7	8454	410	8590
10	8454	466	8860
12	8454	720	8986
14	8454	772	8992
16	8958	41 CFR	
19	8454	101-36	8513
20	8454	105-60	8513
21	8454	42 CFR	
25	8454	60	8518
50 (2 documents)	8942, 8979	43 CFR	
56	8958	Public Land Orders:	
		3869 (Revoked in part by PLO 5855)	8520

5854	8520
5855	8520
45 CFR	
126	8518
1226	8520
46 CFR	
Proposed Rules:	
537	8599
47 CFR	
Proposed Rules:	
73	8600
49 CFR	
1002	8524
1003	8524
1011	8524
1014	8525
1100	8524
Proposed Rules:	
1100	8601
1310	8604
50 CFR	
26	8525



# Rules and Regulations

Federal Register

Vol. 46, No. 17

Tuesday, January 27, 1981

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 352

#### Reemployment Rights

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rulemaking.

**SUMMARY:** Pursuant to the Taiwan Relations Act, and Executive Order 12143, Maintaining Unofficial Relations with People in Taiwan, the Office of Personnel Management is issuing regulations to provide reemployment rights to individuals separated from Federal employment for a specified period of service with the American Institute in Taiwan. These regulations, prepared in consultation with the Department of State, are intended to define the scope of the reemployment rights and to prescribe the conditions under which they may be exercised.

**EFFECTIVE DATE:** February 26, 1981.

**FOR FURTHER INFORMATION CONTACT:** Maribeth Zankowski (202) 632-6817.

#### SUPPLEMENTARY INFORMATION:

Eligibility for reemployment under these regulations extends to any Federal employee who separates from Federal service to accept employment in AIT for a specified period of service not in excess of 6 years. Employees may exercise their rights at the end of their specified tour of duty or at any time sooner if AIT and the former employing agency agree. In hardship cases, employees can exercise their rights if AIT agrees to separate them.

Responsibility for reemploying such individuals is agencywide. The agency must first try to place the former employees in their former positions or ones of like grade and pay for which the employees qualify. If the agency cannot place the employees under these

criteria, it must extend the reemployment rights, based on the agency's needs, for assignment outside the competitive area.

At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with employee's rights. Also, with the employee's consent, reemployment rights can be met by placement in a vacant position for which the employee qualifies outside the organization or geographic area of entitlement.

Such rights terminate: for failure to apply within the prescribed time limits; due to resignation from AIT without the consent of AIT or the former employing agency; or failure to accept within 15 days a bona fide offer of reemployment.

Employees have the right to appeal to the Merit Systems Protection Board if they believe they have been improperly denied reemployment.

We prepared these regulations in consultation with the Department of State and we published our proposed regulations on June 3, 1980, in the *Federal Register* providing 60 days for public comment. We received written comments from the Departments of Commerce and Air Force, and 2 unions—the American Federation of Government Employees and the National Federation of Federal Employees.

The unions offered no objections to the proposed regulations. The Department of Commerce wanted us to add a requirement that employees be reemployed at the rate of pay they are currently receiving from AIT. Thus upon reemployment, the employee is entitled to any within-grade increases or merit pay increases the employee would have received had he or she not been separated. (See CFR 531.404(e) of the current regulation, § 531.406 of the new proposed within-grade regulations, and § 540.106.) However, since employees of AIT are not Federal employees (section 11(c), Pub. L. 9508), the use of any salary rate earned by the employees of AIT for pay-setting purposes is precluded by both law, 5 U.S.C. 5334, and the implementing regulations contained in subpart B of Part 531, 5 CFR.

The Department of the Air Force's comments centered on position entitlement. The Department suggested

that assignment outside of the geographic area not be permitted on the basis of the employee's availability but according to the agency's needs. After full consideration of the issues, we decided to adopt the agency's suggested revision. This represents the only change to the regulations as proposed.

These regulations will be supplemented by further guidance developed by the Office of Personnel Management and issued through the Federal Personnel Manual (FPM) System. Coverage under the United States Civil Service Retirement System and continuation of Federal group life insurance and health benefits coverage, while not proper matter for inclusion in these regulations, will also be covered in the FPM guidance. The Department of State is responsible for issuing regulations governing Foreign Service personnel.

OPM has determined that this is a significant regulation for the purpose of E.O. 12044, Improving Government Regulations.

Office of Personnel Management.

Beverly M. Jones,

*Issuance System Manager.*

Accordingly, the Office of Personnel Management is adding subpart H to Part 352, Title 5, Code of Federal Regulations, to read as follows:

## PART 352—REEMPLOYMENT RIGHTS

### Subpart H—Reemployment Rights Under the Taiwan Relations Act

Sec.	Purpose.
352.801	Purpose.
352.802	Definitions.
352.803	Basic entitlement to reemployment rights on leaving Federal employment.
352.804	Maximum period of entitlement to reemployment.
352.805	Position to which entitled on reemployment.
352.806	Return to Federal employment.
352.807	Appeals.

**Authority:** 22 U.S.C. 3310, E.O. 12143, 44 FR 37191.

#### § 352.801 Purpose.

This subpart governs reemployment rights authorized by section 11(a) (1) and (2) of the Taiwan Relations Act (Pub. L. 96-8) after service in the American Institute in Taiwan (AIT) under the Act.

#### § 352.802 Definitions.

For the purposes of this subpart:

"Act" refers to Taiwan Relations Act (Pub. L. 96-8).

"Competitive area" is the same as defined in section 351.402 of this title;

"Institute" means the American Institute in Taiwan.

"Specified period of service" shall be a period of not more than 6 years.

**§ 352.803 Basic entitlement to reemployment rights on leaving Federal employment.**

(a) This subpart applies to all executive agencies as defined in section 105 of title 5, United States Code, the U.S. Postal Service, the Postal Rate Commission, and to the employees thereof, and to those positions in the competitive civil service and the employees occupying those positions.

(b) The agency must give employees entitled to reemployment rights under this subpart written notice of these rights at the time of their separation.

(c) *Employees entitled.* The following employees or former employees are granted reemployment rights subject to the conditions of this subpart, if they leave their Federal employment to be employed (on the date of incorporation of AIT or within 30 calendar days following separation from their agency) by the Institute for a specified period of service.

(1) An employee serving in a competitive position under a career or career-conditional appointment;

(2) A non-temporary excepted service employee;

(3) An employee serving under a career appointment in the Senior Executive Service; or

(4) An employee serving in a career executive assignment under Part 305 of this chapter.

(d) *Employees not entitled.* The following employees are not entitled to reemployment rights under this subpart:

(1) An employee who has received a notice of involuntary separation because of reduction in force, or other cause, not directly related to employment with the Institute under the Act;

(2) An employee whose resignation has been accepted for reasons other than to accept employment with the Institute under this subpart;

(3) An employee serving under a Schedule C excepted appointment.

(4) An employee serving in a limited executive assignment or a noncareer executive assignment under Part 305 of this chapter; or

(5) An employee serving under a noncareer, limited emergency, or limited term appointment in the Senior Executive Service.

**§ 352.804 Maximum period of entitlement to reemployment.**

Entitlement to reemployment terminates at the end of 6 years and 30 days, following the date employment commences in the Institute unless exercised or otherwise terminated before that time as provided in this subpart.

**§ 352.805 Position to which entitled on reemployment.**

(a) *Basic position entitlement.* (1) On reemployment, an employee is entitled to be appointed to a position in the employee's former or successor agency in the following order:

(i) To the position last held in the former agency;

(A) If that position has been identified for transfer to a different agency, reemployment rights must be exercised with the gaining agency.

(B) If that position has been reclassified, the employee should be placed in the reclassified position;

(ii) A position in the same competitive level; or

(iii) Another position for which otherwise qualified at the same grade or level and in the same competitive area.

(2) *The employing agency determines under paragraph (a)(1) of this section the position to which the employee is entitled.* Reduction-in-force procedures shall be applied when necessary in determining the position to which the employee has a right. In applying reduction-in-force procedures, the applicant shall be considered an employee of the agency.

(3) *Extending the area.* Responsibility for reemploying an applicant is agencywide. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the agency's need, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the purpose of applying the reduction-in-force procedures.

(b) *Employee option.* Before the competitive area is extended under paragraph (a)(3) of this section, an employee who cannot be placed under paragraph (a)(1) of this section in the same competitive area at the grade or level as the position last held, is entitled, if the employee elects, to reemployment in a position at a lower grade or level identified under the same conditions

and procedures as paragraph (a)(1) of this section.

(c) *Agency option.* At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee's rights. Also, with the employee's consent, right to reemployment can be met by placement in a vacant position, for which the employee is qualified according to agency determination and need, outside the organizational or geographic area of entitlement, either at the appropriate grade or at a grade other than the one to which entitled.

(d) *Basic position entitlement in the Senior Executive Service.* (1) On reemployment, an employee (who meets the requirements to § 352.803(c)(3)) is entitled to be given a career appointment in the Senior Executive Service the employee's former or successor agency.

(2) The employee may be assigned to any position in the Senior Executive Service for which he/she meets the qualifications requirements.

(3) The employee may elect to accept reemployment in a position outside the Senior Executive Service. Such placement would be subject to the provisions of paragraphs (b) and (c) of this section.

**§ 352.806 Return to Federal employment.**

(a) *Conditions:* Reemployment rights may be exercised only under the following conditions. The employees must apply in writing to their former or successor agency:

(1) No less than 30 calendar days before completion of the specified period of service with the Institute; or

(2) No more than 30 calendar days after involuntary separation from the Institute; or

(3) No more than 30 calendar days after separation based on personal hardship or other special circumstances with the consent of Institute and former employing agency.

(b) An agency must act on the former employee's request for reemployment within 30 calendar days of receipt thereof, i.e., the agency must provide the employee with a written notice stating the agency's decision whether to reemploy and the position being offered, if the employee is to be reemployed.

(c) *Termination of reemployment rights.* A former employee's entitlement to reemployment terminates for:

(1) Failure to apply, except for good cause shown, for reemployment within the time limits stated in paragraph (a) of this section;

(2) Resignation from the Institute without the consent of the Institute or the former employing agency; or

(3) Failure to accept, within 15 workdays of receipt thereof, an offer of reemployment under § 352.803 which is determined to be a proper offer of reemployment by the employing agency and by Merit Systems Protection Board (MSPB), if appealed.

#### § 352.807 Appeals.

An employee may appeal to MSPB, under the provisions of the Board's regulations, an agency's decision on his or her request for reemployment which he or she believes is in violation of this subpart.

(22 U.S.C. 3310, E.O. 12143, 45 FR 37452)

[FR Doc. 81-3001 Filed 1-26-81; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 907

[Navel Orange Regulation 496, Amendment 4]

#### Navel Oranges Grown in Arizona and Designated Part of California; Extension of Minimum Size Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This action continues through July 16, 1981, the current minimum diameter requirement of 2.45 inches for fresh shipments of navel oranges produced in Arizona and designated part of California. This action is necessary to provide markets with acceptable sizes of fruit and to promote orderly marketing in the interest of producers and consumers.

**EFFECTIVE DATE:** January 30, 1981.

**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Final Impact Statement relative to this final rule is available upon request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures in Secretary's Memorandum 1955 to implement Executive Order 12044 and classified as "not significant." Notice of proposed amendment of Navel Orange Regulation 496 to extend the current minimum diameter requirement of 2.45 inches from January 30, through July 16, 1981, was published in the Federal Register

on December 22, 1980, (45 FR 84070). The notice allowed interested persons until January 6, 1981, to submit written comments pertaining to the proposed amendment. No such material was submitted.

This amendment is issued under the marketing agreement and Order No. 907 (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information.

The 1980-81 season crop of California-Arizona navel oranges is currently estimated by the committee at 80,400 carlots, compared to 68,601 carlots utilized during the past season. The committee reports that demand in regulated fresh market channels is expected to require about 44.8 percent of this volume. The remaining 55.2 percent would be available for utilization in export and processing outlets. The committee indicates that volume and size composition of the crop of navel oranges are such that more than ample supplies of the more desirable larger sizes will be available to satisfy the demand in regulated channels. The committee reports that when more than ample supplies of larger sizes are available for shipment, disposition of the sizes which would be eliminated by this regulation can be accomplished only at a substantial price discount and this tends to depress the market for all sizes. Navel oranges failing to meet such requirements could be shipped to fresh export markets, left on trees to attain further growth, or utilized in processing.

After consideration of all relevant matter presented, including the proposal in the notice and other available information, it is hereby found that the following amendment is in accordance with the marketing agreement and order and will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of oranges are currently in progress and this amendment should be applicable to all such orange shipments in order to effectuate the declared policy of the act; (2) the amendment is the same as that specified in the notice to which no exceptions were filed; and (3) compliance with this amendment will not require any special preparation on

the part of the persons subject thereto which cannot be completed by the effective time hereof.

Therefore, § 907.796 (Navel Orange Regulation 496, 45 FR 75163; 76651; 79003; 83193) is further amended to read as follows (as so amended, § 907.796 expires July 16, 1981, and will not be published in the annual Code of Federal Regulations):

#### § 907.796 Navel Orange Regulation 496.

(a) During the period January 30, 1981, through July 16, 1981, no handler shall handle any navel oranges grown in Districts 1, 2, 3, or 4 which are of a size smaller than 2.45 inches in diameter: *Provided*, That not to exceed 5 percent, by count, of the oranges in any container may measure smaller than 2.45 inches in diameter.

(b) As used in this section, "handler," "handle," "District 1," "District 2," "District 3," and "District 4" mean the same as defined in the marketing order. Diameter shall mean the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit.

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

Dated: January 21, 1981, to become effective January 30, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-2743 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-02-M

## Farmers Home Administration

### 7 CFR Part 1942

#### Population Limits for Community Facilities Loan Eligibility

AGENCY: Farmers Home Administration, USDA.

ACTION: Emergency Final Rule.

**SUMMARY:** The Farmers Home Administration is revising the regulations for eligibility for community facilities loans. The revision will increase the population limit for eligible towns and cities from 10,000 to 20,000. Consolidated Farm and Rural Development Act Amendments passed by the 96th Congress provide for essential community facilities loans in towns and cities with populations of up to 20,000. The revision will allow loans to be made in towns and cities with populations between 10,000 and 20,000.

**EFFECTIVE DATES:** January 27, 1981. Comments must be received on or before March 30, 1981.

**ADDRESS:** Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, South Agriculture Building, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

**FOR FURTHER INFORMATION CONTACT:** M. Wayne Stansberry, Loan Officer, Community Facilities Loan Division, Farmers Home Administration, Room 6310, South Agriculture Building, Washington, D.C. 20250, Telephone: (202) 447-7667.

**SUPPLEMENTARY INFORMATION:**  
*Classification:* This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant." The emergency nature of this action warrants publication of this final action without completion of an Impact Analysis.

A Final Impact Statement will be developed after public comments have been received. Gordon Cavanaugh, Administrator, FmHA has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because current regulations do not comply with Pub. L. Number 96-438 which amended the Consolidated Farm and Rural Development Act and was signed into law on October 13, 1980. Applicants that would be eligible under the provisions of Pub. L. Number 96-438 are being denied assistance by the current regulations.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the *Federal Register*. Comments have been solicited for 60 days after publication of this document, and this emergency action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the *Federal Register* as soon as possible.

*Clearinghouse Review:* The FmHA programs and projects which are affected by this instruction are subject to State and local clearinghouse review, in the manner delineated in FmHA

Instruction 1901-H. (CFDA No. 10.423 Community Facilities Loan)

*Environmental Impact Statement:* This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

*Background:* The Consolidated Farm and Rural Development Act authorizes loans to construct, enlarge or improve essential community facilities in rural areas. Under current regulations loans may not be made in, or to primarily serve towns and cities with populations of more than 10,000. The 96th Congress approved an amendment to the Consolidated Farm and Rural Development Act to permit loans in towns and cities with populations of up to 20,000 people. This action will revise Farmers Home Administration regulations to implement the amendment approved by Congress.

This action does not apply to loans for water systems or waste disposal facilities.

Accordingly, § 1942.17, paragraph (b) of Subpart A of Part 1942, Chapter XVIII of Title 7, Code of Federal Regulations, is amended to read as follows:

**§ 1942.17 Appendix A—Community Facilities.**

(b) *Applicant Eligibility.* Facilities financed by FmHA must primarily serve rural users. For water and waste disposal facilities the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States. For essential Community facilities the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 20,000 inhabitants according to the latest decennial census of the United States. Facilities must be located in rural areas except for utility-type services, such as water, sewer, natural gas, or hydroelectric, serving both rural and urban areas. In such cases FmHA funds may be used to finance only that portion serving rural users, regardless of facility location. Loans for water or waste disposal facilities will not be made to any city or town with a population in excess of 10,000. Loans for essential community facilities will not be made to

any city or town with a population in excess of 20,000.

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

James E. Thornton,  
Associate Administrator.

[FR Doc. 81-2739 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-07-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 25

#### Access Authorization Fees for Nuclear Industry

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The NRC amends its regulation establishing the scheduling of fees charged NRC licensees for the performance of full field security background investigations. This amendment increases the fee to cover the increased fee charged the NRC by the Office of Personnel Management which performs these investigations and to cover increasing costs NRC incurs in processing the access authorizations that require the investigations.

**EFFECTIVE DATE:** February 26, 1981.

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

**SUPPLEMENTARY INFORMATION:** 10 CFR Part 25, "Access Authorization for Licensee Personnel," was published in the *Federal Register* on March 5, 1980 (45 FR 14476). Section 25.17 indicates that access authorization fees will be published in December of each year and will be applicable to each access authorization request received during the following calendar year. The initial fee schedule for this Part was published in the *Federal Register* on July 3, 1980 (45 FR 45256).

These fees are charged for access authorizations processed and services rendered by the Nuclear Regulatory Commission (NRC), at the request of an identifiable recipient of the services, and are authorized under Title V of the Independent Offices Appropriation Act of 1952 (65 Stat. 290; 31 U.S.C. 483a).

The only revision to the fee schedule is the increased cost for the processing of an NRC "Q" access authorization which involves a full field background investigation conducted by the Office of Personnel Management (OPM). The



charge to NRC by OPM of this investigation was recently raised from \$950.00 to \$1,200.00. The new fee recovers this cost plus a part of NRC's overhead associated with the processing of these access authorizations. The fees for an NRC "L" access authorization have not been changed. Subsequent fee schedules may be based on full cost recovery which could significantly affect the cost of an "L" access authorization.

When the original Part 25 fee schedule was developed, it was recognized that the actual amount charged to NRC by NRC. This relationship between the amounts charged by OPM for conducting investigations would be the decisive factor governing future fees charged by OPM and the resulting fees charged by NRC still exists and was affected by the recent increase announced by OPM. Since the public had the opportunity to comment on this aspect of Part 25 as a proposed rule, it is not felt that any further benefits would be accrued by additional public comment at this time. Under these circumstances, NRC, for good cause, finds that notice of proposed rulemaking and public procedure thereon are unnecessary. The amendments will become effective February 26, 1981.

Pursuant to the Independent Offices Appropriation Act of 1952 (65 Stat. 290; 31 U.S.C. 483a) and 5 U.S.C. 553, the following amendment to Appendix A to Part 25 of Title 10, Chapter 1, Code of Federal Regulations, is published as a document subject to codification.

In consideration of the foregoing, 10 CFR Part 25, Appendix A, is revised as set forth below:

#### PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

##### Appendix A to Part 25—Fees for NRC Access Authorization

Category	Fee
Initial "L" Access Authorization	\$15
Reinstatement of "L" Access Authorization	*15
Extension of Transfer of "L" Access Authorization	*15
Initial "Q" Access Authorization	1,380
Reinstatement of "Q" Access Authorization	*1,380
Extension of Transfer of "Q"	*1,380

\*Full fee will only be charged if investigation is required.

(31 U.S.C. 483a (65 Stat. 290))

Dated at Washington, DC, this 7th day of January 1981.

For the Nuclear Regulatory Commission,  
William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-2747 Filed 1-26-81; 8:45 am]

BILLING CODE 7590-01-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 211

[Docket No. R-0349; Regulation K]

#### International Banking Operations; Investments by United States Banking Organizations in Foreign Companies

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interpretation.

**SUMMARY:** The Board of Governors of the Federal Reserve System has issued an interpretation describing the circumstances in which a United States banking organization will be permitted to invest in foreign companies (including foreign banks) that do domestic business in the United States.

**DATE:** January 19, 1981.

**FOR FURTHER INFORMATION CONTACT:** Frederick R. Dahl, Associate Director, Division of Banking Supervision and Regulation (202/452-2726); or C. Keefe Hurley, Jr., Senior Counsel, Legal Division (202/452-3289) Board of Governors of the Federal Reserve System.

**SUPPLEMENTARY INFORMATION:** Edge Corporations, member banks, and bank holding companies are authorized to invest in foreign companies with the prior consent of the Board. Under the relevant statutes, however, the United States activities of the foreign company must be incidental to its international or foreign business as determined by the Board. In the past the Board has followed the policy that the United States activities of any such foreign company should, like those permitted Edge Corporations, be exclusively international in character. The Board has reviewed this policy in the light of developments in international banking and finance and the directive to improve the competitive capabilities of Edge Corporations contained in the International Banking Act of 1978.

This interpretation would permit United States banking organizations, with the prior consent of the Board, to acquire and hold interests in foreign companies (including foreign banks) that operate United States subsidiaries or direct offices that conduct domestic as well as international business. The Board would generally grant its consent where the following conditions were satisfied: (1) the foreign company is engaged predominantly in business outside the United States or in internationally related activities in the United States; (2) the direct or indirect activities of the foreign company in the United States are either banking or

closely related to banking; and (3) the United States banking organization does not own 25 per cent or more of the voting stock of, or otherwise control, the foreign company. In considering whether to grant its consent for such investments, the Board would also review the proposals to ensure that they are consistent with the purposes of the Bank Holding Company Act and the Federal Reserve Act.

Pursuant to its authority under sections 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 601, 611) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)), the Board has issued the following interpretation with respect to the investment powers of member banks, Edge Corporations, and bank holding companies (§ 211.5 of Regulation K, 12 CFR 211.5):

#### § 211.602 Investments by United States Banking Organizations in Foreign Companies that Transact Business in the United States.

Section 25(a) of the Federal Reserve Act (12 U.S.C. 611, the "Edge Act") provides for the establishment of corporations to engage in international or foreign banking or other international or foreign financial operations ("Edge Corporations"). Congress has declared that Edge Corporations are to serve the purpose of stimulating the provision of international banking and financing services throughout the United States and are to have powers sufficiently broad to enable them to compete effectively with foreign-owned institutions in the United States and abroad. The Board was directed by the International Banking Act of 1978 (12 U.S.C. 3101) to revise its regulations governing Edge Corporations in order to accomplish these and other objectives and was further directed to modify or eliminate any interpretations that impede the attainment of these purposes.

One of the powers of Edge Corporations is that of investing in foreign companies. Under the relevant statutes, however, an Edge Corporation is prohibited from investing in foreign companies that engage in the general business of buying or selling goods, wares, merchandise or commodities in the United States. In addition, an Edge Corporation may not invest in foreign companies that transact any business in the United States that is not, in the Board's judgment, "incidental" to its international or foreign business. The latter limitation also applies to investments by bank holding companies (12 U.S.C. 1843(c)(13)) and member banks (12 U.S.C. 601).

The Board has been asked to determine whether an Edge Corporation's minority investment (involving less than 25 percent of the voting shares) in a foreign company would continue to be permissible after the foreign company establishes or acquires a United States subsidiary that engages in domestic activities that are closely related to banking. The Board has also been asked to determine whether an Edge Corporation's minority investment in a foreign bank would continue to be permissible after the foreign bank establishes a branch in the United States that engages in domestic banking activities. In the latter case, the branch would be located outside the State in which the Edge Corporation and its parent bank are located.

In the past the Board, in exercising its discretionary authority to determine those activities that are permissible in the United States, has followed the policy that an Edge Corporation could not hold even a minority interest in a foreign company that engaged, directly or indirectly, in any purely domestic business in the United States. The United States activities considered permissible were those internationally related activities that Edge Corporations may engage in directly. If this policy were applied to the subject requests, the Edge Corporations would be required to divest their interests in the foreign companies notwithstanding the fact that, in each case, the Edge Corporation, as a minority investor, did not control the decision to undertake activities in the United States, and that even after the United States activities are undertaken the business of the foreign company will remain predominantly outside the United States.

International banking and finance have undergone considerable growth and change in recent years. It is increasingly common, for example, for United States institutions to have direct or indirect offices in foreign countries and to engage in activities at those offices that are domestically as well as internationally oriented. In this climate, United States banking organizations would be placed at a competitive disadvantage if their minority investments in foreign companies were limited to those companies that do no domestic business in the United States. Moreover, continued adherence to the existing policy would be contrary to the declaration in the International Banking Act of 1978 that Edge Corporations' powers are to be sufficiently broad to enable them to compete effectively in the United States and abroad. Furthermore, where the activities to be

conducted in the United States by the foreign company are banking or closely related to banking, it does not appear that any regulatory or supervisory purpose would be served by prohibiting a minority investment in the foreign firm by a United States banking organization.

In view of these considerations, the Board has reviewed its policy relating to the activities that may be engaged in in the United States by foreign companies (including foreign banks) in which Edge Corporations, member banks, and bank holding companies invest. As a result of that review, the Board has determined that it would be appropriate to interpret sections 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 601, 611) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)) generally to allow United States banking organizations, with the prior consent of the Board, to acquire and hold investments in foreign companies that do business in the United States subject to the following conditions: (1) the foreign company is engaged predominantly in business outside the United States or in internationally related activities in the United States;\* (2) the direct or indirect activities of the foreign company in the United States are either banking or closely related to banking; and (3) the United States banking organization does not own 25 percent or more of the voting stock of, or otherwise control, the foreign company. In considering whether to grant its consent for such investments, the Board would also review the proposals to ensure that they are consistent with the purposes of the Bank Holding Company Act and the Federal Reserve Act.

By order of the Board of Governors of the Federal Reserve System, January 19, 1981.

Theodore E. Allison,  
Secretary of the Board.

[FR Doc. 81-2945 Filed 1-26-81; 8:45 am]  
BILLING CODE 6210-01-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Parts 541 and 545

[No. 81-19]

#### Debit Cards; Remote Service Unit Amendments

Dated: January 16, 1981.

AGENCY: Federal Home Loan Bank Board.

\*This condition would ordinarily not be met where a foreign company merely maintains a majority of its business in international activities. Each case will be scrutinized to ensure that the activities in the United States do not alter substantially the international orientation of the foreign company's business.

#### ACTION: Final regulations.

**SUMMARY:** This regulation confirms the authority of Federal associations to issue debit cards, which enable savings accountholders to make withdrawals or to make third-party payments by non-transferable order. The regulation also amends the Board's remote service unit (RSU) regulation to eliminate the current requirement that Federal associations obtain prior Board authorization of RSU activities, thus relieving restrictions and enhancing Federal associations' ability to provide convenient services to consumers.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** K. Diane Boyle, Office of Industry Development (202-377-6720), or Kenneth F. Hall, Office of General Counsel, (202-377-6466), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:** These regulations codify the existing authority of associations to issue debit cards and to permit savings accountholders to utilize the cards to make withdrawals or to make third-party payments by nontransferable order. The amendments also revise the Board's remote service unit (RSU) regulation (12 CFR 545.4-2) to delete all RSU application requirements. Finally, the regulations make several additional technical amendments to the RSU regulation and to the Board's savings account regulations.

#### Debit Cards

A debit card is a means by which a savings accountholder (including a NOW accountholder) may gain access to his or her account other than through use of a passbook or of negotiable orders of withdrawal. Thus, a debit card enables an accountholder to make withdrawals for the purpose of obtaining cash or of making payments to third parties by non-transferable order or authorization. In practice, a debit card operates in a manner similar to a credit card except that each transaction on the debit card results in a withdrawal from a savings account rather than in an addition to a line of credit. A debit card may be used to initiate an electronic transfer of funds through the use of an electronic terminal, including a remote service unit, and may be used to initiate "paper" transactions for the purpose of purchasing goods or services from a third party.

Federal associations currently are not prohibited from issuing debit cards; this regulatory amendment simply makes clear that Federal associations have this authority. The broad language of the

amended regulation reflects the broad authority associations have in this area.

#### RSU Amendments

The RSU amendments delete the present requirement that Federal associations obtain Board approval and publish notice before establishing or participating in RSU operations. The major reason the Board originally imposed an application requirement was to provide a means of monitoring the experimental operations of Federal associations. To this end, application requirements enabled the Board to obtain data on Federal associations' RSU activities, to formulate Board policy on various aspects of RSU operations (e.g., system security, consumer protections), and to assess the impact which expanding RSU operations might have on competition.

Since Federal associations first were authorized to undertake RSU operations in 1974, the Board has simplified and reduced its RSU application requirements as its experience with RSU operations warranted. Currently, the Board only reviews applications when a Federal association first seeks to establish or participate in an RSU operation. Subsequent expansions are subject only to a 30-day notice requirement. Despite these simplification efforts, however, the Board has found that the current application requirements hamper Federal associations' ability to provide RSU services to their customers on a competitive basis.

Consequently, the Board believes the more efficient way to monitor a Federal association's RSU activity is through the regular examination process rather than through prior review of proposed RSU operations.

While the application requirement is deleted, the amended regulation retains provisions regarding the establishment and use of RSU systems and codifies policies and standards of review consistently applied by the Board in assessing applications under existing regulations. These include a prohibition on participation in a shared RSU system from which other financial institutions are excluded whether directly or through imposition of unreasonable terms and conditions, or under which those participants that are not organizers or owners of a substantial interest in the system are prohibited from establishing or participating in other RSU systems. A Federal association also is prohibited from entering into any agreement for the exclusive right to engage in RSU activities at any location(s). Finally, the regulation requires a Federal association to obtain, prior to engaging in RSU

operations, an opinion from legal counsel to the effect that the association's establishment of or participation in shared RSU operations will not violate Federal antitrust laws. This opinion is intended to substitute for the antitrust review previously undertaken by the Board.

Because application is no longer required, the Board will discontinue processing all pending applications that have not been protested pursuant to subparagraph (k)(4) of the regulation (as amended effective May 10, 1980; 45 FR 24446 (1980)). Applicants must comply with the requirements of the regulation as amended by this action.

The amendments also make several technical changes to the RSU regulation. Currently, Federal associations are permitted to establish or participate in RSUs located in the association's home state or in the primary service area (as determined by the Board) of any of the association's out-of-state branches.

The Board has determined, for purposes of this regulation, to define the primary service area as the county in which any of its out-of-state branches is located or, where an out-of-state branch is located in a Standard Metropolitan Statistical Area (SMSA), that portion of the SMSA located in the same state as the out-of-state branch. This amendment retains the Board's current general policy of prohibiting associations from engaging in interstate RSU operations.

The amendment also removes the definition of "activator" currently contained in the regulation because the term no longer is used in the regulation. However, the current prohibition against using a passbook as a means of accessing an RSU is retained, as is the requirement that any device used to activate an RSU bear the words "Not Transferable" or their equivalent. Finally, certain paragraphs of the RSU regulation that no longer have any application are deleted (12 CFR 545.4-2(m), (n)).

#### Additional Changes

This regulatory action amends the Board's regulation on evidence of accounts (12 CFR 545.4) to expand the types of items that may be used as evidence of an account. Thus, associations are now permitted to use passbooks, certificates, plastic cards or any other item that evidences the accountholder's interest in the account. Associations would be required to furnish an accountholder with the rules applicable to an account upon establishment of the account. In addition, § 545.4 is streamlined by deleting existing paragraph (c), which sets out certain disclosures required in

certificate accounts. Instead, a sentence has been added to paragraph (b) referencing the disclosure requirements of § 563.3-1, which duplicate those of existing paragraph (c).

Finally, the Board's credit-card regulation (12 CFR 545.4-3) has been moved from that part of the regulations dealing with savings accounts to the lending section. The Board believes this change is appropriate since credit-card operations are a lending activity unrelated to the operations of savings accounts.

Since the RSU regulation has been amended in several separate regulatory actions during the past year, no publication currently sets out the regulation, as amended, in full. To avoid possible confusion resulting from such actions, the Board is publishing the regulation in its entirety.

Because this regulatory action reduces and simplifies the RSU regulation, which will enhance the ability of Federal associations to provide convenient services to consumers, makes clear that Federal associations may issue debit cards, and makes additional clarifying amendments to the savings account regulations, the Board finds it is unnecessary to the public interest to publish general notice of proposed rule-making pursuant to 12 CFR 508.13 and 12 U.S.C. 553(b) or to delay publication of the amendments for the period of time specified in 12 CFR 508.14 and 12 U.S.C. 553(d).

Accordingly, the Board hereby amends Parts 541 and 545 of Subchapter C, Chapter V of Title 12, Code of Federal Regulations, to read as set forth below.

#### SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

##### PART 541—DEFINITIONS

1. Add new § 541.30, to read as follows:

###### § 541.30 Debit card.

A card that enables an accountholder to obtain access to a savings account for the purpose of making withdrawals or of transferring funds to a third party by non-transferable order or authorization.

##### PART 545—OPERATIONS

2. Amend § 545.2 by revising existing paragraph (b), removing existing paragraph (c), redesignating existing paragraphs (d) and (e) as paragraphs (c) and (d), and revising new paragraph (d), to read as follows:

###### § 545.2 Evidence of account.

(b) *Evidence of account.* (1) A Federal association shall, at the time of opening

of a savings account, issue to the accountholder evidence of the accountholder's interest in the account and written evidence of the terms of the account contract. (2) No passbook evidencing a regular account, as defined in § 526.1(d) of this Chapter, and no certificate evidencing a certificate account, as defined in § 526.1(b) of this Chapter, may be issued without the prior approval, pursuant to § 563.1 of this Chapter, of the Federal Savings and Loan Insurance Corporation.

(c) *Ownership of record.* \* \* \*

(d) *Duplicate evidence of account.*

When the holder of record of a savings account in a Federal association, or the legal representative of the holder, files an affidavit with the association that the accountholder's evidence of account was lost or destroyed, and that no part of such evidence of account has been pledged or assigned, the association shall issue a new evidence of account in the name of the holder of record. However, the association's board of directors may require bond sufficient to indemnify the association against any loss that might result from issuance of the new evidence of account.

3. Amend § 545.4 by redesignating existing paragraphs (c) and (d) as paragraphs (d) and (e), and by adding new paragraph (c), to read as follows:

§ 551.4 *Withdrawals.*

(c) *Debit card withdrawals.*

A Federal association may permit an accountholder to make withdrawals from a savings account through the use of a debit card, as defined in § 541.30 of this Subchapter. Such withdrawals may be subject to § 545.4-2 of this Part. The Federal association may charge the accountholder a fee for such withdrawals. If a "personal security identifier," as defined in § 545.4-2(b) of this Part, is used in conjunction with a debit card, the identifier may not be disclosed to a third party.

(d) *Payment of withdrawal requests by Charter N associations.* \* \* \*

(e) *Grace period with respect to withdrawals.* \* \* \*

4. Amend the heading and paragraphs (a) and (d) of § 545.4-1, amend the heading of existing paragraph (c), add new paragraph (e), redesignate existing paragraph (b) as paragraph (c), and redesignate existing paragraph (c) as paragraph (b), to read as follows:

§ 545.4-1 *Payments to third parties.*

(a) *Payment to third parties by non-transferable order or authorization.* By non-transferable order or authorization, an accountholder of a Federal association may authorize the

association, periodically or otherwise, to pay third parties from a savings account. The association may, at the request of the third party, treat such an order or authorization as a transfer to a savings account of the third party. Transfers pursuant to this paragraph may be made through the use of a debit card, as defined in § 541.30 of this Subchapter, and may be subject to § 545.4-2 of this Part. If a personal security identifier, as defined in § 545.4-2(b) of this Part, is used in conjunction with a debit card, the identifier may not be disclosed to a third party.

(b) *Payment by transferable order.* (1) *General.* An association may issue NOW accounts, as defined in § 526.1(1) of this Chapter.

(2) *Overdraft authority.* Associations may extend secured or unsecured credit in the form of overdraft privileges specifically related to NOW accounts.

(c) *Sale of checks and money orders.* A Federal association may sell checks, including travelers checks, and money orders on which the drawee is a Bank, commercial bank, or other organization engaged in the business of handling such instruments.

(d) *Fees.* An association may charge an accountholder a fee for making any payment or transfer under this section or for maintaining any account or providing any service authorized by this section.

(e) *Electronic fund transfers.* Any electronic fund transfer, as that term is defined by § 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and § 205.2 of Regulation E of the Federal Reserve Board (12 CFR 205.2), made under this section is subject to the provisions of the Electronic Fund Transfer Act and Regulation E.

5. Revise existing paragraphs (b), (c), (i), and (j) of § 545.4-2, remove existing paragraphs (d), (k), (m), and (n), redesignate existing paragraphs (e), (f), (g), (h), (i), (j), and (l) as paragraphs (d), (e), (f), (g), (h), (i), and (j), and replace the word "user" everywhere it appears with the word "accountholder," to read as follows:

§ 545.4-2 *Remote Service Units (RSUs).*

(a) *Applicability of Regulation E.* Transactions made under this section are subject to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205.2).

(b) *Definitions.* As used in this section—

(1) "Generic data" means statistical information which does not identify any individual accountholder.

(2) "Personal security identifier" (PSI) means any word, number, or other

security identifier essential for an accountholder to gain access to an account.

(3) "Remote service unit" (RSU) means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution.

Any such device not on the premises of a Federal association that, for activation and account access, requires use of a machine-readable instrument and PSI in the possession and control of an accountholder, is an RSU.

The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a Federal association, unless shared with other financial institutions. An RSU is not a branch, satellite, or other type of facility or agency of a Federal association under § 545.14 *et seq.* of this Part.

(4) "RSU account" means a savings or loan account that may be accessed through use of an RSU.

(c) *General.* A Federal association may establish or use RSUs and participate with others in RSU operations in the State of its home office, in the county in which any of its out-of-State branches are located, or, where an out-of-State branch is located in a Standard Metropolitan Statistical Area (SMSA), in that portion of the SMSA located in the same State as the out-of-State branch. No RSU may be used to enable accountholders to open a savings account or to establish a loan account.

(d) *RSU access techniques.* A Federal association shall provide a PSI to each accountholder and require its use when accessing an RSU; it may not employ RSU access techniques that require the accountholder to disclose a PSI to another person. The association must inform each accountholder that the PSI is for security purposes and shall not be disclosed to third parties. Any device used to activate an RSU shall bear the words "Not Transferable" or their equivalent. A passbook may not be such a device.

(e) *Service charges.* A Federal association may impose service charges for RSU financial services.

(f) *Privacy of account data.* A Federal association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal association may disclose account data to third parties,

other than the Board or its representatives, unless express written consent of the accountholder is given, or applicable law requires. Information disclosed to the Board will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. § 552(a). A Federal association may operate an RSU according to an agreement with a third party or share computer systems, communications facilities, or services of another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal association.

(g) *Bonding.* A Federal association shall take all steps necessary to protect its interest in financial services processed at each RSU, including obtaining available fidelity, forgery, and other appropriate insurance.

(h) *Security.* A Federal association shall protect electronic data against fraudulent alterations or disclosure. All RSUs shall meet the minimum security devices requirements of Part 563a of this Chapter as though such units were offices, as defined in § 563a.1 of said Part, except to the extent that an association satisfies the Board's Supervisory Agent that those requirements are inappropriate. In such a case, alternative measures satisfactory to the Board's Supervisory Agent must be taken for installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, larcenies, and computer theft and to assist in identification and apprehension of persons who commit such acts.

(i) *Restrictions.* (1) Prior to establishing, participating in or using any RSU system, a Federal association shall obtain from legal counsel an opinion that such action does not violate Federal antitrust laws. (2) A Federal association may not participate in a shared RSU system from which other financial institutions are excluded either directly or through imposition of unreasonable terms and conditions. (3) A Federal association may not participate in a shared RSU system under which participants, except participants who are organizers or owners of a substantial interest in the system, are prohibited from establishing or participating in any other RSU system. (4) A Federal association may not enter into an agreement for the exclusive right to engage in RSU activities at any location(s).

(j) *Board supervision.* A Federal association may share an RSU controlled by an institution not subject to examination by a Federal regulatory agency only if such institution has

agreed in writing that the RSU is subject to such examination by the Board as it deems necessary.

6. Remove § 545.4-3.

**§ 545.4-3 Credit cards. [Removed]**

7. Add § 545.7-7, to read as follows:

**§ 545.7-7 Credit cards.**

An association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations. Such operations may be subject to § 545.4-2 of this Part. If a personal security identifier, as defined in § 545.4-2(b) of this Part, is used in conjunction with a credit card, the identifier may not be disclosed to a third party.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464, Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

**Robert D. Linder,**

*Acting Secretary.*

[FR Doc. 81-2980 Filed 1-26-81; 8:45 am]

BILLING CODE 6720-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 101

[Revision 2—Amdt. 19]

#### Administration Delegations of Authority to Conduct Program; Activities in Field Offices

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** SBA is instituting a pilot program in its Columbia, South Carolina District Office under which the delivery of financial assistance previously administered under a Chief, Financing Division and loan servicing previously administered under a Chief, Portfolio Management Division is being redistributed to a Guaranty Loan Director and Special Programs Director. Also, loan liquidation is being transferred from Chief, Portfolio Management to District Counsel. These transfers of authority will allow the Columbia District Office to specialize its work assignments, use the team concept in program goal accomplishments and combine liquidation and litigation in one division.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Ronald Allen, Paperwork Management Branch, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, Telephone: (202) 653-6703.

**SUPPLEMENTARY INFORMATION:** Part 101 consists of rules relating to the Agency's

organization and procedures; therefore, notice of proposed rule making and public participation thereon as prescribed in 5 U.S.C. 553 is not required and this amendment to part 101 is adopted without resort to those procedures. Accordingly, pursuant to authority contained in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, 13 CFR 101.3-2 is amended by adding the position of Special Program Director and Guaranty Loan Director in the Columbia, South Carolina District Office as set forth below:

§ 101.3-2h [Amended]

1. Part I, Section A, paragraph 1a is revised as follows:

a. To approve or decline direct section 7(a) business loans, section 7(1) energy loans, and 7(h) handicapped assistance loans, not exceeding the following amounts (SBA share):

	Approve	Decline
(1) Regional Administrator	\$350,000	\$350,000
(2) District Director	350,000	350,000
(3) Deputy District Director	350,000	350,000
(4) Assistant District Director for F&I	350,000	350,000
(5) Chief, Financing Division, D/O	350,000	350,000
(6) Financial/Management Assistance Officer, Minneapolis, MN, D/O	350,000	350,000
(7) Supervisory Loan Specialist, Financing Division, D/O	250,000	350,000
(8) Branch Manager, Buffalo, Elmira, Corpus Christi, and El Paso	350,000	350,000
(9) Branch Manager, Except Fairbanks, Buffalo, Elmira, Corpus Christi, and El Paso	250,000	350,000
(10) Assistant Branch Manager for F & I, Biloxi, Milwaukee and Springfield B/O's only	250,000	350,000
(11) Branch Manager, Fairbanks B/O only	150,000	150,000
(12) Assistant Branch Manager for F & I, Corpus Christi and El Paso B/O's only	350,000	350,000
(13) Special Programs Director, Columbia, SC D/O only	350,000	350,000

2. Part I, Section A, paragraph 1b is amended by adding a new paragraph (15) as follows:

	Approve	Decline
(15) Guaranty Loan Director, Columbia, SC D/O only	\$500,000	\$500,000

3. Part I, Section A, is revised by adding paragraph 1c as follows:

1c. To approve or decline guaranty and immediate participation Handicapped Assistance loans and immediate participation 7(a) business loans and 7(1) energy loans, not exceeding the following amounts (SBA share):

	Approve	Decline
(1) Regional Administrator	\$350,000	\$350,000
(2) District Director	350,000	350,000
(3) Deputy District Director	350,000	350,000
(4) Assistant District Director for F&I	350,000	350,000
(5) Chief, Financing Division, D/O	350,000	350,000
(6) Financial/Management Assistance Officer, Minneapolis, MN, D/O	350,000	350,000
(7) Supervisory Loan Specialist, Financing Division, D/O	250,000	350,000
(8) Branch Manager, Buffalo, Elmira, Corpus Christi, and El Paso	350,000	350,000

	Approve	Decline
(9) Branch Manager, Except Fairbanks, Buffalo, Elmira, Corpus Christi, and El Paso	250,000	350,000
(10) Assistant Branch Manager for F&I, Biloxi, Milwaukee and Springfield B/O's only	250,000	350,000
(11) Branch Manager, Fairbanks B/O only	150,000	150,000
(12) Assistant Branch Manager for F&I, Corpus Christi and El Paso B/O only	350,000	350,000
OPER:	KS	RND'D
ACTUAL	4742	4700
COPY BONUS, 0%	ERR	
PREC CODE	67	
TOTAL	4809	4800

	Approve	Decline
(13) Guaranty Loan Director, Columbia, SC D/O only	350,000	350,000

4. Part I, Section A, paragraph 2 is amended by adding paragraphs j and k as follows:

j. Special Program Director, direct loans, Columbia, SC D/O only  
 k. Guaranty Loan Director, guaranty and immediate participation loans, Columbia, SC D/O only

5. Part I, Section A, paragraph 3a is amended by adding paragraphs (13) and (14) as follows:

(13) Special Program Director, direct loans, Columbia, SC D/O	500,000
(14) Guaranty Loan Director, immediate participation loans, Columbia, SC D/O only	500,000

6. Part I, Section A, paragraph 3b is amended by adding paragraph (13) as follows:

(13) Guaranty Loan Director, Columbia, SC D/O only	1,000,000
--	-----------

7. Part I, Section A, paragraph 4a is amended by adding paragraphs (13) and (14) as follows:

(13) Special Program Director, direct loans, Columbia, SC D/O only	500,000
(14) Guaranty Loan Director, immediate participation loans, Columbia, SC D/O only	500,000

8. Part I, Section A, paragraph 4b is amended by adding paragraph (13) as follows:

(13) Guaranty Loan Director, Columbia, SC D/O only	1,000,000
--	-----------

9. Part I, Section A, paragraph 5 is amended by adding paragraphs (j) and (k) as follows:

(j) Special Programs Director, direct loans, Columbia, SC D/O only	100,000
(k) Guaranty Loan Director, guaranty and immediate loans, Columbia, SC D/O only	100,000

10. Part I, Section B, paragraph 1 is amended by adding paragraph i as follows:

i. Guaranty Loan Director, Columbia, SC D/O only

11. Part I, Section B, paragraph 2a is amended by adding paragraphs (10) and (11) as follows:

(10) Special Programs Director, direct loans, Columbia, SC D/O only

(11) Guaranty Loan Director, guaranty and immediate participation loans, Columbia, SC D/O only

12. Part I, Section B, paragraph 2b is amended by adding paragraphs (10) and (11) as follows:

(10) Special Programs Director for fully undisbursed direct loans, Columbia, SC D/O only.

(11) Guaranty Loan Director for fully undisbursed guaranty and immediate participation loans, Columbia, SC D/O only.

13. Part I, Section B, paragraph 3a is amended by adding paragraphs (9) and (10) as follows:

(9) Special Programs Director, direct loans, Columbia, SC D/O only

(10) Guaranty Loan Director, guaranty and immediate participation loans, Columbia, SC D/O only

14. Part I, Section B, paragraph 4 is amended by adding paragraph j as follows:

(j) Guaranty Loan Director, Columbia, SC D/O only

15. Part II, Section A, paragraphs 1a(1) and 1a(2) are amended by adding paragraph (j) and paragraph (k) respectively as follows:

1a(1) \* \* \*

(j) Special Programs Director, Columbia, SC D/O only

1a(2) \* \* \*

(k) Special Programs Director, Columbia, SC D/O only.....500,000

16. Part II, Section A, paragraph 2 is amended by adding paragraph m as follows:

\* \* \*

	Home loans	Business loans
m. Special Programs Director, Columbia, SC D/O only.....	100,000	500,000

17. Part II, Section A, paragraph 3 is amended by adding paragraph m as follows:

\* \* \*

m. Special Programs Director, Columbia, SC D/O only.....500,000

18. Part II, Section A, paragraph 4 is amended by adding paragraph m as follows:

\* \* \*

m. Special Programs Director, Columbia, SC D/O only.....1,000,000

19. Part II, Section A, paragraph 5 is amended by adding paragraph g as follows:

\* \* \*

g. Special Programs Director, Columbia, SC D/O only.

20. Part II, Section A, paragraphs 7a and 7b are amended by adding paragraphs (10) and (12) respectively as follows:

7.a. \* \* \*

(10) Special Programs Director, Columbia, SC D/O only

7. b. \* \* \*

(12) Special Programs Director, Columbia, SC D/O only

21. Part II, Section A, paragraph 8a is amended by adding paragraph (10) as follows:

\* \* \*

(10) Special Programs Director, Columbia, SC D/O only

22. Part II, Section B, paragraphs 1a and b are amended by adding paragraph (18) as follows:

\* \* \*

(18) Special Programs Director, Columbia, SC D/O only

23. Part II, Section B, paragraphs 2a and 2b are amended by adding paragraph (18) respectively, and in paragraph 2c, adding paragraph (14), as follows:

2a and 2b. \* \* \*

(18) Special Programs Director, Columbia, SC D/O only

2c. \* \* \*

(14) Special Programs Director, Columbia, SC D/O only

24. Part III, Section A, paragraph 1 is amended by adding paragraph j as follows:

\* \* \*

j. Guaranty Loan Director, Columbia, SC D/O only.....750,000

25. Part III, Section A, paragraph 2c. is amended by adding paragraph (4) as follows:

\* \* \*

(4) Guaranty Loan Director, Columbia, SC D/O only.....500,000

26. Part III, Section B, paragraphs 1 and 3 are amended by adding paragraphs (j) respectively as follows:

\* \* \*

(j) Guaranty Loan Director, Columbia, SC D/O only

27. Part III, Section B, paragraphs 2a and 2b are amended by adding paragraph (10) respectively as follows:

\* \* \*

(10) Guaranty Loan Director, Columbia, SC D/O only

28. Part III, Section D, paragraph 1 is amended by adding paragraph k as follows:

\* \* \*

k. Special Programs Director, Columbia, SC D/O only

29. Part IV is amended by adding paragraphs 4 and 5 as follows:

4. To take all necessary action in connection with the administration servicing and collection of all SBA loans (and EDA loans in liquidation when and as authorized by EDA) and lease guarantees, exclusive of matters in liquidation and litigation; to authorize the liquidation of a loan and the cancellation of authority to liquidate a loan and to do and perform, and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate these granted powers.

Except: a. To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereof;

b. To deny liability of the Small Business Administration under the terms of a participation institution under any alleged violation of a participation or guaranty agreement; or

c. To authorize suit for recovery from a participating institution under any alleged violation of a participation or guaranty agreement; or

d. To accept a lump sum settlement or to purchase property under the lease guarantee:

(1) Special Programs Director, Columbia, SC D/O only for direct 7(a) and disaster 7(b) loans only

(2) Guaranty Loan Director, Columbia, SC D/O only for guaranty, immediate participation, 501 and 502 loans only

5. To take all necessary action in connection with the liquidation of all SBA loans (and EDA loans in liquidation when and as authorized by EDA) and lease guarantees and to do and perform, and to assent to the doing and performance of all and every act and thing requisite and proper to effectuate these granted powers.

Except: a. To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereof;

b. To deny liability of the Small Business Administration under the terms of a participation or guaranty agreement or a lease guarantee;

c. To authorize suit for recovery from a participating institution under any alleged violation of a participation or guaranty agreement; or

d. To accept a lump sum settlement or to purchase property under the lease guarantee:

(1) District Counsel, Columbia, SC D/O only

30. Part V, Section A, paragraph 1 is amended by adding the positions as follows:

Special Programs Director, Columbia, SC D/O only  
Guaranty Loan Director, Columbia, SC D/O only

31. Part VII, Section A, paragraph 1 is amended by adding paragraph h as follows:

h. Minority Small Business and Contract Services Director, Columbia, SC D/O only

32. Part X, Section A, paragraph 1 is amended by adding paragraph o as follows:

o. District Counsel, Columbia, SC D/O only  
Dated: January 16, 1981.

William H. Mauk, Jr.,  
Acting Administrator.

[FR Doc. 81-2713 Filed 1-26-81; 8:45 am]  
BILLING CODE 8025-01-M

## CIVIL AERONAUTICS BOARD

### 14 CFR Part 298

[Economic Regulations; Amendment No. 14 to Part 298; Docket: 38907; ER-1208]

#### Classification and Exemption of Air Taxi Operators

**AGENCY:** Civil Aeronautics Board.  
**ACTION:** Final rule.

**SUMMARY:** The CAB is amending its rules governing commuter air carriers to conform with its new data submission requirements for fitness determinations and with the requirements of the Federal Aviation Act. This rulemaking is at the Board's own initiative.

**DATES:** Effective: February 25, 1981.  
**ADOPTED:** JANUARY 21, 1981.

**FOR FURTHER INFORMATION CONTACT:** Patricia Szrom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5088.

**SUPPLEMENTARY INFORMATION:** The CAB, by ER-1180, 45 FR 42593, June 25, 1980, required that certain data be submitted (14 CFR Part 204) for use in determining the fitness of passenger air carriers. This rule also imposed new reporting requirements on commuter air carriers serving or proposing to serve a point eligible for subsidy, as defined in 14 CFR 325.3.

Under deregulation, commuter air carriers have substantially increased their passenger operations by expanding into small markets abandoned as unprofitable by trunk carriers. To help

maintain essential service and adequate safety levels in these markets, Congress added a new section 419 to the Federal Aviation Act of 1958 (49 U.S.C. 1389). Paragraph (c)(2) of that section states that a commuter air carrier may not serve an eligible point unless it is found fit, willing, and able by the Board. Part 204 enables us to make section 419(c)(2) fitness determinations by requiring commuter air carriers to submit the necessary data. The fitness requirement applies only to those commuters that provide scheduled passenger service to an eligible point.

On November 4, 1980, the Board issued a notice of proposed rulemaking, EDR-413, (45 FR 73086), to conform its rules governing commuter air carriers in § 298.21 to section 419's fitness determination requirement, and in § 298.61 to the new reporting requirements in Part 204. The Board did not receive any comments in response to EDR-413. This rule makes the change as proposed, except for minor word changes in § 298.21 to make clear that the rule with regard to commuter air carriers only applies to those that provide passenger service.

To avoid disrupting current operations while the Board conducts these initial fitness determinations, this rule permits a currently registered commuter air carrier to continue present service or begin new service at a point eligible for subsidy pending the determination. However, a commuter air carrier that the Board finds unfit must stop service. The rule also amends Part 298 to clarify that, after this amendment becomes effective, no company will be allowed to register as a new passenger commuter air carrier unless the Board first finds that carrier fit. This is consistent with the intent of Part 204 and section 419 to ensure that before a new carrier is allowed to hold itself out to the public as a common carrier, it is able to operate safely and without undue financial risk to its customers.

Accordingly, the Board amends 14 CFR Part 298, *Classification and Exemption of Air Taxi Operators*, as follows:

1. The authority for Part 298 is:

Authority: Secs. 204, 416, 419, Pub. L. 85-726, as amended; 72 Stat. 743, 771; 92 Stat. 1732; 49 U.S.C. 1324, 1386, 1389.

2. In § 298.21, a new paragraph (d) is added to read:

§ 298.21 Filing for registration by air taxi operators.

(d) No air carrier, except a commuter air carrier providing scheduled passenger service that registered with

the Board on or before February 25, 1981, shall provide scheduled passenger service at an eligible point until it has been found fit, willing, and able to conduct such service by the Board. A commuter air carrier that registered with the Board on or before February 25, 1981 and that is providing scheduled passenger service may continue such service or commence new service at an eligible point while the Board makes its fitness findings. If the Board finds a commuter air carrier not to be fit, willing, and able to serve an eligible point the carrier shall not conduct such service.

3. In § 298.61, a new paragraph (h) is added to read:

§ 298.61 Reporting of scheduled operations by commuter air carriers.

(h) Commuter air carriers serving or proposing to serve an eligible point shall comply with the applicable requirements in Part 204 of this chapter.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-2741 Filed 1-26-81; 8:45 am]  
BILLING CODE 8320-01-M

### 14 CFR Part 389

[Organization Regulations Amendment No. 28 to Part 389; OR-178]

#### Fees and Charges for Special Services

**AGENCY:** Civil Aeronautics Board.  
**ACTION:** Final rule.

**SUMMARY:** The CAB is transferring the responsibility for distribution of its publications for which there is a price to the Government Printing Office. This action is at the Board's own initiative.

**DATES:** Adopted: January 21, 1981.  
Effective: January 26, 1981.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Thompson, Chief, Publication Services Division, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5174.

**SUPPLEMENTARY INFORMATION:** The rules in 14 CFR Part 389 govern fees and charges for special services rendered by the CAB, one of which is distributing its publications upon request and by subscription. Section 389.16 contains the CAB's policies on charges and subscriptions for these publications. It also designates five classes of recipients that may subscribe to these publications free of charge.

The CAB has decided to transfer the responsibility for distribution of its publications for which there is a price to



the Superintendent of Documents, Government Printing Office (GPO), on January 1, 1981. This transfer is made under Pub. L. 90-620, (44 U.S.C. 1702), which permits a government official responsible for a document published for sale to turn this responsibility over to the Superintendent of Documents. The costs of printing, postage, and maintaining the growing subscription service have increased during the past year. At the same time, preparation for the CAB's sunset has required substantial reductions in the CAB's budget and personnel. This transfer will enable the CAB to reduce costs and to better allocate its resources. Eventually, the CAB plans also to transfer the responsibility for the distribution of its free publications to GPO, when the Superintendent of Documents determines subscription charges for them.

This rule amends § 389.16 to reflect the transfer. Since GPO will now have responsibility for distributing the publications, the five classes of recipients previously allowed by the CAB to subscribe to publications free of charge are deleted. Those classes are: (1) foreign countries or international organizations, (2) nonprofit activities, (3) government agencies, (4) colleges, and (5) others determined by the CAB. The CAB will no longer determine the charges for or handle subscriptions to these publications. Therefore, these recipients will have to order the publications from GPO at prices and standards established by GPO. The CAB will continue to furnish without charge any publications it is required by law to serve on parties in Board proceedings, and single copies of publications for which a price has not yet been determined.

In the interest of international comity, this rule also amends § 389.16(c), the provision for reciprocal exchange of publications, to include international organizations in addition to foreign countries. This will enable the CAB to continue the informal exchange with appropriate international organizations of information necessary to its participation in international aviation matters.

A list of the transferred publications, their prices, and subscription information is available upon request from the CAB's Publications Services Division, B-22, Washington, D.C. 20428. Interested persons may also contact the Government Printing Office for information.

Since this amendment is administrative in nature, affecting a rule of agency organization and procedure, the Board finds that public notice and

comments are unnecessary. The Board further finds that since the transfer of responsibility to GPO is as of January 1, 1981, there is good cause to make the rule effective immediately, so as not to confuse the public.

Accordingly, the Board amends 14 CFR Part 389, *Fees and Charges for Special Services*, as follows:

1. The authority for Part 389 is amended to read:

Authority: Sec. 204, Pub. L. 85-726, as amended; 72 Stat. 743; 49 U.S.C. 1324.

2. In § 389.16, paragraphs (a), (b) and (c) are amended to read:

**§ 389.16 Board publications.**

(a) *Charges for publications.* Charges have been established by the Superintendent of Documents for subscriptions to certain Board publications. A list of these publications together with information on how they can be ordered is contained in the "List of Publications", which is available on request from the Board's Publications Services Division, B-22, Washington, D.C., 20428.

(b) *Free services.* No charge will be made by the Board for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Board. No charge will be made for single copies of Board publications individually requested in person or by mail, except where a charge is specifically fixed for a publication at the time of its issuance.

(c) *Reciprocal services.* Arrangements may be made with the Board's Bureau of International Aviation for furnishing publications to a foreign country or to an international organization on a reciprocal basis.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-2740 Filed 1-26-81; 8:45 am]

BILLING CODE 6320-01-M

**FEDERAL TRADE COMMISSION**

**16 CFR Part 13**

[Docket 9123]

**Litton Industries, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final order.

**SUMMARY:** This order requires, among other things, a Beverly Hills, Calif. firm, engaged in the manufacture, sale, distribution and advertising of various

products, to cease making any unsubstantiated representations regarding the performance, characteristics, or benefit of any microwave oven; or its superiority over competing products. Further, the company must cease failing to maintain, for three years, accurate records of all materials, test reports, studies and surveys relating to any such representation. Additionally, the order prohibits the company from misrepresenting the purpose, content, reliability or conclusions of a test or survey; and advertising the results of any such survey, unless respondents in the survey are representative of the group referred to in the ads.

**DATE:** Complaint issued Jan. 31, 1979.

Final order issued Jan. 5, 1981.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** FTC/PA, Robert L. Barton, Jr., Washington, D.C. 20580. (202) 724-1499.

**SUPPLEMENTARY INFORMATION:** In the Matter of Litton Industries, Inc., a corporation, and Litton Systems, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.20 Comparative data or merits, 13.20-20 Competitors' products; § 13.170 Qualities or properties of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.255 Surveys; § 13.265 Tests and investigations. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements, 13.533-45 Maintain records, 13.533-45(a) Advertising substantiation. Subpart—Failing To Maintain Records: § 13.1051 Failing to maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1757 Surveys; § 13.1762 Tests, purported. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1895 Scientific or other relevant facts.

[Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45]

The Final Order, including further order requiring report of compliance therewith, is as follows:

This matter has been heard by the Commission upon the appeal of counsel supporting the complaint, and upon briefs and oral argument in support of and in opposition to the appeal. The Commission, for the reasons stated in

<sup>1</sup> Copies of the Complaint, Initial Decision, Opinion, Appendices and Final Order filed with the original document.

the accompanying Opinion, has granted the appeal in part, and denied the appeal in part. Therefore,

It is ordered that the initial decision of the administrative law judge, pages 1-53, and appendices, be adopted as the Findings of Fact and Conclusions of Law of the Commission, except as is otherwise inconsistent with the attached opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist be entered:

#### Order

##### I

It is ordered that respondents Litton Industries, Inc., a corporation, Litton Systems, Inc., a corporation, and their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising for sale, sale, or distribution of microwave ovens (either for commercial or consumer use), in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Representing, directly or by implication, that any commercial microwave oven or consumer microwave oven

(a) is able to perform in any respect, or has any characteristic, feature, attribute, or benefit; or

(b) is superior in any respect to any or all competing products; or

(c) is recommended, used, chosen or otherwise preferred in any respect more often than any or all competing products,

unless and only to the extent that respondents possess and rely upon a reasonable basis for such representation at the time of its initial and each subsequent dissemination. Such reasonable basis shall consist of competent and reliable surveys or tests and/or other competent and reliable evidence which substantiates the representation. A competent and reliable survey or test means one in which persons qualified to do so conduct the survey or test and evaluate its results in an objective manner, using procedures that insure accurate and reliable results.

2. Failing to maintain accurate records

(a) Of all materials that were relied upon in disseminating any representation covered by paragraph I(1) of this order, insofar as the text of such representation is prepared,

authorized, or approved by any person who is an officer or employee of respondents, or of any division, subdivision or subsidiary of respondents, or by any advertising agency engaged for such purposes by respondents, or by any of its divisions or subsidiaries;

(b) of all test reports, studies, surveys, or demonstrations that contradict any representation made by respondents that is covered by paragraph I(1) of this order.

Such records shall be retained by respondents for three years from the date that the representations to which they pertain are last disseminated, and may be inspected by the staff of the Commission upon reasonable notice.

It is further ordered that respondents Litton Industries, Inc., a corporation, Litton Systems, Inc., a corporation, and their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising for sale, sale, or distribution of microwave ovens (either for commercial or consumer use) and any other product normally sold to members of the general public for their personal or household use in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Misrepresenting in any manner, directly or by implication, the purpose, sample, content, reliability, results, or conclusions of any survey or test.

2. Advertising the results of a survey unless the respondents in such survey are a census or a representative sample of the population referred to in the advertisement, directly or by implication. A representative sample need not be a probability sample so long as when the ad is first disseminated respondents have a reasonable basis to expect the sampling method used would not produce biased results.

3. Representing, directly or by implication, that experts were surveyed, unless reasonable care was taken to insure that the survey respondents possessed sufficient expertise to qualify as respondents for the survey and to answer the survey questions. For purposes of this order, an "expert" is an individual, group or institution held out as possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

It is further ordered that the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and

form in which they have complied with this order.

It is further ordered that the respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered that the respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

By the Commission. Commissioner Bailey did not participate.

Carol M. Thomas,  
Secretary.

[FR Doc. 81-2705 Filed 1-26-81; 8:45 am]  
BILLING CODE 6750-01-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 231

[Release No. 33-6281]

#### Employee Benefit Plans

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretive release

**SUMMARY:** The Commission has authorized the issuance of an interpretive release supplementing an earlier release which expressed the views of its staff on the application of the Securities Act of 1933 to employee benefit plans. The purpose of the supplemental release is to provide further guidance and assistance to employers and plan participants in complying with that Act. To accomplish this purpose, the release: (1) clarifies certain positions expressed in the prior release, (2) discusses issues not previously addressed, and (3) describes recent developments under the 1933 Act relevant to employee benefit plans.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Romeo, Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2573.

**SUPPLEMENTARY INFORMATION:** On February 1, 1980, the Commission issued Release No. 33-6188 ["Release 6188"] [45 CFR 8960], setting forth the views of its Division of Corporation Finance (the "staff") concerning the application of the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] to employee benefit

plans.<sup>1</sup> The release was intended to resolve much of the uncertainty concerning the application of the 1933 Act which had developed as a result of the Supreme Court's decision in *International Brotherhood of Teamsters v. Daniel* ("Daniel").<sup>2</sup>

In Release 6188, the staff invited interested members of the public to express their views on the positions set forth in the release. Further, it indicated a willingness to reconsider those positions if it received persuasive comments from the public that revisions were appropriate.

The staff received 12 letters commenting on the release. Almost all of the letters expressed general agreement with the views of the staff. Several, however, either indicated reservations about the staff's position on certain issues or sought clarification of some matters not specifically addressed in the release. In addition to the written commentary, many persons have sought the views of the staff on numerous other issues relating to employee benefit plans not discussed in the release.

The various comments received indicate that there is considerable interest on the part of the public in receiving further guidance concerning the application of the 1933 Act to employee benefit plans. As a result, the Commission has authorized the issuance of this release for the purpose of providing additional advice by the staff on this subject. Among other things, the release will discuss issues not covered in the prior release, describe important developments in the employee benefit plan area that have occurred since that release was issued, and address concerns expressed by the persons who commented on the earlier release.

The release is divided into four topical areas, which are as follows:

- I. Plans Subject to the Act
- II. The Section 3(a)(2) Exemption
- III. Sales and Resales of Employer Stock
- IV. Form S-8

The statements set forth in this release represent the current views of the staff. Accordingly, they supersede

<sup>1</sup> As used in this release, the term "employee benefit plan" means a pension, profit-sharing, bonus, thrift, savings or similar plan. Thus, it generally would include plans described in Section 3(2) of the Employee Retirement Income Security Act of 1974 ("ERISA") [29 U.S.C. 1001 et seq.]. The term does not include welfare and similar plans, such as those described in Section 3(1) of ERISA, which do not involve any expectation of financial return or profit on the part of participating employees.

<sup>2</sup> 439 U.S. 551, 99 S. Ct. 790 (1979). In *Daniel*, the Supreme Court held that neither the 1933 Act nor the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a et seq.] applies to a compulsory noncontributory pension plan.

any prior letters or other documents issued by the staff on the subjects covered. Again, as with the earlier release, the staff welcomes any comments from the public on the positions expressed herein.<sup>3</sup>

#### I. Plans Subject to the Act

In Release 6188 the staff expressed the view that the only types of employee benefit plans which are subject to the 1933 Act are those which are both voluntary and contributory on the part of participating employees. Some questions were raised in this regard about the types of plans that are considered "voluntary and contributory." Further, some commentators asked for clarification or reconsideration of the staff's views concerning specific types of voluntary contributory plans. These matters are discussed under appropriate captions in the sections which follow.

##### A. Voluntary Contributory plans

The staff indicated in Release 6188 that a "voluntary" plan is "one in which employees may elect whether or not to participate."<sup>4</sup> A "contributory" plan was defined as "one in which employees make direct payments, usually in the form of cash or payroll deductions, to the plan."<sup>5</sup>

In retrospect, the foregoing definitions were somewhat incomplete in that they did not encompass all types of voluntary contributory plans. Generally, it is the staff's view that the determination of whether a plan is a voluntary contributory one rests solely on whether the participating employees can decide at some point whether or not to contribute their own funds to the plan.<sup>6</sup> Thus, for example, each of the following types of plans would be considered voluntary and contributory because each permits employees to make a determination, either at the time they join the plan or later, whether they will invest their own money: (1) a plan which is voluntary as to participation and then mandatory as to the amount of contributions, (2) a plan which is voluntary as to participation and which permits employees to make contributions at their option, and (3) a plan which is mandatory as to

<sup>3</sup> Any such comments should be addressed to Peter J. Romeo, Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

<sup>4</sup> See fn. 19 of Release 6188.

<sup>5</sup> See fn. 20 of Release 6188.

<sup>6</sup> As noted in Release 6188 (see the text at fn. 84), a plan may also be deemed to be voluntary and contributory and therefore to involve a sale of a security in those instances where participating employees individually bargain to contribute their services in exchange for interests in the plan.

participation but provides employees with a choice whether or not to invest their own funds.

Although the staff continues to hold the view that all voluntary contributory plans are subject to the 1933 Act, it should be noted that there exists litigation<sup>7</sup> which raises the issue whether this view is appropriate with respect to a defined benefit plan<sup>8</sup> which is voluntary and contributory. The Commission has filed an *amicus curiae* brief in the subject litigation taking the position that employee interests in the plan at issue are securities within the meaning of the 1933 Act.

##### B. Section 401(k) Plans

In connection with the foregoing, several persons have inquired whether cash or deferred arrangements qualifying under Section 401(k) of the Internal Revenue Code of 1954 as amended ("Code") [26 U.S.C. 401(k)] are deemed to be voluntary contributory plans. Section 401(k) exempts from taxation certain nondiscriminatory profit-sharing or stock bonus plans which allow employees to elect annually either (1) to receive immediate payment of the employer's plan contribution or a portion thereof, or (2) to defer receipt of, and not be subject to income tax on, the contribution or a portion thereof and have it invested in a trust where it will accumulate for later payment. The fact that employees can elect either to receive their shares of the employer's contribution immediately or to defer receipt raises a question whether the deferred amounts are tantamount to voluntary contributions by the employees.

The staff's view on the above question is that Section 401(k) plans are not contributory on the part of employees<sup>9</sup> because they do not involve out-of-pocket investments by employees of their own funds. Such plans are funded entirely by employer contributions. Accordingly, in the staff's view, interests in Section 401(k) plans are not subject to the 1933 Act.

<sup>7</sup> *Newkirk v. General Electric Company*, [1979-1980 Transfer Binder] CCH Fed. Sec. L. Rep. 197,216 (N.D. Cal., 1979), appeal pending (9th Cir.), docket No. 80-402.

<sup>8</sup> A defined benefit plan pays fixed or determinable benefits and in this respect differs from defined contribution plans, which pay benefits that vary, depending on the amount of plan contributions, the investment success of the plan, and allocations made of benefits forfeited by non-vested participants who terminate employment. See in this regard Section 3(34) of ERISA.

<sup>9</sup> The Internal Revenue Service has taken a similar position under the Code. See Rev. Rul. 80-16, C.B.— (January 7, 1980), Internal Revenue Bulletin No. 1980-3, January 21, 1980.

### C. Participant-Directed Plans

One of the commentators on Release 6188 questioned whether voluntary contributory plans which permit participants to direct the investment of their funds involve separate employee interests that are subject to the 1933 Act. Examples of such plans are Individual Retirement Account ("IRA") plans and certain Keogh and corporate plans which provide a variety of investment alternatives to participants.

The commentator's doubt is based in part on the belief that there is no investment contract relationship between the participant and the plan because the participant arguably does not rely on the plan to determine how his funds will be invested. Moreover, the commentator believes that there is no sale of an interest by the plan to the participant, on the theory that the participant makes no investment decision regarding such an interest.

Whether a separate security in the form of a plan interest exists in participant-directed plans depends on the circumstances.<sup>10</sup> Certainly, as noted in Release 6188,<sup>11</sup> there is considerable doubt in this regard with respect to many master trust or prototype plan arrangements which are used to market IRAs and Keogh plans. Where the sponsor under such a trust or arrangement acts as a mere custodian of the participant's account without rendering investment advice or commingling the assets of the account with those of other accounts, and the participant retains complete investment discretion and control over the account, the staff generally has taken a no-action position regarding the registration of interests in the plan or arrangement.

A different situation exists where the sponsor or trustee of a participant-directed plan actively manages the funds provided to him by plan participants. Thus, for example, corporate thrift, savings or similar plans which allow participants to direct their investments into any of several investment funds managed by the plan trustees or administrators would be deemed to involve securities in the form of employee interests. In such cases, it is clear that the employees are relying on the plan managers to maintain the various funds in a manner that will produce profits and thereby enhance their investment. Although the interests of employees in such plans are

securities, they usually are exempt from registration under Section 3(a)(2) of the 1933 Act, except in those instances, as noted later in this release,<sup>12</sup> where employee monies are used to purchase employer stock.

### D. TRASOPs

TRASOPs are a special form of Employee Stock Ownership Plan created by the Tax Reduction Act of 1975.<sup>13</sup> From the employee's standpoint, they are a combined stock bonus and stock purchase plan. That is, employees are awarded shares of the employer's stock at no cost to them under such a plan, and they also may be given the opportunity to purchase additional shares at half the prevailing market price.

In Release 6188, the staff revised its prior position concerning TRASOPs and indicated that shares acquired in the open market by employees pursuant to such a plan henceforth need not be registered under the 1933 Act, provided the plan satisfied certain conditions described in Release No. 33-4790 ("Release 4790") (July 13, 1965) [30 FR 9959].<sup>14</sup> One of the conditions in Release 4790 is that the plan must not contain any significant limitations on the right of employees to withdraw which might give rise to separate employee interests.

Several persons, noting that all TRASOPs contain a mandated provision which generally prohibits withdrawals for a period of seven years, inquired whether the above condition means that interests in an open market TRASOP must be registered. The staff's view is that the mandated seven-year withdrawal provision will not, by itself, necessitate the registration of employee interests in a TRASOP. To hold otherwise would subject all open market TRASOPs to registration, thereby nullifying the perceived benefits of the staff's position in Release 6188. In effect,

<sup>12</sup> See Part II, Subsection B. 1.

<sup>13</sup> Pub. L. 94-12 (March 29, 1975). Employers derive certain tax benefits by sponsoring TRASOPs. They can, for instance, receive up to an additional one percent investment tax credit for amounts contributed in cash or shares to the plan. In addition, they can become entitled to an extra one-half percent investment tax credit to the extent they match employee contributions for the purchase of company stock under the plan.

<sup>14</sup> The conditions in Release 4790 are designed to provide some assurance that the purchase of stock pursuant to the plan will be essentially the same as a purchase by the employee in an open-market transaction. Among the conditions are requirements that the employer limit its participation in the plan basically to performing ministerial functions and that it not pay any portion of the purchase price of stock acquired by employees under the plan. When such conditions are satisfied, the employer is not considered to be soliciting offers to buy its securities within the meaning of Section 2(3) of the 1933 Act.

the conditions in Release 4790 relating to withdrawal rights and employer contributions<sup>15</sup> are not considered applicable to open market TRASOPs.

Accordingly, if a TRASOP is in compliance with the other conditions outlined in Release 4790, neither the stock acquired by employees nor any plan interests that might be deemed to exist would have to be registered under the 1933 Act.

Finally, a number of persons asked whether an issuer which decides to discontinue registration of its TRASOP under the 1933 Act because of the staff's revised position in Release 6188 must formally notify the Commission or its staff regarding that fact. The staff encourages an issuer in such a situation to furnish formal notification by filing a post-effective amendment to its registration statement formally deregistering the remaining unsold shares.<sup>16</sup> The principal advantage of deregistration is that it makes clear on the record that the plan is relieved from any obligation to file future periodic reports that otherwise might be required under Section 15(d) of the 1934 Act. However, a failure to formally notify the Commission will not mean that a TRASOP continues to be subject to registration or that it cannot avail itself of the staff's position concerning the nonregistration of open market TRASOPs. In effect, therefore, formal deregistration is encouraged but is not absolutely necessary.<sup>17</sup>

### E. Open Market Stock Purchase Plans

As a result of the staff's position in Release 6188 that certain open market TRASOPs no longer need be registered, a number of persons have asked the staff to take a similar position with respect to all other open market stock purchase plans which currently must be registered because the employer pays part of the purchase price of the stock acquired by employees. Traditionally, the payment by the employer of part of the purchase price has been considered a solicitation of an offer to buy its securities within the meaning of Section 2(3) of the 1933 Act and has therefore triggered the registration provisions of the Act.

<sup>15</sup> See Release 6188 [Subsection B.2] and the next section of this release for discussions of employer contributions to TRASOPs.

<sup>16</sup> Even in the absence of formal notification, the registration statement automatically could no longer be used after a period of time because it would fail to satisfy the current prospectus requirements of Section 10(a)(3) of the 1933 Act.

<sup>17</sup> See in this regard the staff's no-action letter concerning *The Limited Stores, Inc.* dated August 8, 1980.

<sup>10</sup> Although the plan interests may not always be deemed securities, the stocks, bonds or investment fund shares in which the participant directs that his assets be invested would be securities in almost all instances.

<sup>11</sup> See the text beginning at fn. 76 of Release 6188.

In Release 6188,<sup>18</sup> the staff stated with respect to open market TRASOPs that "no practical purpose appears to be served by requiring registration solely because the employer is paying half the purchase price." In part, this position reflected the general policy of the Congress to encourage the adoption of TRASOPs by employers. This policy is evidenced by the fact that the federal government, through the device of an additional investment tax credit, in effect reimburses employers for their contributions to the cost of stock acquired by employees under such plans.

In the case of a non-TRASOP open market stock purchase plan which provides for contributions by the employer that match or exceed employee contributions, the employer's contributions are not reimbursed by the federal government. Notwithstanding this fact, it seems reasonable to not require registration where such a plan otherwise satisfies the requirements of Release 4790. From the employee's standpoint, the plan is similar to an open-market TRASOP. The source of half or more of the funds used to purchase stock is the employer, and the employee has a strong incentive (though is not actually required) to participate because his risk of loss is substantially reduced due to the matching contribution feature. Under the circumstances, particularly the limited investment required of participating employees, the staff henceforth will take a no-action position regarding the registration of all open market stock purchase plans which provide for employer contributions that match or exceed employee contributions and which otherwise satisfy the conditions of Release 4790.

The foregoing position is being taken for policy reasons. Accordingly, it should not be construed as a change in the view expressed in Release 4790 that contributions by employers under stock purchase plans to the purchase price of their stock generally constitute solicitations of offers to buy under Section 2(3). As a result, the staff's no-action position described above does not extend to other open market stock purchase plans under which employers make contributions which fail to match or exceed the contributions of participating employees.

On another matter relating to open market stock purchase plans, some persons inquired whether the staff continues to apply Release 33-5515 ("Release 5515") (August 8, 1974) [39 FR 28520] to such plans. The inquiry stems

from the fact that Release 6188 omitted any reference to Release 5515 when discussing open market plans.

Release 5515 states in part that an issuer may perform certain bookkeeping and similar administrative functions in operating a dividend reinvestment or similar plan without such activities being deemed solicitations of offers to buy its securities. The staff traditionally has applied the position stated in that release to open market employee stock purchase plans and continues to do so. Accordingly, the fact that Release 6188 did not specifically state that Release 5515 is applicable to such plans should not be construed as a change in the staff's prior position.

#### F. Conversions of Noncontributory Plans

In Release 6188<sup>19</sup> the staff indicated that a conversion of an existing plan to another plan would involve a sale of a security if a choice were given to plan participants regarding the matter. A commentator asked the staff to reconsider that position with respect to conversions of noncontributory plans. First, he questioned whether a security is involved when an existing noncontributory plan is being converted to another plan, in view of the fact that interests in noncontributory plans are not deemed to be securities. Second, the commentator believes it is inconsistent for the staff to state, as it did in Release 6188, that registration is not required with respect to investment elections under noncontributory plans,<sup>20</sup> but may be necessary if employees are given a choice regarding the conversion of a noncontributory plan to another plan. In the commentator's opinion, the two situations should be treated the same because they both involve a choice by employees with respect to monies not contributed by them. Finally, he stated that the staff's position appears to have the undesirable effect of discouraging plan sponsors from providing employees with a choice regarding conversions, because to do so might subject the conversions to registration.

The staff has given serious consideration to the views described above. Nevertheless, it continues to believe that a conversion of a noncontributory plan involves a sale of a security where employees are given a choice as to whether they will receive funds or benefits from the original plan or whether they will have such funds invested on their behalf in another plan. In such a situation, although the funds from the original plan were derived from

the employer, the second plan operates essentially as a voluntary contributory one insofar as the contributions from the prior plan are concerned.

The staff believes that a conversion in which employees have the option to receive funds or to invest them in another plan can be distinguished from an election granted to employees under a continuing noncontributory plan. In a conversion where a choice is given, the employee's interest in the prior plan is terminated, and the funds or other benefits representing his accumulated rights under that plan in effect become the property of the employee, and can at his election be contributed to the new plan. As a result, it is appropriate to regard the funds contributed to the new plan as coming from the employee, and to consider the new plan as contributory to that extent. In the situation involving an election among investment media under an ongoing noncontributory plan, however, the funds contributed by the employer are not made available to the employee, but instead are retained by the plan itself and therefore cannot be regarded as employee monies. Similarly, under Section 401(k) plans, discussed in Section I.B. above, although the employee has an initial right to elect to receive plan contributions directly, amounts which are contributed come solely from the employer, become assets of a continuing plan, and can properly be regarded as not involving out-of-pocket investments by employees of their own funds.

In summary, it is the staff's view that conversions in which employees are offered a choice between a new plan and receipt of the funds or other benefits from the old plan involve a sale of a security subject to the 1933 Act. Many such conversions, however, would be exempt from registration under Section 3(a)(2) of the 1933 Act, provided none of the funds transferred are to be invested in employer stock and other applicable conditions are met.<sup>21</sup>

#### II. The Section 3(a)(2) Exemption

Section 3(a)(2) of the 1933 Act provides an exemption from registration for the issuance of securities in connection with employee benefit plans. The exemption was discussed at length in Release 6188. Subsequent to that release, Congress amended Section

<sup>21</sup> There are, of course, situations where the Section 3(a)(2) exemption would not be available. For example, the exemption could not be relied upon if a defined benefit plan were converted to, and employees were given a choice as to investment in, a defined contribution profit sharing or stock bonus plan (including an employee stock ownership plan) under which the funds transferred on conversion were invested in employee stock.

<sup>18</sup> See Part III, Subsection B. 1 of Release 6188.

<sup>19</sup> See Part III, Section A. 1. of Release 6188.

<sup>20</sup> See Part III, Section A. 2. of Release 6188.

3(a)(2) in certain significant respects and the Commission proposed the adoption of a rule that would exempt certain Keogh plans under that section. These developments, as well as certain significant interpretive issues that were not addressed in Release 6188, are discussed in the sections which follow.

#### A. Important Developments

Title VII of the Small Business Investment Incentive Act of 1980 (the "1980 amendments")<sup>22</sup> amended Section 3(a)(2) and certain other provisions of the federal securities laws relating to employee benefit plans.<sup>23</sup> The amendments to Section 3(a)(2) are set forth below. Italics and brackets have been used to signify, respectively, additions to and deletions from the former language of the section.

Section 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(2) \* \* \* any interest or participation in a single [or collective] trust fund, or in a collective trust fund maintained by a bank, [or in a separate account maintained by an insurance company] or any security arising out of a contract issued by an insurance company, which interest, [or] participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for deduction of the employer's contributions under section 404(a)(2) of such Code, or (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for a part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (A), [or] (B), or (C) of this paragraph (i) the contributions under which are held in a single trust fund [maintained by a bank] or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities [other than interests or participations in the trust or separate account itself] issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees

some or all of whom are employees within the meaning of section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in Section 403(b) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

The 1980 amendments broadened the scope of the Section 3(a)(2) exemption by including certain insurance contracts and governmental plans within its coverage. In addition, the amendments make clear that any security arising out of a contract issued by an insurance company will be exempt under Section 3(a)(2) if it is issued in connection with a plan specified in that section and the other conditions of the exemption are met. As revised, the exemption is now broad enough to include within its coverage guaranteed investment contracts<sup>24</sup> and other arrangements sold to tax qualified plans that are funded by an insurance company's general account rather than by separate accounts. Formerly, Section 3(a)(2) exempted only securities funded by separate accounts, with the result that new insurance contracts funded by general accounts arguably were beyond its coverage.<sup>25</sup>

The 1980 amendments also added governmental plans, as defined in Section 414(d) of the Internal Revenue Code, to the category of plans to which securities of the type specified in Section 3(a)(2) may be offered and sold without registration under the 1933 Act. Section 414(d) was added to the Code in 1978 and provides special tax treatment for plans covering state and local governmental employees. In order to fall within the amended exemption, a Section 414(d) plan must be established for the exclusive purpose of providing retirement benefits to employees or their beneficiaries, and the funds of the plan

must be segregated and not subject to diversion to other purposes.

Finally, the 1980 amendments codified two prior staff interpretations regarding the Section 3(a)(2) exemption. First, the amendments specifically exclude from the exemption contracts issued in connection with tax deferred annuity plans described in Section 403(b) of the Internal Revenue Code. Such plans are adopted primarily by public school systems and departments of education, and it has been the staff's position that annuity contracts issued to them must be registered under the 1933 Act unless some exemption other than that provided by Section 3(a)(2) is available. Second, the amendments make it clear that a single trust fund need not be maintained by a bank in order for the Section 3(a)(2) exemption to be available. The former language of Section 3(a)(2) was ambiguous in this respect, but it is now clear that only collective trust funds for qualified plans must be maintained by a bank under the exemption.

The 1980 amendments are silent on the issue of whether Section 3(a)(2) exempts the interests of participants in plans covered by the exemption. The staff took the position in Release 6188 that, on the basis of the Commission's past administrative practice and practical considerations, Section 3(a)(2) generally exempts such interests to the same extent that it exempts the interests of plans in certain specified funding vehicles. The staff's position, which was contrary to dicta in the *Daniel* case,<sup>26</sup> recognized that the interests of participants in a plan are identical to their interests in the funding vehicles invested in by the plan and therefore generally should be accorded the same treatment as these latter interests.<sup>27</sup> Thus, for purposes of the Section 3(a)(2) exemption, the two types of interests generally are the same for all practical purposes. Nothing in the legislative history of the 1980 amendments suggests that the staff's interpretation is incorrect. Accordingly, the staff continues to adhere to the position outlined in Release 6188.

<sup>22</sup> See the discussion in Release 6188 [part IV, Section B. 2.] on this point.

<sup>23</sup> There are limited situations, however, where the interests of participants in a plan would be treated differently under Section 3(a)(2) than the interests of the plan in certain funding vehicles. For example, a plan may invest part or all of its assets in a mutual fund. The interest of the plan in the mutual fund would not be exempt under Section 3(a)(2) because such funds are not referred to in the section. However, the interests of employees in the plan would be exempt under Section 3(a)(2) so long as no employee funds were invested in employer securities and the plan otherwise satisfied the requirements of the exemption.

<sup>24</sup> See Release No. 33-6051 [April 5, 1979] [44 FR 21626].

<sup>25</sup> Notwithstanding the former language of the Section 3(a)(2) exemption, the staff had taken a no-action position regarding the registration of guaranteed investment contracts issued to plans under certain specified conditions. Letter to *American Council of Life Insurance* dated March 18, 1977. The no-action position was based in part on a recognition that guaranteed investment contracts are relatively new forms of contracts that generally were not in existence in 1970 when Congress created the exemption for interests in separate accounts.

<sup>22</sup> Pub. L. 96-477 [October 21, 1980].

<sup>23</sup> The other provisions amended were Section 3(a)(12) of the 1934 Act and Section 3(c)(11) of the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 81a et seq.].

In addition to the enactment of the 1980 amendments, a further development of significance pertaining to Section 3(a)(2) was the issuance for public comment of proposed Rule 180 under the 1933 Act.<sup>28</sup> Pursuant to its authority in Section 3(a)(2) to exempt securities issued in connection with Keogh plans from registration, the Commission proposed the rule for the purpose of exempting plans which meet the criteria specified therein. The rule, if adopted, should largely eliminate the need for the Commission to issue exemptive orders for Keogh plans in the future.

#### B. Significant Interpretive Issues

There are several important issues relating to Section 3(a)(2) that various commentators have asked the staff to address. These are discussed below under appropriate captions.

##### 1. Plans With Multiple Investment Choices.

Many persons have asked the staff to discuss the availability of the Section 3(a)(2) exemption for interests in thrift, savings or similar plans which provide employees with several investment alternatives, one of which consists of securities of the employer. It is the staff's view that the exemption is available for such interests only if amounts invested in securities of the employer can be attributed to contributions made by the employer. The staff bases its position on the provision in Section 3(a)(2) which states that the exemption does not apply to a plan whose contributions are held in a single trust fund or in a separate account maintained by an insurance company and under which an amount in excess of the employer's contribution is allocated to the purchase of securities of the employer or its affiliates. As previously noted in Release 6188,<sup>29</sup> this provision was included in Section 3(a)(2) in 1970 in order to reflect the staff's consistent administrative practice of not requiring interests in plans to be registered unless employee monies were used to buy securities of the employer.

The application of the staff's position to thrift and similar plans can best be illustrated by the following example. XYZ Company has established a thrift plan whose assets are held in a single trust fund. The plan's assets are segregated under the trust into three separate funds, one of which consists exclusively of XYZ securities. Employees may choose to have their plan contributions invested in any or all

of the funds, and XYZ will match all such contributions on a dollar-for-dollar basis. Aggregate contributions under the plan are as follows:

Three funds	Employee contributions (percent)	XYZ contributions (percent)	Total (percent)
XYZ securities fund.....	10	10	20
Guaranteed income fund.....	20	20	40
Diversified equity fund.....	20	20	40
Total.....	50	50	100

It is the staff's view that although XYZ's contributions to the plan in the aggregate exceed the amount invested in its securities, the Section 3(a)(2) exemption is not available. This is because the plan clearly allows, insofar as the XYZ securities fund is concerned, funds in excess of the employer's contribution to be allocated to the purchase of securities of the employer. Thus, interests in the plan are not exempt under Section 3(a)(2). If, however, the plan were changed so that it became possible to attribute all employee contributions to non-XYZ securities, the Section 3(a)(2) exemption would then be available. In the above example, this could be done in either of two ways. First, employees might be prohibited in the future from investing their own money in the XYZ securities fund, but they would be permitted to designate that matching contributions by the employer be invested on their behalf in that fund. Second, the XYZ securities fund might either be enlarged to include securities of other entities or merged into the diversified equity fund, with the understanding that in no instance would the amounts invested in XYZ securities under any such fund exceed the amount of XYZ's contributions to that fund. In both of these situations, it would be possible to attribute all investments in XYZ securities to contributions by the employer, with the result that the Section 3(a)(2) exemption would then be available, assuming all of its other conditions were satisfied.

##### 2. Commingling of Assets in a Fund or Account.

In Release 6188,<sup>30</sup> the staff expressed the opinion that the Section 3(a)(2) exemption for interests or participations in a bank collective trust fund or an insurance company separate account is not available if the fund or account commingles the assets of tax qualified corporate plans with those of Keogh plans. The staff based its view on the belief that Section 3(a)(2) exempts only

interests or participations in collective funds or separate accounts which consist exclusively of assets of tax qualified corporate plans.

Representatives of insurance companies and other persons have asked the staff to reconsider the opinion noted above. Their request is based partly on the language and legislative history of Section 3(a)(2) and partly on practical considerations. With respect to the language of Section 3(a)(2), these persons noted that it exempts any interest or participation in a collective fund or separate account so long as it is issued in connection with a plan (other than a Keogh plan) qualified under Section 401 of the Internal Revenue Code. Read literally, this language does not preclude commingling of Keogh plan assets with corporate plan assets. Further, the legislative history of Section 3(a)(2) suggests that a literal interpretation is not inappropriate in this regard.<sup>31</sup>

From a practical standpoint, the persons requesting reconsideration point out that there does not appear to be any substantial reason why commingling of the assets of corporate and Keogh plans should be prohibited. Moreover, they indicate that a number of insurance companies commingled assets in separate accounts in such a manner for many years prior to the enactment of Section 3(a)(2) and have continued to do so after its enactment. Such companies traditionally have registered only the interests in such accounts that are sold to Keogh plans, believing that the Section 3(a)(2) exemption applied to the interests sold to tax qualified corporate plans.

After consideration of the reasons outlined above, the staff has determined to change the interpretation in Release 6188 discussed above. Accordingly, the availability of the Section 3(a)(2) exemption no longer will be deemed by the staff to depend in part on whether the assets of Keogh plans are commingled with the assets of tax qualified corporate plans. Of course, where commingling of assets in the above manner does occur, interests or participations sold to plans not covered by the Section 3(a)(2) exemption would be subject to registration under the 1933 Act, absent some other exemption.

##### 3. Plans Funded by Exempt Securities.

The exemption from registration provided by Section 3(a)(2) for interests

<sup>28</sup> Compare Amendment No. 438 to S. 1659, 90th Cong., 1st Sess., Section 102(b) (1967), which would have required a bank collective fund under Section 3(a)(2) to consist solely of assets of tax qualified plans other than Keogh plans, and a subsequent bill, S. 3724, 90th Cong., 2nd Sess., Section 27(b) (1968), which did not include the word "solely."

<sup>29</sup> Release No. 33-6247 (October 14, 1980) [45 FR 6947b].

<sup>30</sup> See the text at fn. 132 of Release 6188.

<sup>31</sup> See the text at fn. 114 of Release 6188.

or participations in a plan is, by virtue of the language of the statute, not available in those instances where employee monies are used to purchase securities of the employer or its affiliates. Notwithstanding the language of Section 3(a)(2), the staff has taken a no-action position for policy reasons on several occasions where employee monies were used to purchase employer securities which were exempt from registration under one of the securities exemptions set out in Sections 3(a)(2) through 3(a)(8) of the 1933 Act.<sup>32</sup> These no-action positions have been based on the view that it would be contrary to the purposes of Section 3(a)(2) to require interests in a plan to be registered solely because employees are investing in securities of the employer which, because of their nature, were never intended by Congress to be subject to registration.

On a somewhat related issue, a commentator on Release 6188 inquired whether the Section 3(a)(2) exemption would be jeopardized if the trustees for a plan whose assets are held in an insurance company separate account decided to create an additional fund consisting of exempt U.S. Government securities which is not maintained by the insurance company. The staff's position is that the exemption would not be affected by such a decision. Apart from the policy consideration previously noted that investments by a plan in exempt securities should not necessitate registration, it would appear that in this instance the plan's investment in U.S. Government securities would be held in a single trust fund that would satisfy the literal requirements of Section 3(a)(2). Accordingly, the exemption would be available, in the staff's view.

### III. Sales and Resales of Employer Stock

Release 6188 discussed in considerable detail sales and resales of employer stock by plans and their participants. There still remain, however, several important matters that merit attention. These are discussed below.

<sup>32</sup> See, e.g., letters re *Irwin Union Bank & Trust Co.* dated August 18, 1978 and *Roadway Express, Inc.* dated May 24, 1979. The Division's no-action positions in this area, however, do not extend to those situations in which the employer's securities are offered to employees in reliance upon a transactional exemption, such as those provided by Sections 3(a)(9) through 3(a)(11) of the 1933 Act. The reason is that, unlike a securities exemption, a transactional exemption does not rest on a Congressional determination that the securities themselves should be exempt from registration. See letter re *H.C. Prange Company* dated July 14, 1980.

### A. Sales by Plans

In Release 6188,<sup>33</sup> the staff indicated that if a plan is considered an affiliate<sup>34</sup> of the employer, any sales by it of employer stock "would be subject to the registration and antifraud provisions of the 1933 Act in the same manner as if the employer were engaging in the transaction." Some persons have asked whether this statement was meant to imply that plans which are affiliates cannot use Rule 144 [17 CFR 230.144]<sup>35</sup> under the Act to sell employer stock. The basis for this inquiry lies in the fact that issuers are barred from using Rule 144 to sell their own stock, and thus it could be inferred from the staff's statement that plans which are affiliates of such issuers likewise are so barred.

The statement quoted above was not intended to preclude plans from using Rule 144 to sell employer stock. Only issuers are prohibited from using the rule. Thus, an affiliate plan may rely on Rule 144 to sell stock of the employer, provided it complies with all applicable conditions of that rule.

### B. Resales by Plan Participants

The staff stated in Release 6188 that non-affiliates who receive unregistered securities from a plan could resell such securities immediately without any restrictions (such as registration or compliance with Rule 144) if three conditions were satisfied.<sup>36</sup> The three conditions are: (1) the issuer of the securities is subject to the periodic reporting requirements of Section 13 or 15(d) of the 1934 Act, (2) the stock being distributed is actively traded in the open market, and (3) the number of shares being distributed is relatively small in relation to the number of shares of that class issued and outstanding. Several persons have asked that the staff

provide some guidance as to what is considered to be a "relatively small amount" under the third condition noted above. In this regard, it is the staff's view that a relatively small amount will always be involved when the total amount of shares distributed by a plan to its participants during a fiscal year does not exceed one percent of the outstanding securities of the class. Distributions during a fiscal year which exceed the one-percent test may in some cases still be deemed to involve relatively small amounts if there is data (such as a large trading volume) indicating that resales of the distributed shares will not have a measurable impact on the trading market.

With respect to resales by affiliates, the staff indicated in Release 6188 that, even when the three conditions described above are satisfied, resales by such persons would continue to be subject to registration in the absence of an available exemption, such as that provided by Rule 144. In this regard, the staff also has stated that if the three conditions are complied with the securities involved will not be considered "restricted securities" under Rule 144.<sup>37</sup> As a result, affiliates may disregard the two-year holding period requirement of Rule 144 in the event they choose to rely on that rule for the resale of their securities.

### IV. Form S-8

Form S-8 [17 CFR 239.16b] is the principal form used to register securities issued in connection with employee benefit plans.<sup>38</sup> In the last several months, the Commission and its staff have taken several steps designed to minimize the burdens imposed on issuers who use this form.

<sup>33</sup> Release 33-5750 (October 8, 1976) [41 FR 45632].

<sup>34</sup> See Part V, Section B of Release 6188.

<sup>35</sup> An "affiliate" of an entity is defined in Rule 405 [17 CFR 230.405] under the 1933 Act as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the [entity]."

<sup>36</sup> Rule 144 provides a safe harbor from the registration provisions of the 1933 Act for the resale of restricted securities (i.e., securities acquired in non-public transactions from the issuer or an affiliate) and securities held by affiliates. It contains various conditions, including requirements that there be current information about the issuer available to the public and that the securities have been held by the seller for at least two years.

<sup>37</sup> An assumption underlying the staff's position is that the unregistered securities were distributed in a legal offering to plan participants. If the securities were issued in an illegal offering, non-affiliate participants not involved in the illegality could, pursuant to the policy underlying Section 4(3)(A) of the 1933 Act, freely resell such securities without regard to whether the three conditions were satisfied. For a discussion of Section 4(3)(A) of the Act, see 1 Loss, Securities Regulation (1961), p. 257, fn. 228.

<sup>38</sup> Form S-8 can be used for offerings which are limited to employees of the issuer and its parents and subsidiaries, provided the following conditions are met: (1) the issuer, at the time of filing, has been subject to the periodic reporting requirements of Section 13 or 15(d) of the 1934 Act for at least the prior 90 days and has filed all reports required during the preceding 12 months or such shorter period that it was subject to those requirements, and (2) the issuer has furnished or will furnish an annual report to security holders for its last fiscal year containing substantially the information required by Rule 144-3 [17 CFR 240.144-3] under the 1934 Act. Those issuers who are unable to satisfy the requirements for the use of Form S-8 can use Form S-1 [17 CFR 239.11] or, if they qualify, Form S-7 [17 CFR 239.28], Form S-16 [17 CFR 239.27], or Form S-18 [17 CFR 239.38]. Issuers who utilize these other forms for registering primary offerings by employee benefit plans must include therein all of the information regarding the plans which Form S-8 would otherwise require. Thus, the disclosures regarding the plan would be the same, no matter which registration form was used.



### A. Revisions to the form and to the Procedures for Making it Effective

The initial step taken by the Commission was to revise the procedures utilized by it for making filings on Form S-8 effective under the 1933 Act.<sup>39</sup> Formerly, registration statements on Form S-8 and post-effective amendments thereto generally were not made effective until the Commission's staff had reviewed the filings in question and was satisfied that they were in compliance with all applicable disclosure requirements. It became increasingly apparent to the Commission, however, that most filings on Form S-8 complied in all material respects with the disclosure requirements of the form and related rules, and that the review process resulted in only minimal disclosure improvement. Under the circumstances, the Commission believed that the public interest would generally best be served by prompt effectiveness of such filings without the delays necessitated by the low review priority given to them. Accordingly, the Commission adopted or amended several rules under the 1933 Act,<sup>40</sup> as well as Form S-8 itself, to provide for such prompt effectiveness. The net effect of these changes was to permit original filings on Form S-8 to become effective automatically 20 days following the date of filing and to allow post-effective amendments on Form S-8 to become effective automatically on the date of filing.

A second step of even greater significance taken by the Commission was the adoption of a completely revised Form S-8.<sup>41</sup> The new form generally requires fewer disclosures than formerly were necessary, thereby reducing the time and expense involved in preparing such filings. Moreover, as explained in the next section, it provides for a method of updating which requires minimal effort and expense.

### B. Changes in Methods of Updating

In order to satisfy the current prospectus requirements of Section 10(a)(3) of the 1933 Act, issuers in the past generally updated their Form S-8 registration statements on an annual basis through the filing of a post-effective amendment. The preparation of

many such amendments was costly and time-consuming, due to the fact that a completely revised prospectus generally had to be included in order to reflect all material changes from the preceding year.

In recognition of the considerable effort and expense involved in preparing annual post-effective amendments, the Commission adopted an updating procedure for the new Form S-8 that is similar to that utilized for many years under Form S-16. The new procedure allows the issuer generally to continue to use the same prospectus (sometimes characterized as an "evergreen prospectus") year-after-year without any fundamental changes. Thus, preparation, printing and distribution costs are considerably reduced when this method is used.

In those unusual situations where annual updating cannot be completely accomplished through the filing of 1934 Act periodic reports,<sup>42</sup> the staff has indicated that issuers may utilize an "appendix" to the evergreen prospectus for this purpose.<sup>43</sup> The appendix generally would consist of a page or two containing the additional information required to update the S-8 and would be distributed to existing plan participants in lieu of a completely revised prospectus. New participants, of course, would be furnished with both the evergreen prospectus and the appendix, and existing participants could also obtain copies of the evergreen prospectus, if they so desired. Again, this method of updating is advantageous because it allows printing and other costs to be reduced.

<sup>39</sup> It should be noted that in order to utilize the 1934 Act periodic reports for updating purposes, it is necessary that the accountant for the issuer file a consent with the Commission permitting the financial statements and related accountant's opinion in the issuer's Form 10-K [17 CFR 249.310] to be used in connection with the Form S-8 under the 1933 Act.

<sup>40</sup> For example, updating by filing a post-effective amendment to the S-8 may still be necessary to disclose: (1) changes in the tax effects which may accrue to employees (and to the issuer) as result of participation in the plan, (2) changes in the approximate number of employees participating in the plan and the number eligible to participate, (3) changes in the names and addresses of the plan administrators and any material relationships between them and the plan participants, the issuer or its affiliates, and (4) changes in the data required for the purpose of evaluating alternative investment media.

<sup>41</sup> Letter re *Crocker National Corporation* dated September 25, 1980.

### C. Other Efforts to Minimize Burdens

In addition to the foregoing, the staff has issued two no-action letters designed to further alleviate the burdens associated with Form S-8.

The first letter<sup>44</sup> permits issuers to take advantage of the new updating procedure described above without the necessity of making a complete filing on the new Form S-8. The staff's position is based on the fact that the former S-8 form generally required more information to be disclosed than the new form and therefore plan participants will not suffer if the old form continues to be used for a period of time. Thus, an issuer with an existing S-8 registration statement on file generally may avail itself of the new updating procedure immediately by filing a post-effective amendment (using the appendix approach, if desired) containing the information required by Item 12 ("Incorporation of Certain Documents by Reference") and Item 13 ("Additional Information") of the new S-8 form and the undertakings required by Part II of that form.<sup>45</sup>

The second letter<sup>46</sup> permits issuers to use the summary plan description required by ERISA to satisfy certain of the disclosure requirements of Form S-8 regarding the plan. In effect, this position allows issuers to eliminate essentially duplicative disclosures that may have occurred under ERISA and the 1933 Act in the past. Pursuant to the letter, an issuer is allowed to file the summary plan description as an exhibit to the S-8. The issuer, however, need not attach the summary plan description to the prospectus delivered to employees, since such persons would independently be furnished with a copy of the summary plan description pursuant to the requirements of ERISA.

The staff's position described above is subject to the following conditions: (1) the issuer must state in its Form S-8 prospectus that a current copy of the summary plan description will be provided to any plan participant upon request; (2) the issuer will continue to comply with the requirements of ERISA pertaining to the amendment and distribution of the summary plan description; and (3) the issuer will update, when necessary, the copy of the summary plan description on file with the Commission through the filing of

<sup>42</sup> *Ameron, Inc.* dated May 1, 1980.

<sup>43</sup> Of course, consistent with the updating procedure utilized with respect to Form S-16 filings, the issuer should also file the consent of its independent public accountant, as noted in fn. 42. Further, any material amendments to the plan not previously described in the S-8 would have to be disclosed in the post-effective amendment.

<sup>44</sup> *Shop & Co., Inc.* dated July 17, 1980.

<sup>39</sup> Release 33-6190 [February 22, 1960] [FR 13438].  
<sup>40</sup> The rules involved in the changes were Rules 464 [17 CFR 230.464], 473 [17 CFR 230.473], 475a [17 CFR 230.475a], 477 [17 CFR 230.477], and 485 [17 CFR 230.485].

<sup>41</sup> Release 33-6202 [April 2, 1980] [45 FR 23653]. In that release, the Commission also substantially amended Form 11-K [17 CFR 249.31], the annual report under the 1934 Act required to be filed by plans which have registered interests therein pursuant to the 1933 Act.

exhibits to the S-6 and, where appropriate, the annual reports of the plan filed on Form 11-K.

Accordingly, 17 CFR Part 231, is amended by adding reference to this release thereto.

By the Commission,  
George A. Fitzsimmons,  
Secretary.

January 15, 1981.

[FR Doc. 81-2857 Filed 1-26-81; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 274

[Docket No. RM81-12]

#### Interim Rule Under Section 108 of the NGPA Concerning Temporary Pressure Buildup in Qualifying Stripper Wells

##### Correction

In FR Doc. 81-2203 published in the issue of Thursday January 22, 1981, at page 6901, make the following correction:

On page 6902, third column, under Part 274, the section heading now reading "§ 271.806 \* \* \*" should read "§ 274.206 \* \* \*".

BILLING CODE 1505-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Ch. I

#### Redesignation of Hearing Clerk's Office as Dockets Management Branch

**AGENCY:** Food and Drug Administration.

**ACTION:** Final Rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending Chapter I of Title 21 of the Code of Federal Regulations to reflect the Hearing Clerk's office name change to Dockets Management Branch.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Agnes B. Black, Federal Register Writer's Office (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

**SUPPLEMENTARY INFORMATION:** FDA has designated the Administrative Proceedings Staff-Hearing Clerk's office a branch of the Division of Management Systems and Policy and renamed it the Dockets Management Branch. This

document amends Chapter I of Title 21 of the Code of Federal Regulations to reflect the name change.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 710(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended in Parts 1 through 1299 by changing "office of the Hearing Clerk," "Hearing Clerk's office," and "Hearing Clerk," wherever they appear, to read "Dockets Management Branch."

**Effective date:** January 27, 1981.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

**Dated:** December 23, 1980.

William F. Randolph,

Acting Associate Commissioner, Regulatory Affairs.

[FR Doc. 81-2811 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 5, 7, 10, 12, 14, 19, 20, 21, 25, 109, 110, 330, 509, 510, 808, 1010, 1030, 1240, and 1250

[Docket No. 80N-0452]

#### Reorganization/Location Changes

**AGENCY:** Food and Drug Administration.

**ACTION:** Final Rule.

**SUMMARY:** The Food and Drug Administration is amending the various regulations that were affected by the April 1978 reorganization of the Office of the Commissioner. The amendment includes the transfer of functions between offices, new organizational entities, changes in position and organization titles, and changes in room locations and mailing addresses.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

**SUPPLEMENTARY INFORMATION: 1.**

*Transfer of functions.* The Public Records and Documents Center (PRDC) of the Office of Compliance was abolished, and the Freedom of Information and Privacy Act functions were transferred to the Office of Public Affairs with the administrative proceedings (Hearing Clerk) functions transferring to the retitled Office of Management and Operations. References to PRDC are being changed.

**2. New organizational entities.** A Freedom of Information Staff has been

established in the Office of Public Affairs to perform the Freedom of Information and Privacy Act functions. A Dockets Management Branch has been established in the Office of Management and Operations to perform the administrative proceedings (Hearing Clerk) functions. References to PRDC or Hearing Clerk are being changed according to the division of functions between these two new organizations.

**3. Changes in position and organization titles.** The Associate Commissioner for Compliance became the Associate Commissioner for Regulatory Affairs; the Associate Commissioner for Administration became the Associate Commissioner for Management and Operations; the Assistant Commissioner for Public Affairs became the Associate Commissioner for Public Affairs. The Office of Compliance became the Office of Regulatory Affairs; the Office of Administration became the Office of Management and Operations; the Office of Public Affairs did not change. The Special Assistant for Consumer Affairs now heads a new Office of Consumer Affairs with the title of Associate Commissioner for Consumer Affairs. All references are changed accordingly.

**4. Changes in room locations and mailing addresses.** Wherever appropriate new locations and addresses are referenced.

**5. Other changes.** Because of other reorganizations, references to the Department of Health, Education, and Welfare are changed to the Department of Health and Human Services, and references to the Civil Service Commission are changed to the Office of Personnel Management.

In a rule published elsewhere in this issue of the *Federal Register*, the agency is amending 21 CFR Chapter I, Parts 1 thru 1299, to change the Hearing Clerk's name to Dockets Management Branch.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of 21 CFR is amended in Parts 5, 7, 10, 12, 14, 19, 20, 21, 25, 109, 110, 330, 509, 510, 808, 1010, 1030, 1240, and 1250 as follows:

#### SUBCHAPTER A—GENERAL

#### PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. Part 5 is amended:
  - a. By revising § 5.105, to read as follows:

**§ 5.105 Chief Counsel, Food and Drug Administration.**

The Chief Counsel to the Commissioner of Food and Drugs is the Assistant General Counsel, Food and Drug Division, Office of the General Counsel, Department of Health and Human Services, Room 6-57, 5600 Fishers Lane, Rockville, MD 20857.

b. By revising § 5.110, to read as follows:

**§ 5.110 FDA Public Information Offices.**

(a) *Dockets Management Branch (HFA-305)*. The Dockets Management Branch Public Room is located in Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301-443-1753.

(b) *Freedom of Information Staff (HFI-35)*. The Freedom of Information Public Room is located in Room 12A-30, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301-443-6310.

(c) *Press Relations Staff (HFI-40)*. Press Offices are located in Room 15B-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301-443-3285; and in Room 3807, FB-8, 200 C Street SW., Washington, D.C. 20204. Telephone: 202-245-1144.

**PART 7—ENFORCEMENT POLICY**

2. Part 7 is amended in § 7.42 by revising the introductory text of paragraph (b)(3), to read as follows:

**§ 7.42 Recall strategy.**

(b) \* \* \*

(3) *Effectiveness checks*. The purpose of effectiveness checks is to verify that all consignees at the recall depth specified by the strategy have received notification about the recall and have taken appropriate action. The method for contacting consignees may be accomplished by personal visits, telephone calls, letters, or a combination thereof. A guide entitled "Methods for Conducting Recall Effectiveness Checks" that describes the use of these different methods is available upon request from the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. The recalling firm will ordinarily be responsible for conducting effectiveness checks, but the Food and Drug Administration will assist in this task where necessary and appropriate. The recall strategy will specify the method(s) to be used for and the level of effectiveness checks that will be conducted, as follows:

**PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES**

3. Part 10 is amended:

a. In § 10.3(a) by removing the definition "Hearing Clerk" and adding alphabetically the definition "Dockets Management Branch" to read as follows:

**§ 10.3 Definitions.**

(a) \* \* \*

"Dockets Management Branch" means the Dockets Management Branch, Office of Management and Operations of the Food and Drug Administration, U.S. Department of Health and Human Services, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

b. In § 10.20 by revising the section heading and paragraph (f), to read as follows:

**§ 10.20 Submission of documents to Dockets Management Branch; computation of time; availability for public disclosure.**

(f) All submissions are to be mailed or delivered in person to the Dockets Management Branch, Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, except that a submission which is required to be received by the Branch by a specified date may be delivered in person to the FDA building in Washington (Room 6819, 200 C Street SW., Washington, DC 20204) and will be considered as received by the Branch on the date on which it is delivered.

**§ 10.30 [Amended]**

c. In § 10.30(b) by revising the entry for the Hearing Clerk to read "Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857."

**§ 10.33 [Amended]**

d. In § 10.33(b) by revising the entry for the Hearing Clerk to read "Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857."

**§ 10.35 [Amended]**

e. In § 10.35(b) by revising the entry for the Hearing Clerk to read "Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857."

**§ 10.85 [Amended]**

f. In § 10.85(b) by revising the entry for the Hearing Clerk to read "Dockets Management Branch, Food and Drug

Administration, Department of Health and Human Services, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857."

g. In § 10.95 by revising paragraphs (b)(2) and (d)(7), to read as follows:

**§ 10.95 Participation in outside standard-setting activities.**

(2) Approval forms and all pertinent background information describing the activity will be included in the public file on standard-setting activities established by the Freedom of Information Staff.

(7) The Commissioner may determine in writing that, because direct involvement by FDA in a particular standard-setting activity is in the public interest and will promote the objectives of the act and the agency, the participation is exempt from the requirements of paragraph (d)(1)(ii) and/or (iii) of this section. This determination will be included in the public file on standard-setting activities established by the Freedom of Information Staff and in any relevant administrative file. The activity may include the establishment and validation of analytical methods for regulatory use, drafting uniform laws and regulations, and the development of recommendations concerning public health and preventive medicine practices by national and international organizations.

h. In § 10.220 by revising paragraph (a), to read as follows:

**§ 10.220 Processing of applications by the evaluation board.**

(a) Applications shall be processed by an Evaluation Board composed of the Associate Commissioner for Consumer Affairs, or his or her representative, who will serve as chairman of the Evaluation Board, the Associate Commissioner for Management and Operations, or his or her representative, and a third agency employee to be appointed by the Commissioner. Whenever a member of the Evaluation Board is participating in a Part 12, 13, 14, 15, or 16 proceeding, he or she shall be disqualified from reviewing or ruling upon applications for reimbursement filed in connection with that proceeding. In the event of such a disqualification, the disqualified Board member shall be replaced by an agency employee to be appointed by the Commissioner.

**PART 12—FORMAL EVIDENTIARY PUBLIC HEARING****§ 12.45 [Amended]**

4. In Part 12, § 12.45(a) is amended by revising the entry for the Hearing Clerk to read "Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857."

**PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE**

5. In Part 14, § 14.65 is amended by revising paragraph (a), to read as follows:

**§ 14.65 Public inquiries and requests for advisory committee records.**

(a) Public inquiries on general committee matters, except requests for records, are to be directed to: Committee Management Officer (HFA-306), Office of Management and Operations, Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

**PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST**

6. Part 19 is amended:

a. In § 19.10 by revising paragraphs (a) and (b) and the introductory text of paragraph (d), to read as follows:

**§ 19.10 Food and Drug Administration Conflict of Interest Review Board.**

(a) The Commissioner shall establish a permanent five-member Conflict of Interest Review Board, which shall review and make recommendations to the Commissioner on all specific or policy matters relating to conflicts of interest arising within the Food and Drug Administration that are forwarded to it by (1) the Associate Commissioner for Management and Operations or (2) anyone who is the subject of an adverse determination by the Associate Commissioner for Management and Operations on any matter arising under the conflict of interest laws, except a determination of an apparent violation of law. The Director, Division of Personnel Management, Office of Management and Operations, shall serve as executive secretary of the Review Board.

(b) It shall be the responsibility of every Food and Drug Administration employee with whom any specific or policy issue relating to conflicts of interest is raised, or who otherwise wishes to have any such matter resolved, to forward the matter to the Associate Commissioner for

Management and Operations for resolution, except that reporting of apparent violations of law are governed by § 19.21.

(d) All decisions relating to specific individuals shall be placed in a public file established for this purpose by the Freedom of Information Staff, e.g., a determination that a consultant may serve on an advisory committee with specific limitations or with public disclosure of stock holdings, except that such determination shall be written in a way that does not identify the individual in the following situations:

b. In § 19.21 by revising paragraph (a), to read as follows:

**§ 19.21 Duty to report violations.**

(a) The Policy Management Staff, Office of Management and Operations, is responsible for obtaining factual information for the Food and Drug Administration on any matter relating to allegations of misconduct, impropriety, conflict of interest, or other violations of Federal statutes by agency personnel.

**PART 20—PUBLIC INFORMATION**

7. Part 20 is amended:

a. In § 20.3 by revising paragraph (b), to read as follows:

**§ 20.3 Certification and authentication of Food and Drug Administration Records.**

(b) A request for certified copies of records or for authentication of records shall be sent in writing to the Freedom of Information Staff (HFI-35), Food and Drug Administration, Room 12A-16, 5600 Fishers Lane, Rockville, MD 20857.

b. In § 20.26 by revising paragraph (b), to read as follows:

**§ 20.26 Indexes of certain records.**

(b) A copy of each such index is available at cost from the Freedom of Information Staff (HFI-35), Food and Drug Administration, Room 12A-16, 5600 Fishers Lane, Rockville, MD 20857.

c. In § 20.30 by revising the section heading and paragraph (a), to read as follows:

**§ 20.30 Food and Drug Administration Freedom of Information Staff.**

(a) The Office responsible for agency compliance with the Freedom of Information Act and this part is:

Freedom of Information Staff (HFI-35), Food and Drug Administration, Room 12A-16, 5600 Fishers Lane, Rockville, MD 20857.

d. In § 20.40 by revising paragraphs (a) and (c), to read as follows:

**§ 20.40 Filing a request for records.**

(a) All requests for Food and Drug Administration records shall be filed in writing by mailing the request or delivering it to the Freedom of Information Staff (HFI-35), Food and Drug Administration, Room 12A-16, 5600 Fishers Lane, Rockville, MD 20857.

(c) Upon receipt of a request for records, the Freedom of Information Staff shall enter it in a public log. The log shall state the date received, the name of the person making the request, the nature of the record requested, the action taken on the request, the date of determination letter sent pursuant to § 20.41(b), and the date(s) any records are subsequently furnished.

e. In § 20.41 by revising paragraph (a), the introductory text of paragraph (b) and paragraph (b)(3)(i), to read as follows:

**§ 20.41 Time limitations.**

(a) All time limitations prescribed pursuant to this section shall begin as of the time at which a request for records is logged in by the Freedom of Information Staff pursuant to § 20.40(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the agency shall not begin any time requirement until it is redirected to the Freedom of Information Staff and is logged in there in accordance with § 20.40(c).

(b) Within 10 working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged in at the Freedom of Information Staff, a letter shall be sent to the persons making the request determining whether, or to the extent which, the agency will comply with the request, and, if any records are denied, the reasons therefor.

(3) \* \* \*

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Freedom of Information Staff.

f. In § 20.43 by revising paragraph (b), the introductory text of paragraph (c), and paragraph (c)(2) and (3), to read as follows:

**§ 20.43 Waiver of fees.**

(b) The Associate Commissioner for Public Affairs may waive payment of

fees when he or she determines, based upon a petition, that the person making the request for records is indigent and that the disclosure has a strong public interest justification. All statements made in any such petition are subject to the False Reports to the Government Act, 18 U.S.C. 1001. A person shall be deemed to be indigent for the purposes of this section if he or she does not have income or resources sufficient to pay the fees involved. Determinations pursuant to this provision will be made within the discretion of the agency.

(c) The Associate Commissioner for Public Affairs may reduce or waive payment of fees when he or she determines, based upon a verified petition, that such reduction or waiver is in the public interest because furnishing the information can be considered primarily as benefiting the general public.

(2) The Associate Commissioner for Public Affairs may make available part of the records requested, or different records from those requested, in response to any such request for waiver of fees where he or she concludes that such records adequately meet that part of the request which is in the public interest.

(3) In making a determination of the broad public interest involved, the Associate Commissioner for Public Affairs will weigh the agency resources involved against the likely benefit to the public.

g. In § 20.44 by revising paragraphs (a) and (f), to read as follows:

**§ 20.44 Presubmission review of request for confidentiality of voluntarily submitted data or information.**

(a) Any person who is considering submission of data or information voluntarily to the Food and Drug Administration may forward to the Director of the Bureau involved, or to the Associate Commissioner for Regulatory Affairs, a request for presubmission review of the records involved to determine whether the Food and Drug Administration will or will not make part or all of them available for public disclosure upon request if they are submitted. Any such request shall state why the data or information involved fall within an exemption from public disclosure set out in Subpart D of this part and shall enclose the records involved.

(f) A determination based upon a presubmission review pursuant to this section shall be made in writing and

shall be signed only by the Associate Commissioner for Public Affairs.

h. In § 20.47 by revising paragraph (a), to read as follows:

**§ 20.47 Denial of a request for records.**

(a) A denial of a request for records, in whole or in part, shall be signed by the Associate Commissioner for Public Affairs.

i. In § 20.107 by revising paragraph (a), to read as follows:

**§ 20.107 Food and Drug Administration manuals.**

(a) All Food and Drug Administration Staff Manuals and instructions to staff that affect a member of the public are available for public disclosure. An index of all such manuals is available at the Food and Drug Administration's Freedom of Information Public Room in accordance with § 20.26.

j. In § 20.108 by revising paragraph (b), to read as follows:

**§ 20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.**

(b) A permanent file of all such agreements and understandings is available for public review during working hours in the Food and Drug Administration's Freedom of Information Public Room.

k. In § 20.117 by revising the introductory text of paragraph (a), to read as follows:

**§ 20.117 New drug information.**

(a) The following computer printouts are available for public inspection in the Food and Drug Administration's Freedom of Information Public Room:

**PART 21—PROTECTION OF PRIVACY**

8. Part 21 is amended:

a. In § 21.1 by revising paragraph (b)(4), to read as follows:

**§ 21.1 Scope.**

(b) (4) Apply to personnel records maintained by the Division of Personnel Management, Food and Drug Administration, except as provided in § 21.32. Such records are subject to regulations of the Office of Personnel Management in 5 CFR Parts 293, 294, and 297.

b. In § 21.20 by revising paragraphs (a) and (b)(8), to read as follows:

**§ 21.20 Procedures for notice of Food and Drug Administration Privacy Act Record Systems.**

(a) The Food and Drug Administration shall issue in the Federal Register on or before August 30 of each year a notice concerning each Privacy Act Record System as defined in § 21.3(c) that is not covered by a notice published by the Department, the Office of Personnel Management, or another agency.

(b) (8) The notification procedure, i.e., the address of the FDA Privacy Act Coordinator, whom any individual can contact to seek notification whether the system contains a record about him/her.

c. In § 21.32 by revising paragraph (a), the introductory text of paragraph (b)(1), and paragraphs (b)(1)(i), (b)(2), (b)(3)(i) and (ii), (c), (d)(4), (5), and (6), to read as follows:

**§ 21.32 Personnel records.**

(a) Present and former Food and Drug Administration employees desiring access to personnel records about themselves should consult system notices applicable to the agency's personnel records that are published by the Office of Personnel Management and the Department as well as any notice issued by the Food and Drug Administration.

(b) (1) The procedures of the Office of Personnel Management at 5 CFR Parts 293, 294, and 297 rather than the procedures in § 21.33 and Subparts D through F of this part, govern systems of personnel records about Food and Drug Administration employees that are subject to notice published by the Office of Personnel Management, i.e., systems that:

(i) The Office of Personnel Management maintains.

(2) The Office of Personnel Management's procedures may, if necessary, be supplemented in the Food and Drug Administration Staff Manual Guide. Current Food and Drug Administration employees should mail or deliver written requests under the Privacy Act for access to personnel records described in this paragraph to the Office of Personnel Management in accordance with 5 CFR 297.106, the Director, Division of Personnel Management (HFA-400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the personnel officer in the servicing HHS Regional Personnel Office. An employee may consult with or direct his or her request to the FDA Privacy Act Coordinator (HFI-30). Requests for access to

personnel records of former employees that are located in Federal Records Centers should be directed to the Office of Personnel Management. Requests under the Privacy Act for amendment of personnel records should be directed to these same officials who are responsible for access to personnel records under this paragraph.

(3) \* \* \*

(i) Refusal to grant access to a record, or refusal to amend a record upon request of an employee, shall only be made by the Associate Commissioner for Management and Operations or his or her designate; and

(ii) Appeals of refusals under paragraph (b)(3)(i) of this section may be made to the Office of Personnel Management in accordance with 5 CFR 297.108(g)(3) and 297.113(b).

(c) Any other Privacy Act Record Systems that contain personnel records, or records that otherwise concern agency employees, that are maintained by offices of the Food and Drug Administration rather than the Division of Personnel Management but which are not subject to the Department's notice for personnel records in operating offices are subject to this part, except that refusals under this part to grant access to or amend records about present or former employees shall be made by the Associate Commissioner for Management and Operations rather than the Associate Commissioner for Public Affairs.

(d) \* \* \*

(4) Records that are subject to this paragraph shall be available for access to an individual, except to the extent that access is refused by the Associate Commissioner for Management and Operations or his or her designate on the grounds that the record is subject to an exemption under § 21.61 or 5 CFR 297.111.

(5) Requests under the Privacy Act for amendment of records subject to this paragraph should be directed to the Director, Division of Personnel Management (HFA-400). Such requests shall be reviewed in accordance with Subpart E of this part. Refusal to amend a record subject to this paragraph (d)(5) shall only be made by the Associate Commissioner for Management and Operations or his or her designate.

(6) Appeals of refusals under paragraph (d)(4) or (5) of this section may be made to the Commissioner of Food and Drugs, except where the Associate Commissioner for Management and Operations or his or her designate indicates with his or her

refusal that the appeal should be made to the Office of Personnel Management.

d. In § 21.40 by revising paragraphs (b) and (g), to read as follows:

**§ 21.40 Procedures for submitting requests for notification and access.**

(b) An individual desiring notification or access to records shall mail or deliver a request for records in any Food and Drug Administration Privacy Act Records System to the FDA Privacy Act Coordinator (HFI-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(g) The Freedom of Information Staff shall maintain and make available copies of the forms (OF-203 Privacy Act Request forms) to assist individuals in filing requests under § 21.40.

e. In § 21.41 by revising paragraphs (c), (d), (e), (f), and (g), to read as follows:

**§ 21.41 Processing of requests.**

(c) The FDA Privacy Act Coordinator (HFI-30) in the Freedom of Information Staff shall be responsible for the handling of Privacy Act requests received by the Food and Drug Administration. Requests mailed or delivered to any other office shall be promptly redirected to the FDA Privacy Act Coordinator. Where this procedure would unduly delay the agency's response, however, the agency employee who received the request should consult with the FDA Privacy Act Coordinator and obtain advice as to whether the employee can respond to the request directly.

(d) Upon receipt of a request by the FDA Privacy Act Coordinator, a record shall promptly be made that a request has been received and the date.

(e) A letter in accordance with § 21.42 responding to the request for notification shall issue as promptly as possible after receipt of the request by the Food and Drug Administration. Upon determination by the Freedom of Information Staff that a request for access to records is appropriately treated as a request under Part 20 of this chapter rather than Part 21, or under both parts, the time limitations prescribed in § 21.41 shall apply. In any case, access to available records shall be provided as promptly as possible.

(f) Except as provided in § 21.32, an individual's access to records about him/herself that are retrieved by his/her name or other personal identifiers and contained in any privacy Act Record System may only be denied by the

Associate Commissioner for Public Affairs or his or her designate. An individual shall not be denied access to any record that is otherwise available to him/her under this part except on the grounds that it is exempt under § 21.65(a)(2), that it was compiled in reasonable anticipation of court litigation of formal administrative proceedings, or to the extent that it is exempt or prohibited from disclosure because it includes a trade secret or commercial or financial information that is privileged or confidential information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy of another individual.

(g) The FDA Privacy Act Coordinator shall ensure that records are maintained of the number, status, and disposition of requests under this subpart, including the number of requests for records exempt from access under this subpart and other information required for purposes of the annual report to Congress under the Privacy Act. These temporary administrative management records shall not be considered to be Privacy Act Record Systems. All records required to be kept under this paragraph shall only include requesting individuals' names or personal identifiers for so long as any request for notification, access, or amendment is pending. The identity of individuals making request under this subpart shall be regarded as confidential and shall not be disclosed under Part 20 of this chapter (the public information regulations) to any other person or agency except as is necessary for the processing of requests under this subpart.

f. In § 21.42 by revising paragraph (b), to read as follows:

**§ 21.42 Responses to requests.**

(b) Except as provided in § 21.32, access to a record may only be denied by the Associate Commissioner for Public Affairs or his or her designate. If access to any record is denied wholly or in substantial part, the letter shall state the right of the individual to appeal to the Commissioner of Food and Drugs.

g. In § 21.43 by revising paragraph (a)(2), to read as follows:

**§ 21.43 Access to requested records.**

(2) Permitting the requesting individual to review the records in person between 9 a.m. and 4 p.m. at the office of the FDA Privacy Act Coordinator, at the Freedom of Information Staff Public Room at the address shown in § 20.30 of this chapter.

or at any Food and Drug Administration field office listed in § 5.115 of this chapter or at another location or time upon which the Food and Drug Administration and the individual agree. Arrangement for such review can be made by consultation between the FDA Privacy Act Coordinator and the individual. An individual seeking to review records in person shall generally be permitted access to the file copy, except that where the records include nondisclosable information, a copy shall be made of that portion of the records, with the nondisclosable information blocked out. Where the individual is not given a copy of the record to retain, no charge shall be made for the cost of copying a record to make it available to an individual who reviews a record in person under this paragraph.

h. In § 21.50 by revising paragraph (c), to read as follows:

**§ 21.50 Procedures for submitting requests for amendment of records.**

(c) Requests to amend records shall be submitted, in writing, to the FDA Privacy Act Coordinator in accordance with § 21.40(b). Such requests shall include information sufficient to enable the Food and Drug Administration to locate the record, a brief description of the items of information requested to be amended, and the reasons why the record should be amended together with any appropriate documentation or arguments in support of the requested amendment. An edited copy of the record showing the described amendment may be included. Verification of identity should be provided in accordance with § 21.44.

i. In § 21.51 by revising paragraph (a)(2), to read as follows:

**§ 21.51 Responses to requests for amendment of records.**

(a) \* \* \*

(2) Inform the individual of its refusal to amend any portion of the record in the manner requested, the reason for the refusal, and the opportunity for administrative appeal to the Commissioner of Food and Drugs. Except as provided in § 21.32, such refusal may only be issued by the Associate Commissioner for Public Affairs or his or her designate.

j. In § 21.61 by revising paragraph (b)(1), (2), (3), and (4), to read as follows:

**§ 21.61 Exempt systems.**

(b) \* \* \*

(1) Bio-research monitoring Information System—HHS/FDA/BD/09-10-0010.

(2) Regulated Industry Employee Enforcement Records—HHS/FDA/ACMO/09-10-0002.

(3) Employee Conduct Investigative Records—HHS/FDA/ACMO/09-10-0013.

(4) Service Contractor Employee Investigative Records—HHS/FDA/ACMO/09-10-0014.

**PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS**

9. Part 25 is amended:

a. In § 25.25 by revising paragraph (a)(3)(v), to read as follows:

**§ 25.25 Preparation and review procedures.**

(a) \* \* \*

(3) \* \* \*

(v) All comments on draft environmental impact statements shall be submitted in quintuplicate to the Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, where they shall be available for public inspection during working hours, Monday through Friday.

b. In § 25.30 by revising paragraph (a), to read as follows:

**§ 25.30 Public availability of environmental impact statements.**

(a) All draft and final environmental impact statements, all environmental impact analysis reports, if required, and all environmental assessment reports, if required, except for such impact statements, reports, or assessments on investigational new drugs or investigational new animal drugs that are confidential information under Part 20 of this chapter, shall be available for public inspection through the Dockets Management Branch.

**SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION**

**PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL**

10. Part 109 is amended in § 109.30 by revising paragraph (b), to read as follows:

**§ 109.30 Temporary tolerances for polychlorinated biphenyls (PCB's).**

\* \* \*

(b) A compilation entitled "Analytical Methodology for Polychlorinated Biphenyls, February 1973" for determining compliance with the tolerances established in this section is available from the Dockets Management Branch, Department of Health and Human Services, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

**PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING HUMAN FOOD**

11. Part 110 is amended § 110.99 by revising paragraph (e), to read as follows:

**§ 110.99 Natural or unavoidable defects in food for human use that present no health hazard.**

(e) Current action levels for natural and unavoidable defects in food for human use that present no health hazard are as follows. (Levels that have been adopted on a temporary basis prior to publication as a regulation may be obtained upon request at the Office of Public Affairs, Food and Drug Administration, Room 15B-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.)

**SUBCHAPTER D—DRUGS FOR HUMAN USE**

**PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED**

12. Part 330 is amended:

a. In § 330.1 by revising paragraph (g), to read as follows:

**§ 330.1 General conditions for general recognition as safe, effective, and not misbranded.**

(g) The labeling for all drugs contains the general warning: "Keep this and all drugs out of the reach of children." The labeling of drugs used for oral administration shall also state: "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The labeling for drugs administered rectally or used topically shall state: "In case of accidental ingestion, seek professional assistance or contact a Poison Control Center immediately." The Food and Drug Administration will grant an exemption from these general warnings where appropriate upon petition, which shall be maintained in a permanent file for public review by the Dockets

Management Branch, Food and Drug Administration, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

b. In § 330.10 by revising paragraph (a)(13)(iii) and (iv), to read as follows:

§ 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

(a) \* \* \*

(13) \* \* \*

(iii) Such notification shall be in the form of a Category III Notification Statement and shall be submitted in quintuplicate to the Dockets Management Branch, Food and Drug Administration, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. A Category III Notification Statement shall contain: (a) Name and address of the sponsor of the study, (b) name and address of each person directly responsible for monitoring the study, (c) each Category III condition being tested in the manner suggested in the applicable final regulation for that class of drugs, and (d) the anticipated date that testing will be initiated, which shall be prior to the date after which a product with a condition subject to paragraph (a)(6)(ii) (Category II) of this section may no longer be shipped in interstate commerce.

(iv) A copy of each Category III Notification Statement shall be maintained in a permanent file for public review in the Dockets Management Branch, Food and Drug Administration, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Upon written request or notice in the Federal Register, the manufacturer or distributor shall furnish to the Food and Drug Administration evidence of the type of test being performed (e.g., in vitro, animal, human, survey, or other), and/or other information and data appropriate to the testing being conducted.

#### SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

##### PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD-PACKAGING MATERIAL

13. Part 509 is amended in § 509.30 by revising paragraph (b), to read as follows:

§ 509.30 Temporary tolerances for polychlorinated biphenyls (PCB's).

(b) A compilation entitled "Analytical Methodology for Polychlorinated

Biphenyls, February 1973" for determining compliance with the tolerances established in this section is available from the Dockets Management Branch, Food and Drug Administration, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

##### PART 510—NEW ANIMAL DRUGS

14. Part 510 is amended in § 510.112 by revising paragraph (a), to read as follows:

§ 510.112 Antibiotics used in veterinary medicine and for nonmedical purposes; required data.

(a) An ad hoc committee, Committee on the Veterinary Medical and Nonmedical Uses of Antibiotics, was formed by the Food and Drug Administration to study, and advise the Commissioner on, the use of antibiotics in veterinary medicine and for various nonmedical purposes as such uses may affect the enforcement of the Federal Food, Drug, and Cosmetic Act with respect to the safety and effectiveness of such substances. A copy of the report may be obtained from the Food and Drug Administration, Office of Public Affairs, Room 15B-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

#### SUBCHAPTER H—MEDICAL DEVICES

##### PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

15. Part 808 is amended in § 808.20 by revising paragraph (b), to read as follows:

§ 808.20 Application.

(b) An application for exemption shall be in the form of a letter to the Commissioner of Food and Drugs and shall be signed by an individual who is authorized to request the exemption on behalf of the State or political subdivision. Four copies of the letter and any accompanying material, as well as any subsequent reports or correspondence concerning an application, shall be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. The outside wrapper of any application, report, or correspondence should indicate that it concerns an application

for exemption from preemption of device requirements.

#### SUBCHAPTER J—RADIOLOGICAL HEALTH

##### PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

16. Part 1010 is amended:

a. In § 1010.4 by revising the introductory text of paragraph (b), to read as follows:

§ 1010.4 Variances.

(b) Applications for variances. Applications for variances or for amendments or extensions thereof shall be submitted in quintuplicate to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

b. In § 1010.5 by revising the introductory text of paragraph (c), to read as follows:

§ 1010.5 Exemptions for products intended for United States Government use.

(c) Application for exemption. An application for exemption, or for amendment or extension thereof, shall be submitted in quintuplicate to the Dockets Management Branch, Food and Drug Administration, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. For an exemption pursuant to the criteria prescribed in paragraph (a)(1) of this section, the application shall include the information prescribed in paragraph (c)(1) through (13) of this section. For an exemption pursuant to the criteria prescribed in paragraph (a)(2) of this section, the application shall include the information prescribed in paragraph (c)(3) through (13) of this section. An application for exemption, or for amendment or extension thereof, and correspondence relating to such application shall be made available for public disclosure in the Dockets Management Branch except for confidential or proprietary information submitted in accordance with Part 20 of this chapter. Information classified for reasons of national security shall not be included in the application. Except as indicated above, the application for exemption shall include the following:



### PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

17. Part 1030 is amended in § 1030.10 by revising the introductory text of paragraph (c)(6)(iv), to read as follows:

#### § 1030.10 Microwave ovens.

(c) \* \* \*

(6) \* \* \*

(iv) Upon application by a manufacturer, the Director, Bureau of Radiological Health, Food and Drug Administration, may grant an exemption from one or more of the statements (radiation safety warnings) specified in paragraph (c)(6)(i) of this section. Such exemption shall be based upon a determination by the Director that the microwave oven model for which the exemption is sought should continue to comply with paragraph (c) (1), (2), and (3) of this section under the adverse condition of use addressed by such precautionary statement(s). Applications shall be submitted in quintuplicate to the Dockets Management Branch, Food and Drug Administration, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Copies of the written portion of the application, including supporting data and information, and the Director's action on the application will be maintained by the Branch for public review. The application shall include:

### SUBCHAPTER L—REGULATIONS UNDER CERTAIN OTHER ACTS ADMINISTERED BY THE FOOD AND DRUG ADMINISTRATION

#### PART 1240—CONTROL OF COMMUNICABLE DISEASES

18. Part 1240 is amended in § 1240.62 by revising paragraph (e), to read as follows:

#### § 1240.62 Turtles.

(e) *Petitions.* The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to amend this regulation. Any such petition shall include an adequate factual basis to support the petition, and will be published for comment if it contains reasonable grounds for the proposed regulation. A petition requesting such a regulation, which would amend this regulation, shall be submitted to the Dockets Management Branch, Food and Drug Administration, Room 4-62,

Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

#### PART 1250—INTERSTATE CONVEYANCE SANITATION

19. Part 1250 is amended in § 1250.51 by revising paragraph (f)(4)(ii), to read as follows:

#### § 1250.51 Railroad conveyances; discharge of wastes.

(f) \* \* \*

(4) \* \* \*

(ii) A public file of requested variances and extensions, their disposition, and information relating to pending actions will be maintained in the Dockets Management Branch, Room 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FDA finds that notice, public procedure, and delayed effective date are unnecessary for the issuance of these amendments because they are nomenclature changes that do not impose an additional duty or burden on any person but rather clarify an existing regulation.

*Effective date.* This regulation shall become effective January 27, 1981.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: December 23, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2812 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-03-M

#### 21 CFR Part 74

[Docket No. 77C-0276]

#### D&C Orange No. 4; Listing of Color Additives Subject to Certification

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is revising the specifications for D&C Orange No. 4 for use in externally applied drugs and cosmetics. This action is being taken because a tolerance for 4,4'-(diazamino)-dibenzene-sulfonic acid was inadvertently omitted in specifications for D&C Orange No. 4.

**DATE:** Effective February 27, 1981.

Objections by February 26, 1981.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

#### FOR FURTHER INFORMATION CONTACT:

Andrew D. Laumbach, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of August 28, 1979 (44 FR 50360), FDA proposed to amend the specifications for D&C Orange No. 4 by adding a tolerance for 4,4'-(diazamino)-dibenzene-sulfonic acid. The revision, proposed at FDA's own initiative, was necessary because a tolerance for 4,4'-(diazamino)-dibenzene-sulfonic acid was inadvertently omitted in the regulation for D&C Orange No. 4 under §§ 74.1254 and 74.2254 (21 CFR 74.1254 and 74.2254). No comment was received in response to the proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399-403 as amended (21 U.S.C. 376(b), (c), and (d))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 74 is amended in § 74.1254 by inserting, after the entry for "Subsidiary colors" in the specifications in paragraph (b), a new entry to read as follows:

#### § 74.1254 D&C Orange No. 4.

(b) \* \* \* 4,4'-(Diazamino)-dibenzene-sulfonic acid, not more than 0.1 percent.

Any person who will be adversely affected by the foregoing order may at any time on or before February 26, 1981 file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections to this order. Objections shall show how the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections if a hearing is held. Four copies of all documents shall be filed and should be identified with the docket number found in brackets in the heading of this document. Received objections may be seen in the Dockets Management Branch, from 9 a.m. to 4 p.m., Monday through Friday.

*Effective date.* This regulation shall be effective February 27, 1981 except as to

any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the Federal Register.

(Sec. 706(b), (c), and (d), 74 Stat. 399-403 as amended (21 U.S.C. 370(b), (c), and (d)))

Dated: January 19, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 2017- Filed 1-26-81; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 146

[Docket No. 78N-0236]

### Grapefruit Juice; Standards of Identity and Fill of Container

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is establishing standards of identity and fill of container for grapefruit juice. These standards were developed after considering the Codex Alimentarius Commission's "Recommended International Standard for Grapefruit Juice Preserved Exclusively by Physical Means," the U.S. Department of Agriculture's "United States Standards for Grades of Grapefruit Juice," and the comments received in response to the proposal. The purpose of this action is to promote honesty and fair dealing in the interest of consumers and facilitate international trade.

**DATES:** Effective July 1, 1983, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin February 27, 1981. Objections by February 26, 1981.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305) (formerly the Hearing Clerk's office), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

**SUPPLEMENTARY INFORMATION:** The standards established by this final rule will, among other things, (1) provide for the addition of concentrated grapefruit juice to grapefruit juice in an amount not to exceed 15 percent of the grapefruit juice soluble solids; (2) permit the adjustment of grapefruit pulp, grapefruit oil, and grapefruit essence content

(components derived from grapefruit) in accordance with good manufacturing practice; (3) permit the addition of specified dry nutritive carbohydrate sweeteners to grapefruit juice; (4) establish a minimum grapefruit juice soluble solids requirement of 9 percent by weight for the product "grapefruit juice from concentrate"; (5) permit the use of specified liquid or dry sweeteners when concentrated juice is used in the preparation of "grapefruit juice from concentrate"; (6) establish a standard of fill of container based upon a minimum of 90 percent of the total capacity of the container except when the food is frozen; and (7) employ a statistical sampling plan for determining compliance with fill-of-container requirements.

A proposal to establish standards of identity and fill of container for grapefruit juice was published in the Federal Register of December 15, 1978 (43 FR 58575). The proposal invited interested persons to submit comments with supporting data concerning: (1) the benefit of including a provision permitting the addition of concentrated grapefruit juice to grapefruit juice; (2) the limitation that should be placed on the amount of concentrate which may be added to grapefruit juice as well as the type of labeling that would be appropriate to inform the consumer of such addition; (3) the quantity (limitation on the amount) of sweetener that may be added to the juice. The proposal also invited the submission of any available data in support of a specific maximum of the grapefruit oil and/or grapefruit essence content.

Nine letters, each containing one or more comments, were received from one government agency, three trade associations representing grapefruit juice packers, four processors or packers, and one supplier of sweeteners. The comments and the agency's responses are as follows:

#### "Fresh" Grapefruit Juice

1. Three comments suggested that a separate standard of identity for "fresh" grapefruit juice should be established.

The agency disagrees. No data were submitted, nor is the agency aware of any data that support the establishment of a separate standard of identity for "fresh" grapefruit juice. Therefore, without the evidence to demonstrate otherwise, FDA concludes that a regulation covering this product is unnecessary. This is in keeping with the President's directive not to promulgate needless regulations. Any interested person who believes that a separate standard for "fresh" grapefruit juice is

necessary is invited to submit a petition with supporting data that demonstrate this need.

#### Preparation for Canning—Centrifuging

2. Two comments recommended that the words "which may include centrifuging" under § 146.132(a)(1) (21 CFR 146.132(a)(1)) be deleted. They contended that listing of one type of permitted mechanical extraction could otherwise be interpreted to imply that certain other unlisted types of mechanical extraction will not be permitted.

FDA agrees, and § 146.132(a)(1), as set out below, reflects this change.

#### Filtering

3. Two comments recommend that the words "but not filtering" under § 146.132(a)(1) be deleted. They argued that (1) filtering could be interpreted to refer to finishing which is essential to the separation of the juice from rag, seed, and excess pulp and (2) there is, in their opinion, no known reason for prohibiting filtering.

FDA agrees that there may be instances where processors may wish to use filtering in the finishing processes. Therefore, § 146.132(a)(1), as set out below, reflects this change.

#### Grapefruit Components vs. Optional Ingredients

4. Two comments recommended that § 146.132(a)(1) should be reworded to include a provision for "grapefruit components," i.e., grapefruit pulp, oil, and essence, to distinguish them from food ingredients (e.g., sugar). Further, the comments stated that inherent grapefruit components derived from grapefruit should not be considered to be "ingredients" and, therefore, should not be declared. In order to accomplish that purpose, the comments recommended that the words "grapefruit components" be added to distinguish pulp, oil, and essence from optional ingredients.

FDA agrees that the grapefruit components need not be declared as optional ingredients and should be distinguished from optional ingredients, and § 146.132(a)(1), as set out below, reflects this change. Further § 146.132(a)(2) lists the optional ingredients permitted as discussed below under the heading "Optional Ingredients."

#### Pulp, Oil, and Essence

5. Two comments contended that the proposal allowed for the removal of pulp, but failed to allow for its restoration. The comments also suggested that the use of the word

"adjusted" clearly allows for the removal of pulp, oil, and essence and may allow oil and essence from the same batch of grapefruit juice to be reincorporated, but the words "or restored" are needed in order to allow the restoration of pulp, oil, and essence previously recovered from a prior batch of grapefruit.

FDA agrees that there may be instances where processors may wish to adjust the pulp as well as the oil and essence content of grapefruit juice, either before or after processing. Therefore, § 146.132(a)(1) of the final regulation includes pulp as a grapefruit component. FDA does not agree that the words "or restored" are needed because the word "adjusted" clearly provides for the removal or restoration of pulp, oil, and essence. Therefore, paragraph (a)(1), as set out below, provides that the grapefruit pulp, grapefruit oil, and grapefruit essence (components derived from grapefruit) content may be adjusted in accordance with good manufacturing practice.

#### Peel

6. One comment recommended that the words "peel (except small fragments of peel that cannot be separated by good manufacturing practice)" under § 146.132(a)(1) be added before the words "and excess pulp." The comment indicated that the change in wording is needed to reflect current good manufacturing practice.

FDA agrees with this comment. Therefore, § 146.132(a)(1), as set out below, reads, in part: "Grapefruit juice is the unfermented juice, \* \* \* from which seeds and peel (except embryonic seeds and small fragments of seeds and peel which cannot be separated by good manufacturing practice) and excess pulp are removed."

#### Addition of Concentrated Grapefruit Juice

7. In response to the request for comments, eight comments supported permitting the addition of concentrated grapefruit juice to single-strength grapefruit juice. The United States Department of Agriculture (USDA) stated, "In our record of 177 replies to the proposed rule for grapefruit juice (voluntary grade standards) (7CFR Part 2852), several consumers cited the popularity of grapefruit juice because of its 'natural' qualities." USDA suggested that consideration be given to the addition of small amounts of grapefruit juice concentrate to grapefruit juice to adjust the soluble solids contents within the normal range of mature grapefruit. USDA contended that this adjustment could be made to furnish a product to

the consumer which would be free from added nutritive carbohydrate sweeteners. Three of these comments suggested that the level of concentrate permitted should be more than 15 percent by weight of soluble solids.

The agency agrees that the addition of a limited amount of concentrated grapefruit juice to nonreconstituted grapefruit juice, in an amount reasonably necessary to adjust the soluble solids content of the finished product, will be in the interest of consumers. Therefore, § 146.132(a)(1), as set out below, provides for the adjustment of the soluble solids content of grapefruit juice by permitting the addition of the concentrated grapefruit juice at a maximum level of 15 percent by weight of the grapefruit juice soluble solids.

#### Minimum Soluble Solids

8. One comment from a major manufacturer of grapefruit juices (producing approximately 80 percent of the total U.S. market) recommended that the minimum soluble solids level of 9 percent proposed for grapefruit juice from concentrate should be increased to 10 percent. The manufacturer submitted data that showed the average juice soluble solids content, by week, of grapefruit received at processing plants for the 1977-1978 seasons to vary from 9.01 to 10.54 percent. Additional data from two manufacturers showed "weighted average" soluble solids levels in single-strength grapefruit juice for the growing period 1968-1969 to 1977-1978 to vary from 9.70 to 10.55 percent.

Two comments supported the proposed minimum soluble solids level of 9 percent for grapefruit juice from concentrate, but recommended that it should apply also to grapefruit juice. One comment supported the concept of establishing a minimum soluble solids level for "fruit juices" at the same level as for "juice from concentrate."

Five comments recommended a uniform minimum "Brix (soluble solids)" for both "grapefruit juice" and "grapefruit juice from concentrate." One of these comments pointed out that, "In view of today's high technology, there can be no justification for establishing different Brix levels for the two products or for establishing a minimum level for one product and no minimum for another. The consumer cannot be expected to know which product is more likely to contain proportionately more water and less solids. Once a consumer chooses a juice, he or she should be assured of receiving a uniform amount of product as measured by soluble solids." The comment contended that the consumer receives that assurance

only when the minimum soluble solids for "fruit juices" and "juices from concentrate" are the same.

The agency disagrees with the suggestion that the minimum soluble solids level required for grapefruit juice from concentrate should be increased from 9 to 10 percent. This decision is based on data that indicate that the average soluble solids of juice from all grapefruit will be somewhat more than 10 percent but that there will be some seasons and some portions of seasons when, in fact, a majority of the juice will be less than 10 percent. The Codex standard for grapefruit juice provides for a minimum soluble solids content of 9 percent, exclusive of added sugar. Consequently, the proposed 9-percent minimum soluble solids requirement for grapefruit juice from concentrate is retained in § 146.132(a)(1) as set out below. Further, the agency does not agree that a minimum soluble solids requirement should be established for a single-strength grapefruit juice that has not been prepared from concentrated grapefruit juice. Seasonal environmental factors, such as soil and climatic conditions, may have an effect on the soluble solids content of the individual fruit. Because of these variables, FDA historically has not set minimum soluble solids requirements in the standards of identity for other fruit juices prepared from unconcentrated, undiluted extract from mature fruits. For the same reason, FDA is not setting a minimum soluble solids requirement for single-strength grapefruit juice that has not been prepared from concentrated grapefruit juice as provided for in the regulation as set out below.

#### Correction for Acidity

9. Six comments opposed the provision that would allow the use of a refractometric sucrose value without a correction for acidity. They stated that the correction of refractometer values for acidity has been standard practice throughout the citrus industry in the United States for 40 or more years, not only for single-strength grapefruit juice at issue here, but also for other citrus varieties and for citrus concentrates and beverage bases. One of the comments contended that a "total soluble solids" reading made by refractometer without correction for acidity would be meaningless. One comment argued that the creation of a standard for grapefruit juice that establishes a different definition of soluble solids content from that used for other single-strength juices and other citrus products would be very disruptive.

The agency agrees, and § 146.132(a)(1), as set out below, reflects this change.

#### Addition of Sweeteners

10. In response to the request for specific comments, three comments were received regarding the addition of sweeteners.

One comment stated that it is a recognized fact that fruits vary in their natural sweetness and tartness as the growing season proceeds and that, in response to these natural changes, manufacturers adjust formulations to produce products that satisfy the consumer's perception of that product. This comment suggested that the standard for grapefruit juice should allow for the use of any safe and suitable nutritive carbohydrate sweetener with no limitation on the maximum amount allowed.

Two comments suggested that specific sweeteners, such as high-fructose corn sweeteners (HFCS), may represent a considerable savings over other sweeteners which could be passed along to the consumer. They contended that liquid HFCS contribute a negligible amount of water to the product. No data in support of these contentions were submitted.

The December 15, 1978, proposal provided for the use of safe and suitable nutritive carbohydrate sweeteners. The agency maintains that food standards should provide, whenever possible, for classes of permitted functional optional ingredients so that manufacturers will have flexibility in the selection of specific ingredients used in foods. Of course, if the ingredient is unsafe, it may not be used. However, based on information resulting from a series of public hearings held between August 1978 and October 1978, it now appears that consumers desire a specific listing, by name, in food standards of those ingredients which characterize the food rather than simply a general provision for the use of "safe and suitable" ingredients. A notice requesting public comment on a tentative proposed revision of the agency's policy regarding the use of "safe and suitable" provisions in food standards was published in the Federal Register of December 21, 1979 (44 FR 75990). Consistent with consumer desire, FDA is listing in § 146.132(a)(2)(iii) set out below the suitable nutritive carbohydrate sweeteners that may be used.

The agency requests comments concerning the completeness of the list. If any commonly used nutritive carbohydrate sweeteners have been omitted, they will be included in the regulation at the time a notice

confirming the effective date of the final regulation is published. Comments should be submitted to the Dockets Management Branch, Food and Drug Administration (address above), during the period for objections.

#### Optional Ingredients

11. Several comments indicated that there may be industry confusion as to which ingredients are optional and must be declared in the ingredient statement. One comment indicated that the standard of identity for grapefruit juice from concentrate should include the use of grapefruit juice as a diluent in addition to water.

The agency agrees with these comments, and § 146.132(a)(1) and (2)(ii), as set out below, reflect this change.

#### Labeling—Color Types

12. One comment suggested that the color type (white, pink, and mixed) of grapefruit juice be designated on the label. The comment noted that the proposed rule to revise the USDA voluntary grade standards for grapefruit juice, published February 15, 1980 (45 FR 10356), does not address the labeling of color type.

No data were submitted to demonstrate that consumers desire labeling to differentiate between color types. Further, no data were submitted, nor is FDA aware of any data that support an objective method for differentiating between the three color types. Therefore, FDA has not provided for such labeling, but points out that a truthful declaration of the color type of grapefruit juice would not be prohibited.

#### Blending of Juices

13. Three comments stated that unless "blends" of grapefruit juices (i.e., grapefruit juice, concentrated grapefruit juice and/or grapefruit juice from concentrate are allowed to be labeled "grapefruit juice," problems would result including consumer confusion and increased costs from the necessity of maintaining inventories of labels for each of the product blends.

The agency agrees, in part, with the contentions raised by these comments. Therefore, § 146.132(a)(3)(i)(o)(2), as set out below, provides for the name "grapefruit juice" for the food prepared from the unconcentrated, undiluted liquid from grapefruit to which concentrated grapefruit juice is added to adjust soluble solids as prescribed in § 146.132(a)(1). FDA believes that the listing of concentrated grapefruit juice in the ingredient statement will be sufficient to inform the consumer of its presence in the product. FDA does not

agree that the name "grapefruit juice" is appropriate for mixtures of grapefruit juice and grapefruit juice from concentrate. Therefore, § 146.132(a)(3)(i)(b) requires the name "grapefruit juice from concentrate" or "reconstituted grapefruit juice" for those foods prepared from concentrated grapefruit juice and water and/or grapefruit juice, or from grapefruit juice from concentrate and grapefruit juice.

#### Type Size

14. One comment asserted that a minimum type size should be specified and that the qualifying words "reconstituted" or "from concentrate" should appear in a type size not less than one-half the size type as the words "grapefruit juice."

The agency agrees with the comment and is specifying the type size in § 146.132(a)(3)(i)(b) accordingly.

After consideration of the comments received and other relevant information in the record, FDA concludes that it will promote honesty and fair dealing in the interest of consumers to establish standards of identity and fill of container for grapefruit juice as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), part 146 is amended by adding new § 146.132, to read as follows:

#### § 146.132 Grapefruit juice.

(a) *Identity—(1) Description.* Grapefruit juice is the unfermented juice, intended for direct consumption, obtained by mechanical process from sound, mature grapefruit (*Citrus paradisi* Macfadyen), from which seeds and peel (except embryonic seeds and small fragments of seeds and peel which cannot be separated by good manufacturing practice) and excess pulp are removed. The juice may be adjusted by the addition of the optional concentrated grapefruit juice ingredients specified in paragraph (a)(2) of this section, but the quantity of such concentrated grapefruit juice ingredient added shall not contribute more than 15 percent of the grapefruit juice soluble solids in the finished food. The grapefruit pulp, grapefruit oil, and grapefruit essence (components derived from grapefruit) content may be adjusted in accordance with good manufacturing practice. The juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining essential composition and quality factors of the

juice. It may be sweetened with the dry nutritive sweeteners referred to in paragraph (a)(2)(iii) of this section. If the grapefruit juice is prepared from concentrate, such sweeteners, in liquid form, referred to in paragraph (a)(2)(iii) of this section, also may be used. When prepared from concentrated grapefruit juice, exclusive of added sweeteners, the finished food contains not less than 9 percent, by weight, of soluble solids taken as the refractometric sucrose value (of the filtrate), corrected to 20° C, and corrected for acidity by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th ed., 1980,<sup>1</sup> section 22.025 "Frozen Concentrate for Lemonade (12)," under the heading "Soluble Solids by Refractometer—Official First Action," which is incorporated by reference. The food may contain one or any combination of the optional ingredients specified in paragraph (a)(2) of this section. Grapefruit juice, as defined in this paragraph, may be preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

(2) *Optional ingredients.* The optional ingredients referred to in paragraph (a)(1) of this section are:

(i) Concentrated grapefruit juice (grapefruit juice from which part of the water has been removed).

(ii) Water and/or grapefruit juice to reconstitute concentrated grapefruit juice in the manufacture of grapefruit juice from concentrate.

(iii) One or any combination of two or more of the dry or liquid forms of sugar, invert sugar sirup, dextrose, glucose sirup, and fructose. Sweeteners defined in Part 168 of this chapter shall be as defined therein.

(3) *Labeling.* (i) The name of the food is:

(a) "Grapefruit juice" (1) if the food is prepared from unconcentrated, undiluted liquid extracted from mature grapefruit; or (2) if the food is prepared from unconcentrated, undiluted liquid extracted from mature grapefruit to which concentrated grapefruit juice is added to adjust soluble solids as provided for in paragraph (a)(1) of this section.

(b) "Grapefruit juice from concentrate" or "reconstituted grapefruit juice" (1) if the food is prepared from concentrated grapefruit juice and water

and/or grapefruit juice; or (2) if the food is prepared from grapefruit juice from concentrate and grapefruit juice. The words "from concentrate" or "reconstituted" shall be shown in letters not less than one-half the height of the letters in the words "grapefruit juice."

(ii) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

(b) *[Reserved]*

(c) *Fill of container.* (1) The standard of fill of container for grapefruit juice, except when the food is frozen, is not less than 90 percent of the total capacity of the container as determined by the general method for fill of container prescribed in § 130.12(b) of this chapter.

(2) Compliance is determined as specified in § 146.3(g)(2).

(3) If the grapefruit juice fails to meet the standard of fill as prescribed in paragraph (c)(1) and (2) of this section, the label shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter, in the manner and form therein prescribed.

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 26, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

*Effective date.* Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any

required labeling changes, may begin February 27, 1981, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1983, shall fully comply. Notice of the filing of objections or lack thereof will be published in the Federal Register.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))).

Dated: January 19, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

Note.—Incorporation by reference approved by the Director of the Office of the Federal Register on October 30, 1980 and is on file at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(FR Doc. 81-2919 Filed 1-26-81; 8:45 am)

BILLING CODE 4110-03-M

## 21 CFR Part 172

[Docket No. 80F-0150]

### Polysorbate 60 and Polysorbate 80; Food Additives Permitted for Direct Addition to Food for Human Consumption

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the food additive regulations by deleting the limitations relative to foods in which shortenings and edible oils treated with polysorbate 60 and polysorbate 80 may be used.

**DATES:** Effective January 26, 1981; objections by February 26, 1981.

**ADDRESS:** Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** James B. Lamb, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of May 20, 1980 (45 FR 33726), FDA announced that a food additive petition (FAP 0A3508) had been filed by ICI Americas, Inc., Wilmington, DE 19897, proposing that Part 172 of the food additive regulations be amended to delete the limitations relative to the foods in which shortenings and edible oils treated with polysorbate 60 and/or polysorbate 80 may be used under

<sup>1</sup> Copies may be obtained from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or examined at the Office of the Federal Register, 1100 L St. SW., Washington, DC 20408.

§§ 172.836(c)(8) and 172.840(c)(8) (21 CFR 172.836(c)(8) and 172.840(c)(8)).

Having evaluated data in the petition and other relevant material, FDA concludes that the food additive regulations should be amended as requested by the petitioner.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 172 is amended as follows:

1. In § 172.836(c)(8) by revising the introductory text to read as follows:

§ 172.836 Polysorbate 60.

(c) \* \* \*

(8) As an emulsifier, alone or in combination with polysorbate 60, in shortenings and edible oils intended for use in foods as follows, when standards of identity established under section 401 of the act do not preclude such use:

2. In § 172.840(c)(8) by revising the introductory text to read as follows:

§ 172.840 Polysorbate 60.

(c) \* \* \*

(8) As an emulsifier, alone or in combination with polysorbate 60, in shortenings and edible oils intended for use in foods as follows, when standards of identity established under section 401 of the act do not preclude such use:

The Commissioner of Food and Drugs has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Commissioner's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979, 44 FR 71742) may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office), Food and Drug Administration.

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 26, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with

particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**Effective date.** This regulation shall become effective January 27, 1981.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: January 19, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-2016 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 176

[Docket No. 80F-0045]

**N-Methyl-N-(Tall Oil Acyl) Taurine, Sodium Salt; Indirect Food Additives: Paper and Paperboard Components**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N*-methyl-*N*-(tall oil acyl) taurine, sodium salt as an antiscalant for use in the manufacture of paper and paperboard intended for food-contact use. This action responds to a food additive petition filed by Diamond Shamrock Corp.

**DATES:** Effective January 27, 1981; objections by February 26, 1981.

**ADDRESS:** Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Neal D. Singletary, Bureau of Foods (HFF-334), Food and Drug

Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:** A notice published in the Federal Register of March 14, 1980 (45 FR 16564) announced that a food additive petition (FAP 9B3433) had been filed by Diamond Shamrock Corp., Morristown, NJ 07960, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of *N*-methyl-*N*-(tall oil acyl) taurine, sodium salt as an antiscalant for use in the manufacture of paper and paperboard intended for food-contact use.

Having evaluated data in the petition and other relevant material, FDA concludes that § 176.170 should be amended as set forth below to provide for the safe use of the petitioned additive.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 176 is amended in § 176.170(a)(5) by alphabetically inserting a new item to read as follows:

§ 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods.*

(a) \* \* \*

(5) \* \* \*

List of substances	Limitations
<i>N</i> -methyl- <i>N</i> -(tall oil acyl) taurine, sodium salt (CAS Reg. No. 61791-41-1).	For use only to control scale formation in the manufacture of paper and paperboard prior to the sheetforming operation at a level not to exceed 0.015 percent by weight of the dry paper and paperboard.

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 26, 1981, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a

waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**Effective date.** This regulation shall become effective January 27, 1981.

(Secs. 201(s), 409, 72 Stat. 1784-1788 (21 U.S.C. 321(s), 348))

Dated: January 19, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2918 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Parts 520, 522, and 524

### Animal Drugs, Feeds, and Related Products; Change of Sponsor

**AGENCY:** Food and Drug Administration.

**ACTION:** Final Rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the animal drug regulations to reflect a change of sponsor for several new animal drug applications (NADA's) from Ayerst Laboratories to Fort Dodge Laboratories. Supplemental NADA's filed by Ayerst provide for this change.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Sandra K. Woods, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

**SUPPLEMENTARY INFORMATION:** Ayerst Laboratories, Division of American Home Products Corp., 685 Third Ave., New York, NY 10017, filed several supplemental NADA's providing for a change of sponsor from Ayerst Laboratories to Fort Dodge Laboratories, also a division of American Home Products Corp. By Letter, Fort Dodge Laboratories, Fort Dodge, IA 50501, confirmed the change of sponsor. The regulations are amended to reflect the change. The NADA's affected are:

NADA	Product	Section
9-392	Primidone tablets	520.1900
12-991	Kopertox (Copper naphthenate)	524.463
15-030	Acepromazine maleate injectable	522.23
30-137	Primidone Med-Pets (Primidone tablets)	520.1900
32-702	Acepromazine maleate tablets	520.23

This action, the change of sponsor of several NADA's, does not involve changes in manufacturing facilities, equipment, procedures, or personnel. Under the Bureau of Veterinary Medicine's supplemental approval policy (December 23, 1977; 42 FR 64367), approval of this action did not require a reevaluation of the safety and effectiveness data in the parent applications.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(i) (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. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 520, 522, and 524 are amended to read as follows:

### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. Part 520 is amended:

#### § 520.23 [Amended]

a. In § 520.23 *Acepromazine maleate tablets*, paragraph (c), by removing No. 000046 and inserting in its place No. 000856.

#### § 520.1900 [Amended]

b. In § 520.1900 *Primidone tablets*, paragraph (b), by removing No. 000046 and inserting in its place No. 000856.

### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

#### § 522.23 [Amended].

2. Part 522 is amended in § 522.23 *Acepromazine maleate injectable*, paragraph (c), by removing No. 000046 and inserting in its place No. 000856.

### PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

#### § 524.463 [Amended]

3. Part 524 is amended in § 524.463 *Copper naphthenate solution*, paragraph (b)(1), by removing No. 000046 and inserting in its place No. 000856.

**Effective date.** This amendment is effective January 27, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 14, 1981.

Robert Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 81-2913 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 540

### Procaine Penicillin G Sterile Aqueous Suspension (Injectable); Penicillin Antibiotic Drugs for Animal Use

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by John D. Copanos Co., Inc., providing or revised labeling for safe and effective use of injectable procaine penicillin G sterile aqueous suspension for treating cattle, sheep, swine, and horses.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Carnevale, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1788.

**SUPPLEMENTARY INFORMATION:** John D. Copanos Co., Inc., 6110 Robinwood Rd., Baltimore, MD 21225, is the holder of NADA 65-136 for an injectable sterile procaine penicillin G aqueous suspension used for treating infections in cattle, sheep, swine, and horses. This application was originally approved as an antibiotic Form 6 on October 25, 1963, being found equivalent to several identical pre-1962 approved products. Those approved products were the subject of a National Academy of Sciences/National Research Council (NAS/NRC) evaluation published in the *Federal Register* of August 25, 1970 (35 FR 13544). In that document NAS/NRC concluded, and the agency concurred, that injectable procaine penicillin G aqueous suspension is probably effective for intramuscular use in treating animals for penicillin-sensitive

infections. Certain labeling deficiencies were identified.

Pfizer's NADA 65-110 was one of several NADA's which were subject to the NAS/NRC evaluation. Pfizer submitted a supplement to NADA 65-110 which amended the application to conform to the conclusions of the NAS/NRC review and to upgrade their product from probably effective to effective. Approval of the supplement was published in the *Federal Register* of July 28, 1978 (43 FR 32748), providing that 21 CFR 540.274b be amended by adding new paragraph (c)(3). The regulation provides that NADA's for identical products for the same use do not require effectiveness data as specified by § 514.1(b)(8) (ii) and (iii) (21 CFR 514.1(b)(8) (ii) and (iii)) or § 514.111(a)(5)(ii)(a)(4) (21 CFR 514.111(a)(5)(ii)(a)(4)), but may require bioequivalency or similar data as in the guideline for submitting NADA's for NAS/NRC-reviewed generic drugs.

Copanos' NADA 65-136 was originally approved as equivalent to several approved NADA's including Pfizer's NADA 65-110. Since the equivalent products were subject to NAS/NRC review, Copanos' NADA was also considered NAS/NRC reviewed. In addition, Copanos manufactures the Pfizer drug, and Pfizer has authorized the use of the data in NADA 65-110 to support NADA 65-136. For those reasons, bioequivalency data are not required.

Copanos' supplement revised the product's labeling to conform to the NAS/NRC review. It also provided residue data supporting a 5-day slaughter withdrawal time following use of their product in cattle. Based on the data and information submitted, FDA approves the supplement and provides for a withdrawal time for cattle consistent with the data. In addition, since the product has been found equivalent or identical to several approved products, FDA approves withdrawal times for sheep and swine which are consistent with those previously established. The regulations are amended to reflect this approval.

The Bureau of Veterinary Medicine (the Bureau) concludes that approval of Copanos' supplemental application poses no increased human risk from exposure to residues of the new animal drug, procaine penicillin G. This is because the drug is already approved for the requested uses; the supplement also reduces the number of labeled indications. Accordingly, under the Bureau's supplemental approval policy

(December 23, 1977; 42 FR 64367), this approval is a Category II supplement which does not require reevaluation of the human safety data in the parent application.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Rm. 4-82, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(i) (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. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b(i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 540 is amended in § 540.274b by adding new paragraph (c)(4) to read as follows:

**§ 540.274b Procaine penicillin G aqueous suspension.**

\* \* \* \* \*

(c) \* \* \*

(4)(i) *Sponsor.* See No. 010271 in § 510.600(c) of this chapter.

(ii) See paragraph (c)(3) of this section for specifications, tolerances, and conditions of use of the drug, except discontinue treating cattle 5 days before slaughter and non-ruminating calves 10 days before slaughter.

*Effective date.* This amendment is effective January 27, 1981.

(Sec. 512(i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b(i) and (n)))

Dated: January 13, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 812614 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-03-M

## DEPARTMENT OF STATE

### 22 CFR Part 51

[Docket No. SD-168]

#### Passports; Denial of Passport Facilities in Cases Involving a Criminal Court Order

AGENCY: Department of State.

ACTION: Final Rule.

**SUMMARY:** The Department's regulation governing the denial of passports in cases in which the applicant is subject to a court order, condition of probation, or condition of parole which forbids the applicant's departure from the United States and the violation of which could subject the applicant to a provision of the Federal Fugitive Felon Act is revised to apply to all criminal cases in which the applicant's departure could result in the issuance of a federal warrant of arrest.

**EFFECTIVE DATE:** This rule will become effective February 26, 1981.

**FOR FURTHER INFORMATION CONTACT:** Karen R. Spinner, Office of Citizenship Appeals and Legal Assistance, Passport Services, Bureau of Consular Affairs, Department of State, Room 5813, Washington, D.C. 20520. (202) 632-7940.

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking was published in the *Federal Register* on October 23, 1980 (45 FR 70282). All interested persons were invited to submit comments by December 22, 1980. No unfavorable comments were received; therefore, the proposed amendment is adopted without change, as set forth below.

Dated: January 16, 1981.

For the Secretary of State.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

In Title 22 CFR 51.70(a)(2) is revised to read as follows:

#### § 51.70 Denial of passports.

(a) A passport, except for direct return to the United States, shall not be issued in any case in which:

\* \* \* \* \*

(2) The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States and the violation of which could result in the issuance of a Federal



warrant of arrest, including a warrant issued under the Federal Fugitive Felon Act; or

(Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended (22 U.S.C. 211a, 2656); E.O. 11295, 36 FR 10603; 3 CFR 1966-70 Comp., p. 507)

[FR Doc. 81-2992 Filed 1-26-81; 8:45 am]

BILLING CODE 4710-06-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Parts 211 and 212

[T.D. ATF-78; Ref: Notice No. 339, TD-ATF-67]

#### Completely Denatured Alcohol Formula No. 20

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** This document provides final regulations relating to denatured alcohol and rum. The regulations concern a completely denatured alcohol formula which is restricted to fuel uses. In addition, a change in denaturants has been made for use in certain completely and specially denatured alcohol formulas along with formulations of proprietary solvents.

**EFFECTIVE DATE:** February 28, 1981.

**FOR FURTHER INFORMATION CONTACT:** Norman Blake, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226, 202-566-7626.

#### SUPPLEMENTARY INFORMATION:

##### Background Information

The Bureau of Alcohol, Tobacco and Firearms (ATF) published in the Federal Register on March 27, 1980, 45 FR 20420, Temporary regulations T.D. ATF-67, entitled "New and Revised Formulas, Completely Denatured Alcohol Formula No. 20." That regulation provided for a new completely denatured alcohol (CDA) formula which was primarily designed to facilitate the production of gasohol and for other fuel uses. In addition, automotive-gasoline was included as a new denaturant authorized for use in certain formulations.

Various current denatured alcohol formulas have been used for blending in motor fuels, however, these current formulas present certain problems. The denaturants authorized for use in other CDA formulas were expensive and limited in their availability. Specially denatured alcohol (SDA) Formula No.

28-A is generally the same as CDA Formula No. 20 except that it is denatured with only one gallon of gasoline. However, users of SDA are required to qualify for and obtain an industrial use permit. In addition, users of SDA are required to maintain records and reports and in certain cases obtain bonds.

In the temporary regulations, CDA Formula No. 20 provided for five gallons of either gasoline, automotive-gasoline, kerosene or deodorized kerosene to be added to every 100 gallons of at least 190° proof ethyl alcohol. Formula No. 20 was restricted to only fuel uses comparable to SDA use codes Nos. 611, 612, 613, 620 and 630. These SDA codes apply to fuels for automobiles, airplanes, rockets, jets, proprietary heating fuels and other fuel uses.

The temporary regulations were effective upon publication. A cross-referencing notice of proposed rulemaking (45 FR 20422) published the same date as the temporary regulations provided a 60-day comment period to gather additional information and offer interested persons and other governmental agencies an opportunity to respond prior to the issuance of final regulations.

#### Comments

During the comment period, five comments were received. The comments were received from: (1) a member of the alcohol producing industry; (2) an automobile manufacturer; (3) the U.S. Environmental Protection Agency (EPA); (4) a university agricultural extension service; and, (5) one comment submitted by two concerned citizens. In addition, ATF received and approved a request from an alcohol producer to use a substitute denaturant in the production of CDA Formula No. 20.

The comments generally addressed three areas of the temporary regulations:

(1) The proof of the alcohol. One commenter requested that the proof be lowered to 160° proof on the basis that most farmers cannot reach 190° proof with their stills. Two other commenters requested that the proof be increased to 200° proof and be anhydrous (without water) for the production of gasohol. The basis for raising the proof is that a "phase separation" of water and alcohol will occur at proofs near or below 195° proof and also because EPA regulations require the use of anhydrous ethyl alcohol in gasohol. A survey of various denatured alcohol producers indicated that they are producing anhydrous ethyl alcohol for use in the production of gasohol.

Based on the fact that phase separation occurs at the proposed 190° proof, ATF concludes that the lower

limits of the alcohol proof should be increased. In order to produce alcohol suitable for use in the production of gasohol, additional distillation in an anhydrous column of a still is required. To require anhydrous alcohol would be too restrictive and would not allow for the normal drop in proof when exposed to the air. Therefore, CDA Formula No. 20 will be produced from ethyl alcohol of at least 195° proof.

(2) The type of gasoline(s) authorized as a denaturant. The temporary regulations authorized the use of a new denaturant, automotive-gasoline, for the production of gasohol. CDA Formula No. 20 could be manufactured with five gallons of either gasoline, automotive-gasoline, kerosene or deodorized kerosene. The accepted specifications for automotive-gasoline are published by the American Society for Testing and Materials. The current revision of ASTM Specification D 439 includes specifications for leaded, unleaded and low lead gasoline. The temporary regulations did not specify the type of automotive-gasoline authorized as a denaturant for manufacturing gasohol. Comments received from the EPA and an automobile manufacturer objected to authorizing the use of any leaded gasoline as a denaturant in unleaded gasohol. The lead contained in five gallons of leaded gasoline, used as a denaturant, could increase the maximum allowable lead content above the 0.01 gram per gallon limit established by EPA regulations. In addition, the automobile manufacturer stated that the use of leaded gasoline as a denaturant in the production of unleaded gasoline "will add an unnecessary risk to the performance of catalytic automotive exhaust emission control systems."

ATF concurs with the comments raised in regard to the use of any leaded gasolines in the production of gasohol. Information from the EPA and ATF National Laboratory indicates that unleaded gasoline used as a denaturant in the production of leaded gasohol would not adversely affect the efficiency of engines designed to run on leaded gasoline. Therefore, the use of unleaded gasoline will replace gasoline and automotive-gasoline in the production of CDA Formula No. 20. Because of its varied uses in CDA Formulas 18, 19, and by the proprietary solvents industry, "gasoline" will continue to be authorized as a denaturant in all other formulas and formulations.

"Automotive-gasoline" is deleted from Parts 211 and 212 as an authorized denaturant and replaced with unleaded gasoline. Unleaded gasoline will conform to specifications as established by the American Society for Testing and

Materials (ASTM) in its current revision of ASTM Specifications D 439.

(3) The amount of denaturant required to be used in CDA Formula No. 20. One commenter requested that the five gallons of denaturants be reduced for reasons of economy and energy conservation.

The ATF National Laboratory has conducted research into the feasibility of reducing the quantity of denaturants in CDA Formula No. 20 below the proposed five gallons. Two major areas of concern were evaluated: (1) Would alcohol treated with a reduced amount of gasoline impact sufficient odor to alert a would-be consumer that the alcohol was not potable. The laboratory testing concluded that a reduced ratio of two gallons of gasoline per 100 gallons of alcohol was readily detectable by the characteristic odor of gasoline. (2) The ease with which potable alcohol could be recovered from gasohol. The laboratory concluded that potable alcohol could not be recovered from gasohol without the use of a sophisticated redistillation process which would not be an economical means to obtain potable alcohol.

Therefore, the Bureau is changing the minimum quantity of denaturant required in CDA Formula No. 20 from five to two gallons per 100 gallons of ethyl alcohol.

Other areas of the temporary regulations were also addressed in the comments. One comment expressed concern because of a possible "epidemic of serious poisoning" if individuals attempted to clean up the alcohol for subsequent consumption. ATF shares this concern in all situations involving the use of specially and completely denatured alcohols and, because of this concern, requires warning labels on most containers of completely denatured alcohol. Furthermore, ATF closely regulates the use of specially denatured alcohol through industrial use permits.

One commenter also advised that the use of kerosene or deodorized kerosene as a denaturant in gasohol would lower the octane quality of the end product. The small quantity of kerosene used as a denaturant (approximately .2 percent by volume) would not significantly affect the octane of the finished product, and the manufacturers of the gasoline or gasohol could adjust for measurable drops in octane.

The request to use a substitute denaturant in CDA Formula No. 20 involved the use of "rubber hydrocarbon solvent" (RHS). In addition, the proprietor asked for a variance of the specifications for RHS in Part 212. The proprietor requested the use of RHS due to insufficient allocations of unleaded

gasoline and the variance of specifications was based on the unavailability of RHS as specified in current ATF regulations. The ATF National Laboratory has determined that RHS is suitable for use in CDA Formula No. 20 and SDA Formula 28-A as an alternate denaturant and for subsequent use in the production of gasohol and other fuel uses. The Bureau finds that the specifications for RHS must be amended to provide broader flexibility in its current and future production while still remaining suitable as a denaturant.

In order to provide industry with the necessary means to produce sufficient quantities of gasohol during periods of limited availability of denaturants, the regulations are amended to provide for blending or mixing of any of the alternate denaturants authorized for use in CDA Formula No. 20 and SDA Formula No. 28-A.

As amended, CDA Formula No. 20 will be produced from ethyl alcohol of at least 195° proof, and to every 100 gallons there must be added at least two gallons, or any combination equaling two gallons, of unleaded gasoline, kerosene, deodorized kerosene or rubber hydrocarbon solvent.

#### Adoption of Amendments to the Regulations

Accordingly, 27 CFR Parts 211 and 212 are amended by adopting, subject to the above changes, the regulations proposed in the notice of proposed rulemaking published in the Federal Register on March 27, 1980 (45 FR 20422).

#### Drafting Information

The principal author of this document is Norman Blake, Specialist, Bureau of Alcohol, Tobacco and Firearms. However, other officials from the Bureau and from the Treasury Department participated in developing this Treasury decision.

#### Authority and Issuance

These regulations are issued under the authority of 26 U.S.C. 7805 (68A Stat. 917 as amended).

In view of the foregoing, 27 CFR Parts 211 and 212 are revised to read as follows:

#### PART 211—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

1. Section 211.111 provides for completely denatured alcohol formulas which are restricted as to use. As revised, § 211.111 reads as follows:

##### § 211.111 General.

Formulas for completely denatured alcohol are given in Part 212 of this

chapter. If the formula places no restriction on use, the completely denatured alcohol may be sold or used for any lawful purpose. Completely denatured alcohol may be used (a) in the manufacture of definite chemical substances where such alcohol is changed into some other chemical substance and does not appear in the finished product; (b) in the arts and industries (except in the manufacture of preparations or products for internal human use or consumption where any of such alcohol or of the denaturants used in such alcohol may remain in the finished product); and (c) for fuel, light, and power. Use of completely denatured alcohol in the arts and industries includes, but is not limited to, the manufacture of cleaning fluids, detergents, proprietary antifreeze solutions, thinners, lacquers, and brake fluids. Persons distributing and using (but not recovering for reuse) completely denatured alcohol are not required to obtain a permit or to file bond under this part. Persons recovering completely denatured alcohol for reuse shall procure an industrial use permit in accordance with Subpart D of this part and file bond in accordance with Subpart E of this part. Containers of products manufactured with completely denatured alcohol, such as proprietary antifreeze preparations, solvents, thinners, and lacquers, shall not be branded as completely denatured alcohol nor shall any such product be advertised, shipped, sold, or offered for sale as completely denatured alcohol.

(72 Stat. 1356, 1362, 1369, 1372, 1373; 26 U.S.C. 5201, 5214, 5241, 5273, 5275)

2. Section 211.170 is revised to include unleaded gasoline, in lieu of automotive gasoline, as an alternate ingredient in each formulation. As revised, § 211.170 reads as follows:

##### § 211.170 Manufacture of proprietary solvents.

All articles coming under the general classification of proprietary solvents shall be manufactured with specially denatured alcohol Formula No. 1. The formulations shall be as follows, except as may otherwise be authorized by the Director:

(a) Formulation No. I:	
Specially denatured alcohol formula No. 1 .....	100
Ethyl acetate .....	5
Gasoline, unleaded gasoline or rubber hydrocarbon solvent .....	1
(b) Formulation No. II:	
Specially denatured alcohol formula No. 1 .....	100
Denaturing grade wood alcohol .....	2
Ethyl acetate .....	1
Gasoline, unleaded gasoline or rubber hydrocarbon solvent .....	1
(c) Formulation No. III:	
Specially denatured alcohol formula No. 1 .....	100
Methyl isobutyl ketone .....	1

Ethyl acetate.....	1
Gasoline, unleaded gasoline or rubber hydrocarbon solvent.....	1
(d) Formulation No. IV:	
Specially denatured alcohol formula No. 1.....	100
Methyl isobutyl ketone.....	1
tert-butyl alcohol.....	2
Gasoline, unleaded gasoline or rubber hydrocarbon solvent.....	1
(e) Formulation No. V:	
Specially denatured alcohol formula No. 1.....	100
Methyl isobutyl ketone.....	1
Secondary butyl alcohol.....	2
Gasoline, unleaded gasoline or rubber hydrocarbon solvent.....	1

## PART 212—FORMULAS FOR DENATURED ALCOHOL AND RUM

Glycerol U.S.P. \* \* \*

3. The table of sections of 27 CFR Part 212 is amended to read as follows:

### Subpart C—Completely Denatured Alcohol Formulas

212.13 Formula No. 20.

### Subpart E—Specifications for Denaturants

212.80a Gasoline, unleaded (unleaded gasoline).

4. Section 212.11 is revised to provide for the use of unleaded gasoline, in lieu of automotive-gasoline, as an alternate denaturant. As revised, § 212.11 reads as follows:

#### § 212.11 Formula No. 18.

To every 100 gallons of ethyl alcohol of not less than 160° proof add:  
2.50 gallons of methyl isobutyl ketone;  
0.125 gallon of pyronate or a compound similar thereto;  
0.50 gallon of acetaldehyde (b-hydroxybutyraldehyde); and  
1.00 gallon of either kerosene, deodorized kerosene, gasoline or unleaded gasoline.

5. Section 212.12 is revised to provide for the use of unleaded gasoline, in lieu of automotive-gasoline, as an alternate denaturant. As revised, § 212.12 reads as follows:

#### § 212.12 Formula No. 19.

To every 100 gallons of ethyl alcohol of not less than 160° proof add:  
4.0 gallons of methyl isobutyl ketone; and  
1.0 gallon of either kerosene, deodorized kerosene, gasoline or unleaded gasoline.

6. Section 212.13 is revised to provide for the use of unleaded gasoline and rubber hydrocarbon solvent, in lieu of gasoline and automotive-gasoline, as alternate denaturants and two gallons of

denaturant in lieu of five gallons. In addition, Formula No. 20 is revised by requiring ethyl alcohol to be of at least 195° proof, in lieu of 190° proof. As revised, § 212.13 reads as follows:

#### § 212.13 Formula No. 20.

(a) *Formula.* To every 100 gallons of ethyl alcohol of not less than 195° proof add:

2.0 gallons, or any combination equaling 2.0 gallons, of unleaded gasoline, kerosene, deodorized kerosene or rubber hydrocarbon solvent.

(b) *Authorized use.* Restricted to fuel use, comparable to specially denatured alcohol "Use Code No." 611, 612, 613, 620, and 630.

7. Section 212.38 is amended to provide for the use of rubber hydrocarbon solvent and unleaded gasoline, as alternate denaturants in lieu of automotive-gasoline. As amended, § 212.38 reads as follows:

#### § 212.38 Formula No. 28-A.

(a) *Formula.* To every 100 gallons of alcohol add:

One gallon or any combination equaling one gallon of gasoline, unleaded gasoline or rubber hydrocarbon solvent.

8. Section 212.80a is revised to provide specifications for unleaded gasoline, in lieu of automotive-gasoline, as a denaturant. As revised, § 212.80a reads as follows:

#### § 212.80a Gasoline, unleaded (unleaded gasoline).

Conforms to specifications as established by the American Society for Testing and Materials (ASTM) in its current revision of A.S.T.M. STP 23 229 (1980), Standard No. D 439-79. Any of the "seasonal and geographical" volatility classes for *unleaded gasoline* are considered suitable as a denaturant.

9. Section 212.88 is revised by providing a wider temperature range for the first 10 percent of the distilled sample. As revised, § 212.88 reads as follows:

#### § 212.88 Rubber hydrocarbon solvent.

Rubber hydrocarbon solvent is a petroleum derivative.

*Distillation range.* When 10 percent of the sample has been distilled into a graduated receiver, the thermometer must not read more than 170° F. nor less than 90° F. When 90 percent has been recovered in the receiver the

thermometer must not read more than 250° F.

10. The listing of authorized denaturants in § 212.110 is amended by inserting a line for "Gasoline, unleaded" and amending the lines for "Kerosene", "Kerosene (deodorized)" and "Rubber hydrocarbon solvent." As amended, § 212.110 reads as follows:

#### § 212.110 Listing of denaturants authorized for denatured spirits.

Gasoline.....	C.D.A. 18; 19; S.D.A. 28-A.
Gasoline, unleaded (unleaded gasoline).	C.D.A. 18; 19; 20; S.D.A. 28-A.
Glycerol U.S.P. * * *	
Kerosene.....	C.D.A. 18; 19; 20;
Kerosene (deodorized).....	C.D.A. 18; 19; 20.
Rubber hydrocarbon solvent.....	C.D.A. 20; S.D.A. 2-B; 2-C; 28-A.

#### § 212.15 [Amended]

11. Section 212.115 was previously amended by TD ATF-67 by adding a footnote "1" following Formula No. 28-A. This footnote was already contained in the heading of the chart and not required alongside each formula separately. Therefore, § 212.15 is amended by removing the footnote "1" following Formula No. 28-A.

Signed: December 19, 1980.

G. R. Dickerson,  
Director.

Approved: January 15, 1981.

John Simpson,  
Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 81-2935 Filed 1-26-81; 8:45 am]

BILLING CODE 4810-31-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-9-FRL 1724-3]

### Approval and Promulgation of Implementation Plans; Five Air Pollution Control Districts in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to rules of the Lake County, Modoc

County, Imperial County, and San Bernardino County Desert and Great Basin Unified Air Pollution Control Districts (APCDs) submitted by the California Air Resources Board (ARB). The intended effect of these revisions is to update the rules and to correct deficiencies in the California State Implementation Plan (SIP). These rules have been evaluated and found to be in conformance with the requirements of the Clean Air Act and 40 CFR Part 51, with certain exceptions. Therefore, these revisions are approved, and incorporated into the California SIP, with certain exceptions.

**EFFECTIVE DATE:** February 26, 1981.

**ADDRESS:** A copy of the revision is located at: The Office of the Federal Register 1100 "L" Street NW., Washington, D.C. 20005.

**FOR FURTHER INFORMATION CONTACT:**

Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano, (415) 556-2938.

**SUPPLEMENTARY INFORMATION:** On October 2, 1980 EPA published a Notice of Proposed Rulemaking for revisions to rules of the Lake County, Modoc County, Imperial County, and San Bernardino County Desert and Great Basin Unified APCDs submitted by the ARB for inclusion in the California SIP. Revised rules which are being acted upon by this notice include the following subjects:

Permit Fees, Agricultural Burning, Agricultural Operations, Equipment Breakdown, Emergency Variances, Particulate Emissions, Volatile Organic Compound Emissions, In-stack Monitoring, and Incinerators.

A list of the rules being considered by this action was published in the October 2 notice (45 FR 65262). A 60 day public comment period was offered. One comment was received from the Imperial County APCD.

*Comment:* The Imperial County APCD noted that an error exists in EPA's evaluation of Rule 111, *Equipment Breakdown*, because the evaluation references a Rule 617, *Emergency Variance*, of the Imperial County APCD. The APCD pointed out that the County's regulation does not contain a Rule 617 and EPA's evaluation should reference Rule 517, *Emergency Variance*.

*Response:* EPA agrees that the correct reference is Imperial County APCD's Rule 517. However, as discussed in the October 2, 1980 notice, Imperial County APCD's emergency variance rule is inconsistent with 40 CFR Part 51 requirements since it does not give

adequate assurance that the National Ambient Air Quality Standards (NAAQS) will not be exceeded during variance periods. Therefore, EPA is taking final action to disapprove this rule.

It is the purpose of this notice to approve the rule revisions listed in the October 2 notice, except for the rules discussed below.

EPA is taking no action on the deletion of Rule 703, *Cotton Gin Waste Burning* of the Imperial County APCD, because it is not part of the approved SIP and thus its deletion does not need to be requested.

As proposed, EPA is taking final action to disapprove Rule 2:15, *Breakdown Conditions; Emergency Variances* of the Modoc County APCD. Rule 2:15 is disapproved since it does not give adequate assurance that the NAAQS will not be exceeded during variance periods.

Furthermore, EPA is taking final action to disapprove Section B of Rule 111, *Equipment Breakdown* and Rule 517, *Emergency Variance* of the Imperial County APCD. Section B of Rule 111 is disapproved because it references Rule 517. However, Rule 517 is disapproved because it lacks the requirement that the NAAQS be attained and maintained during a breakdown condition.

The ARB has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

EPA has reviewed the revisions being acted upon in this notice and has determined that they are "specialized" revisions not subject to the procedural requirements of Executive Order 12044.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a))

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1980.

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

**Subpart F—California**

1. Section 52.220, paragraphs (c)(42)(i)(D), (c)(50)(vii), (c)(51)(xi) and (xii), (c)(52)(ii)(B) and (x), (c)(58)(iii), and (c)(74) are added as follows:

**§ 52.220 Identification of Plan.**

- (c) \* \* \*
- (42) \* \* \*
- (i) \* \* \*
- (D) New rule 417 (A-H, and J).

- (50) \* \* \*
- (vii) Modoc County APCD.
- (A) New or amended rules 1:2 w, 2:11, 2:15, 3:3 and 3:4.

- (51) \* \* \*
- (xi) Lake County APCD.
- (A) New rules 227.1, 254.1, and 660.
- (xii) San Bernardino County Desert APCD.

- (A) New rules 480 and 501.1.

- (52) \* \* \*
- (ii) \* \* \*
- (B) New or amended rules 101 L, 110, 201B, 301, 302, 304, 306, 401, 404, 406, 408, 410, 417 I, 418, 419, 422, Regulation VI, 701, 702, 703 (deletion), 705, and 706.

- (x) Lake County APCD.
- (A) Amended rule 433.

- (58) \* \* \*
- (iii) Great Basin Unified APCD.
- (A) New or amended rules 205, 210, 300A, and G, 403, 408, 419, and 617.

(74) Revised regulations for the following APCD's submitted on December 24, 1979, by the Governor's designee.

- (i) Imperial County APCD.
- (A) New or amended rules 111, 413, 414, 416, 416 (deletion), and 517.
- 2. Section 52.271, paragraphs (b)(3) and (4) are added as follows:

**§ 52.271 Malfunction regulations.**

- (b) \* \* \*
- (3) Modoc County APCD.
- (i) Rule 2:15, *Breakdown Conditions; Emergency Variances*, submitted on May 7, 1979.
- (4) Imperial County APCD.
- (i) Rule 111 (B), *Equipment Breakdown*, submitted on December 24, 1979.
- (ii) Rule 517, *Emergency Variance*, submitted on December 24, 1979.

[FR Doc. 81-2737 Filed 1-26-81; 8:45 am]  
BILLING CODE 6560-38-M

**40 CFR Part 52**

[A-5-FRL 1738-6]

**Approval and Promulgation of Implementation Plan Revisions: Illinois**

**AGENCY:** U.S. Environmental Protection Agency.  
**ACTION:** Final rulemaking.

**SUMMARY:** On April 30, 1980, the State of Illinois submitted to the U.S. Environmental Protection Agency (USEPA) revisions to the Illinois State Implementation Plan (SIP). These revisions to the transportation control

plans for the northeast Illinois area were submitted to meet the requirements set forth in the rulemaking conditionally approving the Illinois SIP published on February 21, 1980 (45 FR 11472, 11486). On September 2, 1980 (45 FR 58146), USEPA proposed approval of and solicited public comment on the revisions. No comments were received. This notice announces USEPA's final rulemaking action to approve these revisions to the Illinois SIP.

**EFFECTIVE DATE:** February 26, 1981.

**ADDRESSES:** Copies of the materials submitted by the State and by the public during the comment period announced in this notice of proposed rulemaking may be examined during normal business hours at the following USEPA offices:

Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Public Information Reference Unit, Library Systems Branch, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**

Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

**SUPPLEMENTARY INFORMATION:** On February 21, 1980 (45 FR 11472), USEPA announced final rulemaking on revisions to the Illinois SIP. The State submitted these revisions to satisfy the requirements of Part D of the Clean Air Act, as amended in 1977. In the final rulemaking, USEPA conditionally approved the transportation control plans for the northeast Illinois area. A discussion of conditional approval was published in the July 2, 1979 Federal Register (44 FR 38583) and the November 23, 1979 Federal Register (44 FR 67182). A conditional approval requires the State to remedy the identified deficiencies by specified deadlines. The conditional approval status of the SIP continues until final action is taken and published in the Federal Register.

On April 30, 1980, the State submitted additional information on the transportation control plans for the

northeast Illinois area in response to the nine requirements set forth in the conditional approval published February 21, 1980 (45 FR 11472, 11486). USEPA announced receipt and availability for public review of these revisions in the July 2, 1980 Federal Register (45 FR 44970). On September 2, 1980, USEPA proposed approval of the State's submittal as satisfying all of the requirements set forth in the conditional approval except those calling for implementor commitments and reasonable further progress (RFP) in elimination of carbon monoxide hotspots. At that time, USEPA solicited public comment on the revisions and on USEPA's proposed rulemaking action. No comments were received. Therefore, USEPA approves the northeast Illinois TCP with the exception of the implementor commitments and the carbon monoxide hotspot elimination schedule. As described in the September 22, 1980 Federal Register (45 FR 62807), the State of Illinois will submit the implementor commitments to USEPA upon completion of its analysis of reasonably available transportation control measures and prior to February 28, 1981. The carbon monoxide hotspot inventory and schedule for the elimination of hotspots were submitted to USEPA on August 20, 1980. USEPA will announce rulemaking on these items in a separate Federal Register notice. The conditional approval status of the SIP continues until final action on these remaining elements of the transportation control plan is published in the Federal Register.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of date of publication. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels proposed regulations, "specialized." I have reviewed this and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of final rulemaking is issued under the authority of Sections

110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502).

Dated: January 19, 1981.

**Douglas Costle,**  
*Administrator.*

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1980.

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52, is amended as follows:

1. Section 52.720(c) is amended by adding paragraph 25 as follows:

**§ 52.720 Identification of plan**

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(25) On April 30, 1980, the State submitted revisions to the transportation control plan for northeast Illinois (Chicago).

\* \* \* \* \*

2. Section 52.737(b) is revised to read as follows:

**§ 52.737 Transportation control plans.**

\* \* \* \* \*

(b) The transportation control plan for the northeast Illinois (Chicago) area is approved provided that the following conditions are satisfied:

(1) The State submits implementor commitments upon completion of the alternatives analysis and prior to February 28, 1981.

(2) The State submits additional information on reasonable further progress in eliminating carbon monoxide hotspot intersections and links by August 31, 1980.

\* \* \* \* \*

[FR Doc. 81-2940 Filed 1-26-81; 8:45 am]  
BILLING CODE 6560-38-M

**40 CFR Part 52**

**[A-5-FRL 1736-6]**

**Indiana; Approval and Promulgation of Implementation Plans**

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Final Rulemaking.

**SUMMARY:** On June 26, 1979 Indiana submitted as a revision to its State Implementation Plan (SIP) a revised sulfur dioxide (SO<sub>2</sub>) regulation, APC 13. Revised APC 13, in part, relaxes the SO<sub>2</sub> emission limitation in the SIP for certain sources in Jefferson county to 6.0 pounds of SO<sub>2</sub>/MMBTU (10.8 g/Mcal). EPA proposed rulemaking to disapprove the 6.0 pound emission limitation for Jefferson County because technical analysis showed that the 6.0 pound limit

would potentially allow violations of the Secondary National Ambient Air Quality Standards (NAAQS) to occur. Today EPA is disapproving revised APC 13 as it applies to Jefferson County for that reason.

**DATES:** This action is effective as of February 26, 1981.

**ADDRESSES:** Copies of the public comment on the proposed revision to the SIP are available at:

Air Programs Branch, U.S.

Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Air Pollution Control Division, Indiana State Board of Health, 1330 W. Michigan, Indianapolis, Indiana 46206

**FOR FURTHER INFORMATION CONTACT:** Robert Miller, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

**SUPPLEMENTARY INFORMATION:** On September 15, 1972 Indiana submitted a statewide SO<sub>2</sub> regulation, revised APC 13. This SO<sub>2</sub> regulation was approved by EPA on May 14, 1973 (38 FR 12711). This regulation required, in part SO<sub>2</sub> emissions from sources 250 MMBTU or larger in Jefferson County to be limited to a specific number between 2.75 and 1.2 pounds of SO<sub>2</sub>/MMBTU, depending upon the size of the source.

On June 26, 1979, Indiana submitted a new revised APC 13 which the State promulgated on June 19, 1979. Rulemaking disapproving this regulation as it applies to Jefferson County was proposed for public comment on March 27, 1980 (45 FR 20432).

EPA proposed disapproval of revised APC 13 as it applies to Jefferson County because it relaxes the emission limitation for large sources in Jefferson County from 1.2 to 6.0 pounds of SO<sub>2</sub>/MMBTU, even though the technical analysis submitted with the revision predicted violations of the secondary NAAQS at the 6.0 pound emission limitation. EPA today is disapproving revised APC 13 as it applies to Jefferson County because the 6.0 pound emission limitation does not ensure attainment of the secondary SO<sub>2</sub> NAAQS in Jefferson County. EPA analysis shows that 6.0 pounds of SO<sub>2</sub>/MMBTU emission limitation will assure attainment of the primary standards, but that an emission limitation of 4.19 pounds of SO<sub>2</sub>/MMBTU (7.54 g/Mcal) is necessary to ensure attainment of the secondary standard.

In response to the March 27, 1980 Federal Register proposal, many comments were received on revised APC 13. However, only one commentator, the State, discussed revised APC 13 in relation to Jefferson County.

Because EPA is disapproving APC 13 on the grounds that the 6.0 pound of SO<sub>2</sub>/MMBTU emission limit is not stringent enough to attain the NAAQS, the merits of revised APC 13 as a whole will not be discussed in this notice. Comments on revised APC 13 as a whole and on its application to geographical areas other than Jefferson County will be discussed in future Federal Register notices when EPA takes final rulemaking action on revised APC 13 as a whole.

**EPA Response to Comments on the SO<sub>2</sub> Strategy for Jefferson County**

EPA computer dispersion modeling of Jefferson County predicts that the highest ambient concentrations of SO<sub>2</sub> occur under stability class A conditions. The State questions whether stability class A conditions are appropriate in modeling a facility with tall stacks. EPA has determined that it is appropriate to use class A stability in modeling tall stacks. This determination is explained in EPA's response to the remand in *Cincinnati Gas and Electric Company v. EPA*, 578 F. 2d 660 (1978), appearing at 45 FR 41501 (June 19, 1980). Additionally, the State committed to revising the SIP for Jefferson County if the EPA redesignated Jefferson County under section 107 of the Act from "unclassifiable" to "nonattainment." EPA is proposing for public comment such a redesignation elsewhere in this issue of the Federal Register. Additionally, elsewhere in today's Federal Register, EPA is issuing a notice under Section 110(a)(2)(H) of the Clean Air Act that Indiana's SO<sub>2</sub> SIP for Jefferson County is substantially inadequate to achieve the national secondary SO<sub>2</sub> standard and has requested Indiana to revise the SIP.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these actions is available only by the filing of a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044 (43 FR 12681, EPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the order or whether it

may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this proposed regulation pursuant to the guidance in EPA's response to Executive Order 12044, "Improving Environmental Regulations" signed March 29, 1979 by the Administrator, and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of Final Rulemaking is issued under the authority of Sections 110 and 172 of the Clean Air Act, as amended.

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

[FR Doc. 81-2949 Filed 1-26-81; 8:45 am]  
BILLING CODE 6560-36-M

#### 40 CFR Part 52

[A-5-FRL 1739-6]

#### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of SIP Deficiency.

**SUMMARY:** The Indiana State Implementation Plan (SIP) requires sources 250 MMBTU (63 Gcal) and larger in Jefferson County to limit their sulfur dioxide (SO<sub>2</sub>) emissions. Their emissions are limited to a specific number between 2.75 pounds and 1.2 pounds of SO<sub>2</sub>/MMBTU (4.95 and 2.16 g/Mcal), depending upon the size of the source. Indiana repealed in 1974 its regulation on which the SIP is based as state law and is not enforcing the SIP. Therefore, EPA finds under section 110(a)(2)(H) of the Clean Air Act (Act) that the SIP for Jefferson County is substantially inadequate to achieve the National Ambient Air Quality Standards (NAAQS) because it is unenforceable by the State. Section 110(c)(1)(C) requires Indiana to revise its regulations and submit them as a revision to the SIP to EPA within 60 days of the effective date of this notice.

**DATES:** This action is effective as of February 26, 1981. The revised SIP is due on April 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Robert Miller, Regulatory Analysis section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

**SUPPLEMENTARY INFORMATION:** On September 15, 1972 Indiana submitted a statewide SO<sub>2</sub> regulation, revised APC

13. This SO<sub>2</sub> regulation was approved by EPA on May 14, 1973 (38 FR 12711). This regulation required, in part, SO<sub>2</sub> emissions from sources 250 MMBTU or larger in Jefferson County to be limited to a specific number between 2.75 and 1.2 pounds of SO<sub>2</sub>/MMBTU, depending upon the size of the source. In 1974 Indiana submitted to EPA revised APC 13 and a new regulation APC 22. Together they essentially removed any SO<sub>2</sub> emission limitation from sources in Jefferson County. Under State law, the revised APC 13/22 supplanted the former APC 13 which was—and remains—part of the SIP. Therefore, the existing, federally approved APC 13 was no longer enforced by the State. EPA disapproved revised APC 13/22 as it applied to Jefferson County because attainment of the NAAQS was not ensured in Jefferson County without an emission limitation for sources located in the county (41 FR 35676, August 24, 1976). The SO<sub>2</sub> SIP approved in 1973 remained in effect. Certain sources in Indiana petitioned under section 307 of the Act in the U.S. Court of Appeals for the Seventh Circuit to review EPA's disapproval of revised APC 13/22 for five counties, including Jefferson County. *Public Service Co. of Indiana, Inc. (PSI) et al. v. USEPA*, No. 76-1920 (7th Cir., dismissed Dec. 5, 1979). The appeal was based on the fact that a state appellate court was reviewing the validity for state purposes of both APC 13 which was and is part of the SIP and the subsequent APC 13/22 which was the state law at that time for Jefferson County. The state court subsequently found both sets of regulations invalid (*Indiana Environmental Management Board (IEMB) v. Indiana-Kentucky Electric Corporation et al.*, — Ind. App.—, 393 N.E. 2d 213 (Ind. App., 2d Dist. 1979). In order to settle the federal suit, EPA stipulated that it would not enforce either of the APC-13s against the petitioners, although they remained in effect against others. One of these petitioners was the Indiana-Kentucky Electric Corporation, the owner of the largest source in Jefferson County.

In 1979 Indiana adopted and submitted to EPA a revised APC 13 which set an emission limitation of 6.0 pounds of SO<sub>2</sub>/MMBTU for sources in Jefferson County. Elsewhere in today's Federal Register, EPA is disapproving revised 1979 APC 13 as it applies to Jefferson County because it is not adequate to ensure attainment of the secondary SO<sub>2</sub> NAAQS.

#### Notice of Deficiency

EPA is hereby issuing a Notice of Deficiency pursuant to section

110(a)(2)(H) of the Clean Air Act (42 U.S.C. 7410(a)(2)(H)) concerning Jefferson County's SO<sub>2</sub> SIP because the State of Indiana no longer has authority to enforce the state regulations which comprise the applicable plan for control of sulfur dioxide in Jefferson County. The State now lacks this authority because it adopted a new regulation in 1974 which supersedes the APC 13 regulation approved EPA as the applicable implementation plan. Further in *IEMB, supra*, the appellate court in Indiana, as a matter of state law, invalidated the APC 13 approved by EPA in 1973, thereby making that regulation unenforceable by the state.

Furthermore exacerbating the situation is the fact that the SIP APC 13 is not being federally enforced against the major SO<sub>2</sub> source in Jefferson County (Indiana-Kentucky Electric Company's Clifty Creek Power Plant) because EPA stipulated in the PSI case, *supra*, that it will not seek to enforce the APC 13 regulation against petitioners, one of whom was the Indiana-Kentucky Electric Corporation, the parent company of the Clifty Creek Power Plant.

Since the approved plan is not enforceable in Jefferson County against Clifty Creek by the State, the Plan is deficient. EPA is giving the State of Indiana 60 days from the effective date of this notice to revise the plan. If the State fails to submit an approval regulation for Jefferson County within 60 days of the effective date of this notice, EPA will propose a substitute regulation pursuant to section 110(c)(1)(C) of the Act.

Pursuant to the provisions of 5 U.S.C. § 605(b), I hereby certify that this notice of deficiency will not have a significant economic impact on a substantial number of small entities. This proposed action imposes no regulatory requirements in and of itself. Any regulatory requirements which may become necessary as a result of this action will be dealt with in a separate action.

Under Executive Order 12044 (43 FR 12661), EPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this proposed regulation pursuant to the guidance in EPA's response to Executive Order 12044, "Improving Environmental Regulations" signed March 29, 1979 by the Administrator, and I have determined that it is a specialized regulation not

subject to the procedural requirements of Executive Order 12044.

This Notice of Deficiency is issued under the authority of Sections 110 and 301(a) of the Clean Air Act, as amended.

Dated: January 20, 1981.

John McQuire,

Regional Administrator.

[FR Doc. 81-2823 Filed 1-26-81; 8:45 am]

BILLING CODE 6560.38-M

#### 40 CFR Part 52

[A-1-FRL 1737-8]

#### Massachusetts State; Approval and Promulgation of Implementation Plans; Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** The Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted on April 25, 1980 a request for EPA approval of a revision to the Massachusetts State Implementation Plan (SIP). The revision to Regulation 310 CMR 7.05 (1) "Sulfur Content of Fuels and Control Thereof" allows Natick Paperboard Corporation, Natick, to increase its sulfur-in-fuel content from 1% to 2.2%. EPA published a proposed approval of this revision on October 10, 1980 (45 FR 67397). No letters of comment were received during the 30-day comment period which ended November 10, 1980. EPA is today approving this revision.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Margaret McDonough, Air Branch EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-4448.

**ADDRESSES:** Copies of the Massachusetts submittal which is incorporated by reference are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M. St., 8401, Washington, D.C., the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C., and Department of Environmental Quality Engineering, Room 320, 600 Washington Street, Boston, Massachusetts 02111.

**SUPPLEMENTARY INFORMATION:** On October 10, 1980 (45 FR 67397) EPA

proposed approval of a revision to the Massachusetts SIP which would allow Natick Paperboard Corporation, located in Natick, Massachusetts to increase its sulfur-in-fuel limit from 1% to 2.2%.

The SIP revision and EPA's reasons for approving it were explained in the Notice of Proposed Rulemaking, cited above, and will not be repeated here. No comments having been received, EPA is now taking final action to approve the revision.

EPA finds good cause for making this revision immediately effective for the following reasons:

1. The implementation plan is already in effect under State law and EPA approval imposes no additional regulatory burden.

2. The immediate use of less expensive, higher sulfur content fuel oil will greatly ease economic burdens.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this SIP revision is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

After evaluation of the State's submittal, the Administrator has determined that the Massachusetts revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Massachusetts Implementation Plan.

(Sections 110(a) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7410 and 7601)

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1980.

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

#### Subpart W—Massachusetts

1. Section 52.1120, paragraph (c) is amended by adding subparagraph (34) as follows:

##### § 52.1120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(34) A revision to Regulation 7.05(1) "Sulfur Content of Fuels and Control Thereof" for the Metropolitan Boston APCD submitted on April 25, 1980 by the Commissioner of the Department of Environmental Quality Engineering.

##### § 52.1126 [Amended]

2. Section 52.1126, paragraph (f) is amended by adding the following approved source: Natick Paperboard Corporation, Natick.

[FR Doc. 81-2856 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 52

[A-5-FRL 1738-1]

#### State and Federal Administrative Orders Revising the Michigan State Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final Rulemaking.

**SUMMARY:** The U.S. Environmental Protection Agency (USEPA) approves the Michigan Air Pollution Control Commission's (MAPCC) request for a revision to the Michigan State Implementation Plan (SIP). The revision is in the form of a Stipulation for Entry of Consent Order and Final Order between the S. D. Warren Company and the MAPCC. The Order extends the compliance date to November 1, 1984 by which the S. D. Warren Company is required to bring sulfur dioxide (SO<sub>2</sub>) emissions from its three power boilers into compliance with certain regulations contained in the federally approved Michigan SIP. Any Order which has been issued to a major source and extends the SIP compliance date for meeting the SO<sub>2</sub> emission limitations must be approved by USEPA before it becomes effective as a SIP revision under the Clean Air Act, 42 U.S.C. Section 7410.

**EFFECTIVE DATE:** February 28, 1981.

**FOR FURTHER INFORMATION CONTACT:** Delores Sieja, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6053.

**ADDRESSES:** Copies of the SIP revision and USEPA's evaluation of the revision

are available at the address cited above and at:

Michigan Department of Natural Resources, Air Quality Division, State Secondary Complex, General Office Building, 7150 Harris Drive, P.O. Box 30028, Lansing, Michigan 48909.

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

**SUPPLEMENTARY INFORMATION:** The S. D. Warren Company is a Kraft pulp and paper mill located in Muskegon County, an SO<sub>2</sub> attainment area designated by USEPA on October 5, 1978 (43 FR 45993, 46010). The only other major source of SO<sub>2</sub> emissions in the area is the B. C. Cobb Plant of the Consumers Power Company located approximately 6.5 km northeast of the S. D. Warren Plant. The S. D. Warren Plant contains three power boilers vented to an 84.15 meter stack and one recovery boiler vented to an 83.8 meter stack.

On November 13, 1979, the State of Michigan submitted a proposed SIP revision for SO<sub>2</sub> for the S. D. Warren Company in Muskegon County, Michigan. The SIP revision consisted of an Order by the MAPCC which extended the compliance date until November 1, 1984 for the S. D. Warren Company to meet the SO<sub>2</sub> emission limitations in the Michigan SIP.

The MAPCC's R 336.49 [revised Rule 401(c)] sets forth the SO<sub>2</sub> emission limitations for power boilers in the State of Michigan. Presently, SO<sub>2</sub> emissions from the S. D. Warren Plant are in excess of the allowable limit of 1.5 percent sulfur content by weight fuel at 5750 joules/gram (12,000 BTU/pound of coal).

The SIP revision provides for final compliance with the allowable limit of 1.5 percent sulfur content by weight fuel at 5750 joules/gram (12,000 BTU/pound of coal) and establishes an interim emission limitation of 1.8 to 1.7 percent sulfur content by weight fuel on an annual average and 2.8 to 2.6 percent sulfur content by weight fuel on a daily average.

A detailed modeling analysis using reference techniques was performed by USEPA to determine if SO<sub>2</sub> emissions from the S. D. Warren Plant would cause or contribute to violations of the SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS). The results of the air quality analysis, showed that the operation of the S. D. Warren Plant under either the interim (1.8 to 1.7 percent sulfur content by weight fuel on an annual average and



2.8 to 2.6 percent sulfur content by weight fuel on a daily average) or the final (1.5 percent by weight maximum sulfur content in fuel) emission limitations will not threaten or prevent the attainment and maintenance of the sulfur dioxide NAAQS.

USEPA reviewed the Order and the technical support material and proposed approval of the Order and compliance schedule as a SIP revision on September 23, 1980 (45 FR 63004). In that notice, USEPA proposed approval of the extension of the compliance date to November 1, 1984 and proposed to approve the schedule for compliance. Interested parties were given until October 23, 1980 to submit written comments. One individual submitted comments on the proposed changes. This section of the notice discusses the comment received and USEPA's response.

**Public Comment:** Commentor is concerned about the continuous noxious fumes from the plant and the effect of the fumes on the environs and the health and welfare of the people in the area. Commentor assumes that the present odors are due to the compliance date extension which allows the S. D. Warren plant to burn status quo fuel during an interim period.

**USEPA Response:** Under the Clean Air Act the USEPA does not have authority to control noxious odors. It should be noted, however, that the noxious fumes described by the commentor may be the result of various kraft mill processes rather than the result of the power boiler SO<sub>2</sub> emissions.

**USEPA Final Determination:** After reviewing the Order, the technical support material and the public comment received, USEPA takes final action today to approve this revision to the Michigan SIP. The State has indicated that it is relying on continuous emissions monitoring and fuel analysis to determine whether the Company is in compliance with the Order. This is acceptable to USEPA.

After review of all relevant materials, the Administrator has determined that the revision meets the requirements of section 110(a)(3) of the Clean Air Act and USEPA regulations in 40 CFR 51.6. The revision is legally enforceable, will not interfere with attainment or maintenance of the NAAQS and has been subjected to reasonable notice and public hearing. Accordingly, the revision is approved.

Under Section 307(b)(1) of the Clean

Air Act, judicial review of this final action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of January 27, 1981. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by USEPA to enforce these requirements.

Under Executive Order 12044 USEPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized". The Administrator has reviewed this regulation and determined that it is a specialized regulation.

This final Rulemaking is issued under the authority of section 110 of the Clean Air Act as amended.

Dated: January 19, 1981.

Douglas Costle,  
Administrator.

Note.—Incorporation by reference of the

State Implementation Plan for the State of Michigan was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter 1, Title 40 Code of Federal Regulations is amended as follows:

#### Subpart X—Michigan

1. Section 52.1170(c) is amended by adding paragraph 31 as follows:

#### § 52.1170 Identification of plan.

(c) \* \* \*

(31) Compliance schedules were submitted by the State of Michigan, Department of Natural Resources to USEPA on November 13, 1979, for the S. D. Warren Company, Muskegon County (Michigan Final Order, No. 09-1979, adopted October 31, 1979).

2. Section 52.1175(e) is amended by adding the following for S. D. Warren Company under Muskegon County, Michigan.

#### § 52.1175 Compliance schedules.

(e) \* \* \*

#### Michigan

Source	Location	Regulations involved	Date schedule adopted	Final compliance date
S. D. Warren Co	Muskegon County, Muskegon	336.49 (336.1401)	Oct. 31, 1979	Nov. 1, 1984.

[FR Doc. 81-2854 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 52

[A-2-FRL 1736-5]

#### Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On May 21, 1980 (45 FR 33981), the Environmental Protection Agency (EPA) promulgated conditional approval of the New York State Implementation Plan (SIP) for the New York City metropolitan area with regard to its ability to meet requirements of Part D of the Clean Air Act. This conditional approval identified, among other corrective actions, the need to submit to EPA three separate listings covering all of the transportation related studies, demonstration projects and

permanent projects committed to in the SIP.

EPA received the required documentation under cover of a May 21, 1980 letter from the State and proposed its approval on August 25, 1980 (45 FR 56369). EPA is now taking action to finalize its proposal. EPA is also incorporating the provisions of the State's submission into the approved SIP and is revoking the applicable condition on its approval of the plan. Until all conditions are met, conditional approval of the SIP will continue.

**EFFECTIVE DATE:** This action is effective on February 26, 1981.

**ADDRESSES:** Copies of the State's submission and comments received by EPA are available for inspection during normal business hours at the following addresses:

Environmental Protection Agency,  
Region II, Air Programs Branch, 26  
Federal Plaza, Room 1005, New York,  
New York 10278.

Environmental Protection Agency,  
Public Information Reference Unit, 401  
M Street SW., Washington, D.C.  
20460.

Copies of the State's submission are also available for inspection during normal business hours at the following address: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

**FOR FURTHER INFORMATION CONTACT:**  
William S. Baker, Chief, Air Programs  
Branch, Environmental Protection  
Agency, Region II, 26 Federal Plaza,  
Room 1005, New York, New York 10278,  
(212) 264-2517.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On May 21, 1980, at 45 FR 33981, the Environmental Protection Agency (EPA) promulgated conditional approval of the New York State Implementation Plan (SIP) for the New York City metropolitan area with regard to its ability to meet requirements of Part D of the Clean Air Act, as amended. Today's notice discusses a condition of EPA's approval of the plan. This condition required the State to submit to EPA by May 1, 1980 three separate listings covering all of the transportation related studies, demonstration projects and permanent projects committed to in the SIP.

In response to this requirement, on May 21, 1980 the Commissioner of the State of New York Department of Environmental Conservation submitted to EPA a document providing the required listings.

EPA published its proposed approval of this submission in the August 25, 1980 issue of the *Federal Register* at 45 FR 56369. EPA found the State's three listings to be generally complete and accurate. However, EPA identified that some SIP studies, demonstration projects and permanent projects had been omitted or misclassified in the listings. The reader is referred to the August 25, 1980 notice for a detailed discussion of the submission and EPA's preliminary review.

During the sixty day comment period following publication of the August 25, 1980 notice, EPA received three comments concerning the State's submission. A summary of the comments received and EPA's response are presented in the next section.

**II. Comments Received and Issues Raised**

Comments were received in an October 24, 1980 letter from the New York State Department of Transportation, an October 22, 1980 letter from the Tri-State Regional

Planning Commission, and an October 23, 1980 letter from the Federal Highway Administration, Region I.

**A. New York State Department of Transportation**

**1. Comments.**

The New York State Department of Transportation in its October 24, 1980 letter did not accept certain elements of EPA's interpretation of the State's May 21, 1980 submission. The State believed that the three listings it submitted were complete and accurate as to classification of actions. Those actions described in Volume II of the SIP, but not included in the listings, should not, according to the State, be considered by EPA as SIP commitments. Rather they were intended to indicate potential actions subject to further consideration. The State specifically discussed the status of the following actions which EPA had questioned in its proposal:

a. Trailer on Flat Car Freight Service to the South Bronx.

EPA believed that this action was committed to as a permanent project in the SIP. The State contends that this project should not appear in the listings at all. It can only be considered a SIP commitment after it has been approved by the New York City Transportation Coordinating Committee. Since an environmental impact statement is required for this project, the Transportation Coordinating Committee can choose to wait for this evaluation to be completed prior to making it a SIP commitment.

b. High-Occupancy Vehicle Priority Projects Believed by EPA to Have Been Committed to as Permanent Projects in the SIP.

(1) Brooklyn-Queens Expressway Exclusive Bus and Taxi Lane

The first phase of this project is complete. Additional phases are described in Volume II of the SIP as being in the planning and engineering feasibility study stages. These studies are being undertaken, but the State believes that the project at this point is still correctly listed as only a study commitment.

(2) Non-central Business District High-Occupancy Vehicle Implementation Program

The State notes that Volume II of the SIP predicates the commitment to this project on the results of a study which may recommend several locations for demonstration projects related to this concept. Therefore, it should remain as listed by the State in its May 21, 1980 submittal as a study.

(3) Extension of Contraflow Lane Approaching Brooklyn Battery Tunnel from the Brooklyn-Queens Expressway

The State notes that Volume II of the SIP identifies a study that will evaluate whether a contraflow traffic lane should be established exclusively for buses and notes that this study is now underway. (It should be noted that a contraflow bus and taxi lane was established on October 27, 1980). Therefore, the State maintains that this action should appear in the listings as a study.

c. 42nd Street Transitway.  
While this proposal is currently under evaluation, the State hopes that a program of action towards implementation will result. However, the State claims that it is not, as believed by EPA, a demonstration project at this time due to the lack of information regarding the projects impacts and sources of funding. Hence, the State contends that this program is only a study commitment.

d. Pedestrian Priority Zones Believed by EPA to Have Been Committed to As Permanent Projects in the SIP.

(1) South Bronx Hub Transit Mall  
The State notes that the commitment as it appears in Volume II of the SIP was premature and incorrect. This project should be correctly listed as a study commitment as it appears in Volume I of the SIP.

(2) Flatbush Avenue—Pedestrian Amenities Program

This project, as presented in Volume II should be listed only as a study commitment. No further explanation is given by the State.

(3) Yonkers Getty Square Project Phase II of this project requires additional study and analysis. Hence, the State claims that this project should be classified as a study commitment.

e. Bicycle Improvement Projects.

In its proposal EPA noted the several bicycle projects it believed were committed to as permanent projects in the SIP had been classified as demonstration projects or omitted. The State notes that all bicycle projects identified in its May 21, 1980 submittal should be considered as demonstration projects. Volume II of the SIP identified these projects as pilot projects. The use of the term pilot project and demonstration project were synonymous in the early phase of SIP development. Those projects not included in the listings should be deleted.

**2. EPA Response.**

EPA finds that the State's listings of projects, demonstration projects and studies to be acceptable. EPA recognizes that, due to a variety of factors, certain projects identified in Volume II of the

SIP must be relegated to the status of demonstration projects or studies and, on this basis, accepts the State's clarification of its commitments. This conservative, yet prudent approach can lead to a more realistic SIP. However, EPA trusts that in the future the State will not withhold making commitments to control measures until all information is obtained. Implementation of a measure is typically a continuing process of planning, programming, experimenting and approving. It would be helpful to present this entire process in the SIP so that actions associated with a measure will be better identified and have greater likelihood for implementation. Moreover, if at any point a specific application of a measure, or the entire measure, is found not to be reasonable, procedures exist for making appropriate revisions to the SIP.

#### B. Federal Highway Administration, Region I

##### 1. Comments

In its October 23, 1980 letter the Federal Highway Administration (FHWA), Region I Office expressed concern about EPA's interpretation of the State's May 21, 1980 submission. FHWA also indicated that all the reasonably available control measures evaluated in Volume II of the SIP are not necessarily viable studies, demonstration projects or permanent projects. Furthermore, FHWA stated that at this point, the SIP commitments described in Volume II could result in implementation programs that may not be publicly acceptable, may not be safe, could increase air pollution, or be hard to enforce. FHWA believes EPA's proposal to identify Volume II projects as SIP commitments would circumvent the transportation and environmental processes.

##### 2. EPA Response

As noted in EPA's response to comments from the New York State Department of Transportation, EPA accepts the exclusion of certain actions contained in Volume II from the three listings. EPA cannot accept, however, the observations made by FHWA.

It should be noted that Volume II of the SIP was prepared with the full participation of local government and the appropriate transportation coordinating committees. In addition, numerous forums and hearings were held with the public to solicit comment before the SIP was drafted and submitted to EPA. Moreover, FHWA participated in the review of the SIP. During this process no evidence was

presented to suggest that any member of the public felt that a particular project in Volume II was not acceptable.

When developing projects for the SIP, including those in Volume II, there was a presumption of positive air quality benefits. Though there was no technical evaluation completed on a project-by-project basis, it is clear that the implementation of these projects would result in some reduction in emissions and energy savings.

With regard to the physical safety of SIP projects in Volume II, it must be assumed that State and local agencies would not consider implementing any SIP commitment if it involved a risk to public safety. In such cases the SIP would be revised.

#### C. Tri-State Regional Planning Commission

##### 1. Comments

In its October 22, 1980 letter the Tri-State Regional Planning Commission questioned EPA's proposed findings regarding commitments to undertake studies identified in the State's May 21, 1980 submission. Tri-State is in disagreement with EPA that studies listed in Volume II and not in Volume I are SIP commitments. In addition, Tri-State discussed the status of the following SIP commitments which should have been included in the listings as studies:

##### a. The Study of Carpool Lanes to JFK International Airport

Tri-State indicated that the inclusion of this study in the SIP was an oversight and that it had previously notified EPA of this fact.

##### b. "Several" High-Occupancy Vehicle Priority Studies in Nassau and Suffolk Counties.

Tri-State indicated that there are in fact only two high-occupancy vehicle priority studies identified in Volume II of the SIP. This is contrary to EPA's interpretation that there were several. Since neither of these studies is made specific in Volume II of the SIP, their status in Volume I was difficult to ascertain. It was found that the study in the SIP associated with Nassau County is entitled "Bus and Carpool Lane Opportunities." Tri-State noted that this study was completed in August 1979 and was listed in the State's May 21, 1980 submission. The study associated with Suffolk County is under way as part of the Section 175 study program as "Data Base Feasibility Bus and Carpool Study." This study was also included as part of the State's May 21, 1980 submittal.

##### 2. EPA Response

EPA appreciates the information provided by Tri-State and as noted earlier accepts the listings as submitted by the State as being complete listings of the required SIP commitments.

#### III. EPA Action

Based on its review of the submitted documents, the comments received, and discussions with affected agencies, EPA finds that the subject condition on its approval of the New York SIP for the New York City metropolitan area has been fully met. Therefore, EPA is incorporating the State's submission into the SIP and revoking the applicable condition.

In order that Figure 1, appearing on page 56370 of EPA's August 25, 1980 Federal Register notice, remain an accurate summary of the studies, permanent projects and demonstration projects contained in the applicable part of the SIP, the following changes should be made:

- The first permanent project (Trailer on flat car terminal at High Bridge with increased clearances to the north), under Measure C, Freight transportation, should be deleted.

- Under Measure D, Express bus and carpool lanes, the following two studies should be added:

##### —Nassau County

1. Bus and carpool land opportunities

##### —Suffolk County

2. Data base feasibility bus and carpool study

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within sixty days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 172, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601))

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator, Environmental Protection  
Agency.

Note.—Incorporation by reference of the State Implementation Plan for the State of New York was approved by the Director of the Federal Register on July 1, 1980.

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

**Subpart HH—New York**

1. Section 52.1670 is amended by adding a new paragraph (c)(55) as follows:

**§ 52.1670 Identification of plan.**

(c) The plan revisions listed below were submitted on the dates specified.

(55) A supplemental submittal, dated May 21, 1980, from the New York State Department of Environmental Conservation which includes three listings of permanent projects, demonstration projects and transportation related studies committed to in the non-public transit portion of the plan for the New York City metropolitan area.

**§ 52.1674 [Reserved]**

2. Section 52.1674 is amended by removing and reserving paragraph (e)(4).

[FR Doc. 81-2738 Filed 1-26-81; 8:45 am]  
BILLING CODE 6560-38-M

**40 CFR Part 52**

[A-2-FRL 1738-7]

**Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** This notice announces approval by the Environmental Protection Agency (EPA) of a revision to the New York State Implementation Plan (SIP). This action has the effect of allowing the continuation of a temporary relaxation in the fuel oil sulfur content limitation applicable to sources with a capacity less than 250 million BTU per hour located in parts of the Southern Tier East, Central New York and Champlain Valley (Northern) Air Quality Control Regions. These sources may continue to use fuel oil with a maximum sulfur content of 2.8 percent, by weight, until December 31, 1982. Receipt of this implementation plan revision request from New York State

was announced in the Federal Register on August 20, 1980 at 45 FR 55482, where a full description of the proposed revision is contained.

**EFFECTIVE DATE:** This action becomes effective on January 27, 1981.

**ADDRESSES:** Copies of the SIP revision submitted by New York State and public comments are available for inspection during normal business hours at the following addresses:

Environmental Protection Agency,  
Region II, Air Programs Branch, Room  
1005, 26 Federal Plaza, New York,  
New York 10278

Environmental Protection Agency,  
Public Information Reference Unit, 401  
M Street, S.W., Washington, D.C.  
20460

A copy of the New York SIP revision is available for inspection during normal business hours at: The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408.

**FOR FURTHER INFORMATION CONTACT:**  
William S. Baker, Chief, Air Programs  
Branch, Environmental Protection  
Agency, Region II, 26 Federal Plaza,  
New York, New York 10278, (212) 264-  
2517.

**SUPPLEMENTARY INFORMATION:** On October 31, 1979 the New York State Department of Environmental Conservation sent the Environmental Protection Agency (EPA) a proposed revision to the New York State Implementation Plan (SIP). Supplemental material to this proposed revision was sent to EPA by the State on April 28, 1980 and May 20, 1980. This revision provides for the continuation of a state-initiated fuel oil sulfur content relaxation ("special limitation") affecting certain fuel burning sources in certain areas of the State. The submittal requests that this "special limitation" which was previously approved by EPA (42 FR 56607, October 27, 1977) and which expired December 31, 1979, be renewed and extended through December 31, 1982.

"Special limitations" are authorized by Part 225.2 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York and can allow individual sources or groups of sources to use a fuel of a different sulfur content from that specified in the prevailing regulation. The State's proposed extension of the "special limitation" would continue to relax to a maximum of 2.8 percent sulfur, by weight, (unless otherwise constrained by a Prevention of Significant Deterioration permit) the sulfur-in-fuel-oil limitation applicable to sources which do not have a total heat input in excess of 250 million BTU per

hour and which are located in the following areas:

1. The Southern Tier East Air Quality Control Region (AQCR), with the exception of all sources in Broome County.

2. The Central New York AQCR, with the exception of the Oswego Facilities Trust Company in Oswego County and all sources in Onondaga County.

3. The Champlain Valley (Northern) AQCR, with the exception of all sources in the City of Glens Falls and sources in the Town of Queensbury which have a total heat input greater than 100 million BTU per hour.

This proposed revision to the New York SIP was announced in the Federal Register on August 20, 1980 (45 FR 55482), where the revision is described in detail. In its August 20, 1980 notice, EPA advised the public that comments would be accepted as to whether the proposed revision to the New York SIP should be approved or disapproved. One comment supporting EPA approval was received.

Based on EPA's review of the State's technical support documents and the hearing officer's report and agreement with the State's conclusion that, if implemented, the proposed plan revision would not be expected to cause or exacerbate contraventions of any national ambient air quality standard or applicable Prevention of Significant Deterioration increments, EPA finds this revision to the New York SIP consistent with the requirements of Section 110(a) of the Clean Air Act and EPA regulations found at 40 CFR Part 51. Accordingly, EPA approves this revision.

Furthermore, this action is being made effective immediately because it imposes no hardship on the affected sources, and no purpose would be served by delaying its effective date.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized

regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 172, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601)).

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator, Environmental Protection Agency.

Incorporation by reference of the State Implementation Plan for the State of New York was approved by the Director of the Federal Register on July 1, 1980.

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

#### Subpart HH—New York

1. Section 52.1670, paragraph (c) is amended by adding a new subparagraph (c)(56) as follows:

##### § 52.1670 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(56) Revision submitted on October 31, 1979 and supplemented on April 28, 1980 and May 20, 1980 by the New York State Department of Environmental Conservation which grants a "special limitation" under 6 NYCRR Part 225. This "special limitation" relaxes to 2.8 percent, by weight, until December 31, 1982, the sulfur-in-fuel-oil limitation applicable to fuel burning sources which have a capacity less than 250 million BTU per hour and which are located in parts of the Southern Tier East, Central New York and Champlain Valley (Northern) Air Quality Control Regions.

[FR Doc. 81-2962 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

comments received, USEPA is approving and disapproving specific portions of the Ohio SO<sub>2</sub> Plan.

In a separate notice USEPA is also repropounding rulemaking action on all other portions of the SO<sub>2</sub> plan. The portions of the plan that are being repropounded consist of: (1) Those parts of the plan which USEPA proposed to approve on February 25, 1980 only if OEPA submitted necessary technical support and documentation during the public comment period; (2) those parts of the plan which USEPA initially proposed to approve but which, as a result of additional review, USEPA has determined to be deficient; and (3) the regulations which OEPA withdrew during the public comment period. USEPA will repropound these parts of the plan to allow the public an opportunity to comment on the additional information now available.

**EFFECTIVE DATE:** February 26, 1981.

**ADDRESSES:** Copies of the Docket #5A-80-3 are on file for copying and inspection during normal business hours at USEPA, Region V and at: U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street SW., Washington, DC 20460. Copies of the Ohio Administrative Code (OAC) Rules for this SIP revision are available for inspection in the Docket #5A-80-3 cited above and at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Regulatory Analysis Section, Air Programs Branch, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 888-6088.

**SUPPLEMENTARY INFORMATION:** This notice discusses USEPA's review of the Ohio SO<sub>2</sub> SIP in four parts: Introduction, Background, Control Strategy Demonstration, and Public Comment Review.

#### I. Introduction

On September 12, 1979, the Governor of Ohio submitted a Sulfur Dioxide (SO<sub>2</sub>) Control Plan for the State of Ohio to the U.S. Environmental Protection Agency (USEPA) for inclusion in the State Implementation Plan (SIP) for Ohio. Supplemental technical support materials were submitted by the Director of the Ohio Environmental Protection Agency (OEPA) on October 23, 1979, January 10, 1980, and January 28, 1980. On February 12, 1980, the Director of the OEPA submitted the Ohio Administrative Code (OAC) rules 3745-18-01 to 3745-18-94, in final form, as adopted by the Order of November

14, 1979, effective in Ohio December 28, 1979. These regulations replaced those submitted on September 12, 1979 and are the subject of today's rulemaking action. The OEPA requested that the sulfur dioxide control plan be substituted for the existing federal control strategy and regulations for sulfur dioxide. The SO<sub>2</sub> Plan was submitted pursuant to the requirements specified in § 110 of the Clean Air Act and 40 CFR Part 51.

On February 25, 1980 (45 FR 12266), USEPA proposed: (a) to approve those portions of the Ohio submission for which there is an enforceable control strategy that assures the attainment and maintenance of the National Ambient Air Quality Standards for sulfur dioxide, (b) to approve other portions of the submission only if the State of Ohio provided specified technical support and documentation during the public comment period, and (c) to disapprove those portions of the submission for which there are deficiencies in the methodology or inadequate technical justification.

At the time of the proposed rulemaking, a 60 day public comment period was provided. On April 25, 1980, however, in response to the request of several utilities in Ohio and due to the complexity of the proposed rulemaking, USEPA extended the public comment period to May 26, 1980 (45 FR 27957). During the public comment period, 31 comments were received including a submission from the Governor of Ohio dated May 16, 1980 which was transmitted by OEPA on May 20, 1980. The Ohio submission consisted of a final technical support document and OEPA's general comments on the February 25, 1980 notice of proposed rulemaking. It also included a formal withdrawal of OAC Rules 3745-18-08(H), 3745-18-15(B), 3745-18-53(E), 3745-18-63(K), 3745-18-77(B), and 3745-18-90(C). These rules contain emission limitations for the following plants: Cairo Chemical Corporation in Allen County, Crystal Tissue Company in Butler County, U.S. Steel Corporation, Lorain-Cuyahoga Works in Lorain County, Bergstrom Paper Company in Montgomery County, Mead Corporation in Ross County, and Shell Chemical Company in Washington County. Additionally on December 19, 1980 USEPA received a letter from the State of Ohio withdrawing OAC Rule 3745-18-53(A). This rule contains the emission limitations for the B. F. Goodrich Company, Avon Lake Chemical Plant in Lorain County. OEPA expects to submit new rules replacing those listed above in the near future.

#### 40 CFR Part 52

[A-5-FRL 1736-2]

#### Approval and Promulgation of Implementation Plans, Ohio Sulfur Dioxide Control Strategy

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (USEPA) announces today final rulemaking on revisions to the Sulfur Dioxide (SO<sub>2</sub>) State Implementation Plan (SIP) for the State of Ohio, except for those portions cited below. A notice of proposed rulemaking on these revisions was published in the February 25, 1980 Federal Register (45 FR 12266). Based on USEPA's review of the State's response and the public

The Agency is taking no action on these sources in this final rule.

In a separate action USEPA is repropounding the remaining portions of the Ohio sulfur dioxide plan. The portions of the plan that are being repropounded consist of: (1) those parts of the plan which USEPA proposed to approve on February 25, 1980 only if OEPA submitted necessary technical support and documentation during the public comment period; (2) those parts of the plan which USEPA initially proposed to approve but which, as a result of additional review, USEPA has determined to be deficient; and (3) the regulations which OEPA withdrew during the public comment period. USEPA will repropound these parts of the plan to allow the public an opportunity to comment on the additional information now available.

USEPA by this notice takes final rulemaking action to approve and disapprove specific portions of the Sulfur Dioxide (SO<sub>2</sub>) Control Plan for the State of Ohio.

USEPA approves the following OAC Rules: 3745-18-01 Definitions, 3745-18-02 Ambient Air Quality Standards-Sulfur Dioxide, 3745-18-05 Ambient and Meteorological Monitoring Requirements, 3745-18-06 General Emission Limit Provisions.

USEPA disapproves the following OAC Rules: 3745-18-03(A) Attainment Dates and 3745-18-03(C)(3) Compliance Time Schedules in part. USEPA approves the remaining provisions of 3745-18-03.

USEPA disapproves the following OAC Rules relating to measurement methods and procedures: 3745-18-04(D)(2), 3745-18-04(D)(3), 3745-18-04(E)(2), 3745-18-04(E)(3), and 3745-18-04(E)(4). USEPA approves the remaining provisions of 3745-18-04.

USEPA approves the sulfur dioxide emission limits for the following counties: Adams County (in part), Allen County (in part), Ashland County, Ashtabula County, Athens County (in part), Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County (in part), Clinton County, Columbiana County, Coshocton County (in part), Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County (in part), Geauga County, Guernsey County, Hamilton County (in part), Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lawrence County (in part), Licking

County, Logan County (in part), Lorain County (in part), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County (in part), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Portage County, Preble County, Putnam County, Richland County, Ross County (in part), Scioto County, Seneca County, Shelby County, Tuscarawas County, Union County, Van Wert County, Warren County, Washington County (in part), Wayne County (in part), Williams County, Wood County (in part), and Wyandot County.

USEPA disapproves the sulfur dioxide emission limits for Summit County.

The measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for each source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations; or if it chooses, challenging the new regulations. In some instances, the present emission control regulations contained in the federally approved SIP are different from the regulations currently being enforced by the State. In these situations, the present Federally approved SIP will remain applicable and enforceable until the source is in compliance with the newly promulgated and federally approved regulations. Failure of a source to meet applicable pre-existing regulations will result in enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

## II. Background

On January 30, 1972, the State of Ohio submitted the "Implementation Plan for the Control of Suspended Particulate, Sulfur Dioxide, Carbon Monoxide, Hydrocarbons, Nitrogen Dioxide, and Photochemical Oxidants in the State of Ohio" to the Administrator of the Environmental Protection Agency. This plan was submitted pursuant to section 110 of the Clean Air Act, as amended, which requires states to adopt implementation plans to achieve and maintain the National Ambient Air Quality Standard (NAAQS). On May 31, 1972 (37 FR 10842), the Administrator approved the Ohio plan with specific

exceptions. Subsequently, amendments were submitted that permitted full approval of the plan on September 22, 1972 (37 FR 19806).

On June 28, 1973, the United States Court of Appeals for the Sixth Circuit decided the case of *Buckeye Power Company, et al. v. EPA*, 481 F. 2d 162. The court vacated the Administrator's approval of the Ohio plan and remanded the case to the Agency for compliance with section 553 of the Administrative Procedure Act, to take comments, data, or other evidence from interested parties and to express the basis for ensuing administrative actions.

On August 27, 1973, the State of Ohio withdrew from the proposed Ohio plan the control strategy and regulations for control of sulfur dioxide. The remainder of the plan was proposed on November 15, 1973 (38 FR 31543) and was approved on April 15, 1974 (39 FR 13530), with specific exceptions. Because the State of Ohio withdrew the originally submitted control strategy and regulations for control of sulfur dioxide, that portion of the plan was disapproved.

On May 30, 1974, the State of Ohio submitted a proposed sulfur dioxide strategy and regulations to the Administrator to cure the defects in the Ohio Implementation Plan noted in the April 15, 1974 Federal Register. On September 13, 1974, however, the Ohio Environmental Board of Review overturned a portion of these regulations, thereby rendering them unenforceable. Since the plan for control of sulfur dioxide could no longer be effectuated as designed by the State, the Administrator deemed it an ineffective submission and no further rulemaking action was taken. The State of Ohio formally withdrew the proposed regulations on July 16, 1975.

On November 10, 1975, the Administrator proposed an alternate plan for the control of emissions of sulfur dioxide in the State of Ohio (40 FR 52410). On August 27, 1976, USEPA promulgated regulations for the control of sulfur dioxide in Ohio (41 FR 36323). The regulations were amended on November 30, 1976 (41 FR 52455), May 31, 1977 (42 FR 27588), August 15, 1979 (44 FR 47769), December 5, 1979 (44 FR 69328), January 4, 1980 (45 FR 1022), January 21, 1980 (45 FR 3906), June 24, 1980 (45 FR 42279), July 25, 1980 (45 FR 49550), September 22, 1980 (45 FR 62815), November 4, 1980 (45 FR 73043), November 7, 1980 (45 FR 73927), November 26, 1980 (45 FR 78684) and December 1, 1980 (45 FR 79451).

On November 12, 1976, the U.S. Court of Appeals for the Sixth Circuit stayed the enforcement of the federally promulgated regulations in response to

challenges that were filed by industrial and utility petitioners. The court directed USEPA to collect and evaluate additional data and to make appropriate changes in the regulations. On May 31, 1977 (42 FR 27588), USEPA promulgated the necessary corrections in the regulations, as they applied to the petitioners.

On February 13, 1978 and June 29, 1978, the Sixth Circuit Court upheld USEPA's use of the RAM model and other modeling techniques in the development of the Ohio SO<sub>2</sub> Plan. In October 1978 and January 1979, the U.S. Supreme Court declined to review the Sixth Circuit decision.

Ohio has submitted the proposed SO<sub>2</sub> revisions being acted on today to replace the federal regulations.

### III. Control Strategy Demonstration

The OEPA has submitted a comprehensive control strategy and regulations to protect the primary and secondary standards for sulfur dioxide in the State of Ohio. Individual emission limitations are specified for the majority of the sulfur dioxide sources in the State on a county-by-county basis, although some sources, generally those of a smaller size, are required to comply with a process compliance equation or a general fuel burning regulation applicable to a particular county. The control strategy developed by Ohio EPA utilizes one unique concept. As an integral portion of the control strategy to attain and maintain the standards in a number of counties, a mandatory reduced operating level is specified for many sources on a calendar quarter basis. The emission limitation, however, for all except two sources is constant throughout the year.

USEPA's review of the OEPA modeling analyses relied upon the guidance specified in several USEPA documents: "Guideline on Air Quality Models" (EPA-450/2-78-027, April 1978); "Regional Workshops on Air Quality Modeling: A Summary Report" (September 1979); "Procedures and Technical Requirements in Support of SO<sub>2</sub> SIP Revision", USEPA Region V; Stack Height Increase Guidelines (44 FR 2808, January 12, 1979 and 45 FR 42279, June 23, 1980); and the PSD regulations (43 FR 26380, June 19, 1978; 44 FR 51924, September 5, 1979; and 45 FR 52676, August 7, 1980). Hereafter, this collection of documents will be referred to as USEPA's modeling guidelines.

OEPA utilized the same models, in general, that USEPA used in developing the federal control strategy for sulfur dioxide in Ohio, although the application of the models differed in some instances. OEPA utilized 1964

meteorological data and a 1974 emissions inventory.

The OEPA Plan contains the following three significant characteristics which apply to each county: (a) the use of a 30-day averaging period; (b) attainment dates, and (c) compliance schedules.

(a) *30-day Averaging Period:* OAC Rule 3745-18-04, Measurement Methods and Procedures, sections D(2) and (3) and sections E(2) and (3) specify the test methods and procedures for determining compliance with the allowable emission limit for fuel burning equipment with continuous emission monitoring systems or fuel analyses. The provisions state that " \* \* \* compliance with the applicable sulfur dioxide emission limit shall be based on the daily calculations using an arithmetic average of the preceding thirty consecutive twenty-four hour sample analyses." Additionally, section E(4) states that compliance for non-utilities may be determined by " \* \* \* certified fuel analysis reports from each fuel supplier. Such certifications must be reported for each fuel delivery \* \* \* as delivered to the facility." In this provision, no averaging time is specified. These provisions are applicable to all fuel burning sources in all 88 counties in Ohio with the exception of the Ohio Power Cardinal Plant in Jefferson County. Rule 3745-18-04(D)(4) specifies that compliance for this plant will be based on a calendar day period with two allocated exceedances in any consecutive 30-day running period. This compliance method is consistent with the acceptable Fuel Sampling Analysis Method for Demonstrating Compliance by Sulfur Dioxide Sources in Ohio as amended on August 22, 1979 (44 FR 49296).

The provisions specifying a 30-day averaging period or an undefined averaging period in fuel analyses, as well as a 30-day averaging period in continuous emission monitoring to determine compliance with the applicable emission limitation for fuel burning sources are deficient because USEPA has no basis to conclude that such a time period or undefined time periods are adequate to assure the attainment and maintenance of the 24-hour primary health-related NAAQS or the 3-hour secondary welfare related NAAQS.

Although the 30-day averaging period must be disapproved at this time, USEPA has initiated a review of its policies and procedures for regulating coal-fired power plants (February 14, 1980, 45 FR 9994). As part of this review, the Agency is investigating methods that use longer averaging times and at the same time insure the protection of the

NAAQS. Any change in Agency policy cannot be made prior to the completion of these analyses.

Therefore, USEPA cannot approve the compliance test methods of fuel analysis and continuous emission monitoring (with the exception of that portion pertaining to the Ohio Power Cardinal Power Plant) as a revision to the SIP in its present form. USEPA disapproves OAC Rule 3745-18-04(D)(2), 3745-18-04(D)(3), 3745-18-04(E)(2), 3745-18-04(E)(3), and 3745-18-04(E)(4).

USEPA approves OAC Rule 3745-18-04(D)(4) which specify the compliance method for the Ohio Power Cardinal Power Plant and USEPA approves OAC Rules 3745-18-04(D)(1) and (E)(1) which specify stack gas sampling as a test method for determining compliance with the applicable emission limit for fuel burning equipment. The Rules specify test methods contained at 40 CFR § 60.46.

(b) *Attainment Date:* OAC Rule 3745-18-03(A) states that the attainment of established ambient air quality standards for sulfur dioxide shall be accomplished as expeditiously as practicable, but no later than December 31, 1982. The attainment date for the existing Federal regulations is August 27, 1979 (41 FR 35324) for all sources in Ohio except those sources where enforcement of the August 27, 1979 regulations was stayed by the U.S. Court of Appeals for the Sixth Circuit. For those sources affected by the Sixth Circuit Court decision, the attainment date is June 17, 1980 (42 FR 27588), except for the Ashland Oil Company where the attainment date is September 14, 1982 (44 FR 47770), Summit County where the attainment date is January 4, 1983 (44 FR 69928), PPG Industries, Inc. (boilers only) in Summit County where the attainment date is August 25, 1983 (45 FR 49550) and the Ohio Power Company (Cardinal plant in Jefferson County and Muskingum River plant in Washington and Morgan Counties) and the Columbus and Southern Ohio Electric Company (Conesville plant in Coshocton County) where the attainment date is June 19, 1983. Some sources in Butler County do not have an attainment date under the existing federal regulations.

Section 110(a)(2)(A)(i) of the Clean Air Act, as amended, requires that a plan implementing a national primary ambient air quality standard provide for the attainment of such primary standard as expeditiously as practicable, but in no case later than three years from the date of approval of such plan. USEPA cannot justify an extension of the attainment date beyond the dates specified in the existing federal SIP for

the following reasons: (1) The State of Ohio submitted its plan as a substitute for the existing federal plan for  $S_2$  in Ohio pursuant to Section 110 of the Clean Air Act; (2) the emission limitations in the OEPA Plan are less restrictive than those in the existing federal plan for many sources; (3) the Ohio plan is not meant to correct control strategy deficiencies in the existing federal plan, causing nonattainment of the NAAQS, and, therefore, is not submitted pursuant to Part D of the Clean Air Act, as amended; (4) the federal attainment date has passed for the majority of the sources subject to the OEPA plan; and (5) the majority of sources in Ohio are in final compliance or on a schedule to reach final compliance by the attainment date in the existing federal plan.

It is the Agency's judgment that the attainment date specified in the proposed Ohio revision does not meet the requirements of Section 110(a)(2)(A)(i) and cannot be approved as a revision to the SIP in its present form. USEPA, therefore, disapproves OAC Rule 3745-18-03(A). The federal attainment dates contained in 40 CFR § 52.1875 therefore remain in effect.

(c) *Compliance Time Schedules:* OAC Rule 3745-18-03(C)(3) specifies compliance schedules for a number of Ohio industrial and utility sources. Generally, these schedules are for the sources that challenged the August 27, 1976 federally promulgated  $S_2$  Plan. The existing federal SIP specifies three dates by which these sources must be in final compliance with the appropriate emission limitations: (1) for fuel burning sources utilizing complying fuels—October 19, 1979; (2) for fuel burning sources utilizing flue gas desulfurization—June 17, 1980; and (3) for process sources—May 30, 1980.

OAC Rule 3745-18-03(C)(3) allows all of the sources named in the Rule until June 17, 1980 to achieve final compliance with the emission limitations. Since many of the sources subject to the more restrictive existing federal final compliance dates were in final compliance prior to June 17, 1980, and since the proposed OEPA emission limitations are, in some cases, less restrictive than the existing federal emission limitations for a particular source, USEPA finds no basis for approving a final compliance date extension from October 19, 1979 to June 17, 1980 for fuel burning sources utilizing complying fuels to meet the appropriate emission limitations. USEPA, therefore, disapproves OAC Rule 3745-18-03(C)(3) for all fuel burning sources electing to comply with the regulations by utilizing

complying fuels. USEPA approves OAC Rule 3745-18-03(C)(3) as it applies to process sources or fuel burning sources electing flue gas desulfurization to comply with the emission limitations since the final compliance date is either the same as or essentially the same as that contained in the existing federal SIP.

The following items are discussed below: (a) Approved Regulations; (b) Disapproved Regulations; (c) No Action; (d) Ohio Power Cardinal Power Plant; (e) OAC Rules and (f) OEPA Regulations in 33 Rural Counties.

(a) *Approved Regulations*—The emission limitations for the counties, or portions listed below are being approved today because those regulations have been determined to provide for attainment and maintenance of the national ambient air quality standards for sulfur dioxide in those areas.

(b) *Disapproved Regulations*—The emission limitations for Summit County are being disapproved based on the result of an analysis of the receptor resolution in the critical day RAM analysis as discussed in the February 25, 1980 proposed rulemaking. The results of the modeling indicated that Ohio EPA's control strategy is inadequate to attain and maintain the NAAQS in that county. Therefore, USEPA must disapprove the OEPA regulations for Summit County.

(c) *No Action*—The fact that USEPA is taking no action on certain parts of the plan today is not an indication of approval or disapproval. Some portions of the plan are currently under review. Other portions will require a reproposal to allow the public an opportunity to comment on the additional information now available. All remaining portions of the plan will be handled in subsequent rulemaking actions.

(d) *Ohio Power Cardinal Power Plant*—OAC Rule 3745-18-47(D) specifies the emission limitation for the Cardinal Power Plant in Jefferson County. This emission limitation and supporting control strategy documentation was developed by Ohio Power and submitted to both OEPA as a proposed control strategy and to USEPA as an alternative strategy to the existing federal regulations in § 52.1881(b)(34)(viii). Prior to the September 12, 1979 submission of the proposed Ohio EPA  $SO_2$ , SIP, USEPA analyzed Ohio Power's proposed alternative strategy for Cardinal and found it approvable.

In lieu of proposing a revision to the existing federal plan for Cardinal, USEPA approves Ohio's emission limitation and control strategy

demonstration, OAC Rule 3745-18-47(D) and the Compliance Determination Procedure, OAC Rule 3745-18-04(D)(4), for the Ohio Power Cardinal Power Plant in Jefferson County.

OAC Rule 3745-18-04(D)(1), which specifies stack gas sampling using methods specified in 40 CFR 60.46, also is approved for the Cardinal Plant as well as for the other utility sources.

(e) *OAC Rules*—Also included in the Ohio submission are the following OAC Rules: 3745-18-01 Definitions, 3745-18-02 Ambient Air Quality Standards-Sulfur Dioxide, 3745-18-05 Ambient and Meteorological Monitoring Requirements, and 3745-18-06, General Emission Limit Provisions. Since these rules are either identical or equivalent to those associated with the existing federal  $SO_2$  Plan or present no problem with ensuring attainment and maintenance of the NAAQS, the Agency approves these rules.

(f) *Ohio EPA Regulations in 33 Rural Counties*—In the notice of proposed rulemaking, USEPA requested Ohio EPA to explain the rationale for setting emission limits in 33 rural counties where no limits were needed in the federal plan.

In its comments, Ohio EPA explained that emission limits were established to protect PSD increments and to provide an ambient air quality growth margin for new source construction. Ohio EPA noted that the limits generally reflect status quo levels and should not represent a financial burden on the sources.

USEPA acknowledges Ohio EPA's rationale and agrees that protection of the PSD increments and allowance for growth is important. The Agency, therefore, includes approval of the regulations for those counties in today's rulemaking package.

#### IV. Public Comments

During the public comment period, 31 public comments were received including a submission from the Governor of Ohio dated May 16, 1980. This comment included a final technical support document and OEPA's general comments on the February 25, 1980 notice of proposed rulemaking.

Only the issues raised in the public comments which are relevant to this rulemaking action are discussed below. All other issues will be discussed in subsequent rulemaking actions to which they pertain.

##### A. Modeling Methodology

Comment: One commentator requested clarification of the annual modeling analysis.



Response: No annual modeling analyses were performed. All previous analyses of Ohio sources by USEPA indicated that the short-term standards were more constraining than the annual standard. USEPA assumed that the annual standard would be protected if the short-term standards were attained. Therefore, the OEPA modeling focused on the short-term standards.

Comment: One commentator stated that the short-term modeling should have been based on the maximum rated source capacity at the proposed allowable emission limitation. It was unclear to the commentator whether this was done.

Response: The emission inventories applied in the final attainment analyses were, in general, based on maximum allowable emission limits and operation at maximum allowable capacity (or design capacity, if no load restriction). Thus, the OEPA analyses examined maximum emission cases.

Comment: Several commentators objected to the Agency's requirements (1) of modeling maximum sulfur content rather than accounting for sulfur variability; and (2) of use of design or maximum source operating rates under worst case meteorological conditions in modeling for the 24 hour standard. The commentators contended that this situation will never occur.

At this time USEPA only accounts for sulfur variability in the Acceptable Fuel Sampling Analysis Method for Demonstrating Compliance for Sulfur Dioxide Sources in Ohio as amended on August 22, 1979 (44 FR 49296) and in the Interim Enforcement Policy as published on February 11, 1980 (45 FR 9101) and extended on October 28, 1980 (45 FR 71422). However, the Agency did announce its intention to propose policy and regulatory changes which would permit attainment demonstrations to analyze the air quality impact of variable sulfur emissions (February 14, 1980, 45 FR 9994).

Response: This issue has been discussed at length with reference to the existing federal regulations for SO<sub>2</sub> in Ohio in the Supplemental Technical Support Document (TSD) (at 81-83) and the Final TSD (at I-34 to I-41). (See Record for the August 27, 1976 rulemaking 41 FR 36325). Moreover, this issue was specifically considered by the Sixth Circuit Court (see *Cleveland Electric Illuminating v. EPA*, 572 F.2d 1150 (6th Cir. 1978), cert. denied, 436 U.S. 911 (1978)) and the USEPA's approach affirmed. Briefly, design rates are used because they are easily ascertainable and because protection of the short-term health-related standards (24-hour) requires analysis of "worst case"

conditions. See also Summit County TSD at 68-69. (Docket No. 5A-78-1).

Comment: One commentator questioned how area sources were addressed in the modeling. In addition, the commentator requested clarification and justification of the general treatment of distant major sources and background.

Response: Wherever area source data were available, they were used in the modeling. In the absence of area source data, OEPA used the previously derived USEPA constant background levels. These levels account for all uninventoried sources (e.g., natural sources and small or distant man-made sources).

Comment: One commentator contended that the 1964 meteorological data bases were inadequate. The commentator claimed that: (a) a multi-year data base should have been used since that would be a more restrictive approach and (b) that the State should have used highest predicted values since only one year of data was modeled.

Response: USEPA modeling guidelines call for the use of a multi-year meteorological data base, if available. In the absence of a multi-year data base, a single year of data was acceptable at the time OEPA developed their modeling. Because only one year of data was available when OEPA began the modeling for its SIP, the single year data base is adequate. USEPA has since changed its policy and now requires 5 years of data (see 45 FR 42279). Since five years of data have become available for the National Weather Service stations of interest here, all future Ohio analyses will be required to use five years of meteorological data. Further, USEPA guidelines specify the same criteria with respect to use of the second highest concentrations whether 1 year or 5 years of data are used.

Comment: Two commentators argued that the methodology used in developing the USEPA plan should have no bearing on disapproval of the Ohio SO<sub>2</sub> plan. The commentators also stated that the OEPA analyses satisfy the requirements of Section 110(a)(2) of the Clean Air Act.

Response: In reviewing the OEPA submission, the agency did not propose to disapprove portions of the OEPA plan solely because the methodology was different than that used previously by USEPA. The Agency proposed to disapprove portions of the OEPA plan that were not shown to be adequate to ensure attainment and maintenance of the NAAQS, pursuant to Section 110(a)(2) of the Clean Air Act. USEPA modeling guidelines specify the use of all available data (especially any previous analyses) in developing control strategies. Thus, OEPA must employ all

appropriate information included in the existing federal plan.

Comment: One commentator requested that USEPA reexamine the proposed OEPA plan and the existing federal plan to make sure that CRSTER was applied properly in all high terrain areas. The commentator argued that the Valley model should have been used in cases where either high terrain receptors were ignored or were set at artificial lower elevations.

Response: Based on USEPA's previous modeling and its review of the OEPA modeling, USEPA determined that the CRSTER model has been properly applied. The high terrain receptor cases mentioned by the commentator either did not occur or if there were any difference in terrain height, they were insignificant. Thus, application of the Valley model is not appropriate.

Comment: One commentator expressed concern with the Agency's position that the overpredictive characteristic of the models is necessary to provide an additional margin of safety for the NAAQS. The commentator asserted that this is unnecessary since available data on health effects of SO<sub>2</sub> levels above those ensured by the OEPA plan (i.e., the NAAQS) are at best inconclusive.

Response: Contrary to this commentator's statement, reference dispersion models are not inherently over-predictive. However, if the models did provide an additional margin of safety, it would be appropriate simply to assure the attainment and maintenance of the NAAQS.

Comment: Several commentators argued that USEPA's and OEPA's use of the RAM-urban model in Summit County was inappropriate. The commentators cited the ERT modeling-monitoring study in Summit County, an analysis of the ERT results on an event-by-event basis, a study by Guldberg and Kern, and the lack of any full validation studies as the basis for not using RAM-urban.

Response: The Agency requested public comments on its Summit County modeling using the RAM-urban model on June 7, 1979 (44 FR 32738) and discussed its response to comments on December 5, 1979 (44 FR 69928). The agency discussed in the December 5, 1979, notice the ERT and the Guldberg and Kern studies. The Agency's response is relevant here and is incorporated by reference. A brief summary follows.

Comparisons between RAM-urban predicted values and recorded air quality levels from the ERT study demonstrated that RAM-urban is a reasonably accurate means of setting emission limitations in Summit County.

The model underpredicted the second highest actually measured 24-hour concentrations at 3 of the 12 monitoring sites and overpredicted at 9 of the 12 sites. All of the differences were well within a factor of 2, the expected accuracy of state-of-the-art dispersion models. USEPA concluded that RAM-urban is accurately portraying the air quality in Summit County. See 44 FR 69920 (December 5, 1979). The state of Ohio agreed that RAM-urban is the appropriate model for use in Summit County.

The analysis of ERT data on an event-by-event basis is flawed since the accuracy of such comparisons is severely limited by uncertainties in source and meteorological input data. Instead, the most reliable direct comparison between modeled and monitored concentrations is at the upper percentiles of the respective frequency distributions. This is the method USEPA used in making its comparisons.

The Agency has previously discussed the Guldberg and Kern study<sup>1</sup> at 44 FR 69929, December 5, 1979. Briefly, USEPA found that Guldberg and Kern's conclusion are not supported by their study.

**Comment:** Several commentors claimed that OEPA's fixed receptor grid approach is consistent with most modeling analyses performed and accepted across the country and should be approved. The commentors objected to USEPA's use of the significant point receptor option in RAM. The commentors maintained that the significant point receptor option is unnecessarily conservative and that the resulting concentrations are actually high, not second high, concentrations.

In addition, one commentor questioned USEPA's rationale for disapproving the SIP for all of Summit County when only a few facilities affect the key critical receptors.

**Response:** The use of a fixed receptor grid such as OEPA used is an acceptable means of locating receptors in critical day RAM analyses. USEPA's significant point receptor option in RAM is an alternative to a high density of fixed receptors.

In the case of OEPA's use of the fixed receptor grid, however, the grid did not consider the critical receptors from the previous USEPA analyses. To evaluate the importance of this omission on OEPA's attainment demonstrations, USEPA undertook an analysis of the spatial resolution in the OEPA receptor networks for several counties including Summit County. The review served as a

screening analysis since only a small set of previously identified critical receptors and days was examined.

The results of the Summit County review showed that the OEPA Summit County Control Strategy does not protect the 24-hour primary ambient standard. Thus, the OEPA plan for Summit County cannot be approved. However, disapproval of the entire Summit County plan is necessary because the USEPA's analysis indicated that the control strategy for the entire county was deficient, given the complex interaction of pollution sources in the county.

The Agency has previously responded to the comment on its use of significant point receptors (see 44 FR 69928, December 5, 1979). Briefly, USEPA analyses throw out all of the highest critical days at the set of receptors in the full-year RAM run, leaving only the days on which the second highest pollutant concentrations occur at those receptors. When RAM is run to calculate the critical concentrations using significant point receptors on those second high days, the probability of calculating the highest concentration at a given receptor is small. The greater probability is that a concentration has been calculated that may be less than the second highest. USEPA has determined, however, that rerunning every critical day receptor with a full-year RAM run to check the rank of each concentration would be unnecessarily conservative. Use of the significant point receptor option, therefore, is not unnecessarily conservative.

**Comment:** Several commentors maintained that regulation development should be based on either a balance of modeling and monitoring data or strictly on monitoring data when the monitoring data demonstrate that the reference models are not appropriate for a given situation. In addition, several commentors argued that specific emission limitations set by modeling were not necessary since nearby monitoring data provided by the commentors showed no violations of the NAAQS. For example, one commentor cited the lack of any violations in the vicinity of the Ohio Edison Gorge Plant in Summit County. Some sources claimed they should be regulated at status quo emission levels since there are no monitored violations in the vicinity of the sources.

**Response:** The Agency encourages the use of all appropriate quality assured monitoring data, in combination with modeling data, to develop emission limitations. In general, attainment demonstrations must include a dispersion modeling analysis since

modeling can provide a more complete picture of existing and future ambient air quality impacts and is a better tool for evaluating various control strategies and setting emission limitations. Where modeling is determined to be inappropriate, monitoring data may be used.

Where modeling has been used to determine the attainment status of an area, monitoring data alone cannot be used to revise the determination. The monitoring data are limited in spatial and temporal coverage. Thus, modeling is required to provide the necessary spatial and temporal resolution to demonstrate attainment and maintenance of the SO<sub>2</sub>, NAAQS.

In addition, the claim of no measured violations near the Gorge Plant is incorrect. Multiple exceedances of the 24-hour primary standard were recorded at the Sill Avenue monitor during the first quarter alone of the 12-month ERT study in the area. The most significant contributor to these violations was the Gorge Plant. See 44 FR 32738 (June 7, 1979) and 44 FR 69928 (December 5, 1979).

#### B. Individual Sources

**Comment:** One commentor maintained the OEPA limit (4.2 lbs/MMBTU) for the Ohio Edison Gorge Plant in Summit County should be approved because: (a) the OEPA limit is not significantly different from the existing federal limit (4.07 lbs/MMBTU); (b) neither OEPA's nor USEPA's analysis considered the planned shutdown of Edison's Beech Street Steam Plant in Akron; and (c) significant industrial "attrition" has been announced in Summit County since the modeling was performed.

**Response:** USEPA's review of the OEPA plan for Summit County demonstrated that it is inadequate to protect the ambient standards. Therefore, the OEPA emission limitation for Gorge cannot be approved.

The existing federal limit for Gorge is based on a total impact of 462.1  $\mu\text{g}/\text{m}^3$  (day 39, Receptor 133 P 28) to which Gorge contributed 454.1  $\mu\text{g}/\text{m}^3$  at emissions of 5.18 lbs/MMBTU. A rollback analysis indicates that a limit of 4.07 lbs/MMBTU for Gorge is necessary to correct this violation. The remainder of the total constraining concentration is due primarily to area sources (7.8  $\mu\text{g}/\text{m}^3$ ). Consequently, the shutdown of the Beech Street Plant and reduction in emissions from other sources will have no effect on this predicted violation and, thus, no effect on the existing federal limit for Gorge. (See Summit County Docket #5A-78-1).

<sup>1</sup> P. H. Guldberg and C. W. Kern, J. Air Poll. Control Assoc. 28 907 (1978).

Comment: One commentator objected that the OEPA emission limitations for the Ohio Edison Burger (Belmont County), Mad River (Clark County), Norwalk (Huron County), and Toronto (Jefferson County) Plants are more stringent than the existing federal limits. Therefore, the commentator requested that USEPA disapprove these emission limitations if the Agency disapproved the 30-day averaging provisions.

Response: Under Section 118 of the Clean Air Act, the State has authority to establish requirements which are more stringent than the requirements of the Clean Air Act. Therefore, USEPA cannot disapprove emission limitations which may be more stringent than necessary to insure attainment and maintenance of the NAAQS.

Comment: B.F. Goodrich urged the Agency to adopt revised SO<sub>2</sub> limits for the B.F. Goodrich facility in Lorain County, Ohio. The commentator claimed that technical support previously submitted to the USEPA by B.F. Goodrich justifies an emission limitation different from the one in OEPA's plan. Therefore, the commentator requested that USEPA disapprove the proposed OEPA limits and approve new limits developed by B.F. Goodrich and submitted to USEPA as a revision to the federally promulgated Ohio SIP.

Response: Since OEPA has indicated that it may withdraw the State emission limitation for B.F. Goodrich, USEPA will reserve action on this portion of the OEPA plan.

Comment: A commentator stated that the proposed general oil-fired boiler emission limit of 1.6 lbs. SO<sub>2</sub>/MMBTU and the specific oil-fired boiler emission limit of 3.2 lbs. SO<sub>2</sub>/MMBTU for Val Decker and Hobart Corporation in Miami County should be more stringent.

Response: Under the requirements of the Act, USEPA must approve any properly adopted emission limitation which is adequate to insure attainment and maintenance of the NAAQS. Although more stringent emission limitations may be possible for oil-fired boilers, the State has demonstrated that these emission limitations are adequate to assure attainment and maintenance of the NAAQS.

#### C. Attainment and Maintenance of the NAAQS

Comment: One commentator noted that a study of major SO<sub>2</sub> sources in southeast Ohio and northern West Virginia demonstrated that the existing federal SIP limits do not protect the annual ambient standards. Violations were predicted in Pennsylvania and West Virginia, even without taking into account the contributions from

Pennsylvania sources. The commentator maintained that the proposed emission limitations for sources in Jefferson (including Ohio Power Cardinal), Belmont, and Columbiana Counties in Ohio must be disapproved and the existing federal limits must be reviewed to correct this deficiency.

Response: The commentator did not submit the study it cited or any other documentation to support its claim that the existing SIP and the proposed Ohio SIP are inadequate. Therefore, USEPA has no basis for disapproving the proposed emission limitations.

Comment: One commentator noted that the OEPA modeling used a 1974 emissions inventory and did not address maintenance of the NAAQS.

Response: OEPA used the most current emission inventory available for all sources. USEPA has determined this inventory to be adequate. OEPA has taken into account revisions which have occurred since 1974. In addition, to ensure maintenance of the NAAQS, new and modified source review requirements will be used. As part of each new source permit review, a complete air quality impact analysis will be required. OEPA will rely on its operating permit program for existing sources.

#### D. Measurement Methods and Enforcement Procedures

Comment: Several commentators requested approval of the 30-day average. Among the arguments in support of a 30-day average are that: (a) it is a workable and practical enforcement tool, (b) it is effective in providing attainment and will not threaten the public health, (c) it will allow the consumption of more local coal, (d) 30-day averages are included in the NSPS requirements for steam electric generators, and (e) several SIPs contain 30-day averages (e.g., Brayton Point SIP revision), longer averaging periods, or no averaging period at all.

Response: While 30-day averaging affects many issues, the fundamental question in this rulemaking is protection of the NAAQS. Emission limitations based solely on a 30-day arithmetic average have not been demonstrated as adequate to ensure attainment and maintenance of the 24-hour primary or 3-hour secondary ambient standards due to the inherent variability of the sulfur content of coal. Although 30-day averages have been approved in some previous site-specific SIP revisions (e.g., Brayton Point), a 30-day average was used in combination with limits based on shorter averaging periods necessary to protect the short-term NAAQS. Thus, a 30-day averaging period cannot be

used by itself to determine compliance. However, USEPA does have an enforcement policy which uses 30 day averaging as a screening device. (See response below.)

Comment: Several commentators maintained that the Agency's proposed disapproval of continuous emission monitors (CEMs) and fuel sampling as compliance test methods and the approval of only stack tests is not practical since stack tests alone may not be adequate to ensure attainment. Two commentators also claimed that unlike the federal Ohio SO<sub>2</sub> SIP, the OEPA plan satisfies the emission monitoring and reporting requirements of Section 110 (a)(2)(F) of the Act. Therefore, the commentators urged approval of OEPA's emission monitoring and reporting requirements.

Response: The Agency's disapproval of fuel sampling and CEMs is based on the combination of these requirements with 30-day averaging. That is, the use of CEMs and fuel averaging is only required to demonstrate compliance with the 30 day average. As noted previously, the use of the 30-day average is unapprovable.

Comment: Several commentators addressed the Agency's announcement of its intention to propose policy and regulatory changes which would permit attainment demonstrations to analyze the air quality impact of variable sulfur emissions (February 14, 1980, 45 FR 9994).

Response: To date no action has been taken by the Agency on these issues. As policy and regulatory changes are proposed, the commentators are encouraged to submit their comments to the appropriate office at that time. The comments submitted to Region V pertaining to the February 14, 1980 notice have been forwarded to the appropriate reviewing office.

Comment: Several commentators addressed the Interim Enforcement Policy.

Response: The Interim Enforcement Policy statement of USEPA is not a part of this rulemaking. The policy was announced on February 11, 1980 (45 FR 9101) and extended on October 28, 1980 (45 FR 71422). The policy, which is based on 30 day averaging, is an internal screening device from which the Agency can focus its enforcement resources on those plants which present the greatest environmental threat while the sulfur variability issue is under review.

#### E. Stability Class A

Comment: Several commentators objected to the use of Pasquill-Gifford stability class A dispersion coefficients

in the rural modeling analyses. In support of their position, the commentors cited their public comments on the Agency's Federal Register notice concerning class A and letters from various States opposed to class A. Furthermore, the commentors offered alternatives for modeling under very unstable conditions.

Response: On June 29, 1978, the U.S. Court of Appeals for the Sixth Circuit remanded to the USEPA its decision to use Pasquill-Gifford (P-G) dispersion coefficients for modeling isolated rural power plants under stability class A conditions. *Cincinnati Gas & Electric Co. v. EPA*, 578 F. 2d 660 (1978). The Agency's modeling was performed to set emission limitations for sources in Ohio to ensure attainment and maintenance of the SO<sub>2</sub> NAAQS. The court found that the Agency had not developed an adequate record to support the use of the P-G curves for class A conditions. Furthermore, the court held that the Agency had not adequately considered the alternatives to the P-G class A curves, as proposed by various utilities during the previous rulemaking.

Consequently, the Agency then evaluated the alternatives proposed by the utilities, as well as field data not previously considered. Based on these field data and current dispersion theory, the Agency determined that the alternatives would severely underestimate ground-level concentration. Additionally, the Agency found that these data and dispersion theory support the use of the P-G class A curves in setting limitations that will ensure attainment and maintenance of the NAAQS.

The Agency's reconsideration of the use of the P-G dispersion coefficients for class A conditions was published in the Federal Register (February 7, 1979; 44 FR 7798). In that notice, the Agency also solicited comments on their findings. The Agency received numerous comments in response to that notice.

After extensive review and careful consideration of all public comments, the Agency responded to the comments in a Federal Register notice (June 19, 1980; 45 FR 41501). The Agency concluded that the commentors had not provided any technical basis to support changing the proposed findings. In fact, monitoring data submitted by the utilities supported the Agency findings. Accordingly, the Agency determined that the latest experimental and utility monitored data supported the continued use of the Pasquill-Gifford Class A dispersion coefficients.

#### F. Acid Rain

Comment: Several commentors expressed concern over Ohio's contribution to the acid rain problem in New England, Pennsylvania, and Canada.

Response: The Agency recognizes the importance of the long-range transport issue, including acid deposition (which includes acid rain, mist, dew, fog and dry particle deposition) and is currently studying these problems. The statute requires USEPA to review and approve a state plan if, among other things, it ensures attainment and maintenance of standards. The OEPA Plan is designed to attain and maintain the SO<sub>2</sub> NAAQS. Therefore, approval or disapproval of the plan must be based on whether or not the plan demonstrates, among other things, attainment and maintenance of the national SO<sub>2</sub> NAAQS. At this time, USEPA has no national standard for acid deposition or other pollutants related to long-range transport, and therefore, states are not required to evaluate source impacts on acid deposition or long-range transport of other pollutants.

#### G. Interstate Impact

Comment: One commentor claimed that the OEPA SIP is deficient since the impact of Ohio sources on Pennsylvania air quality was not considered by OEPA. The commentor maintained that an interstate impact analysis is required by Section 110(a)(2)(E) of the Clean Air Act.

In addition, the commentor cited the increase in allowable SO<sub>2</sub> emissions from: (a) the OEPA SIP, and (b) previously announced SIP relaxations in Ohio and West Virginia. The commentor argued that these emission increases in two neighboring states upwind of Pennsylvania will exacerbate air quality problems in Pennsylvania. The commentor claimed that this infringement on one state's air quality by another is prohibited by Section 301 of the Clean Air Act.

Two other commentors voiced opposite views on these points. One commentor argued that the OEPA plan does not represent relaxations from the existing federal plan. Another commentor claimed that charges of unfairness are inappropriate because Section 110 does not require uniformity among states.

Response: To support the proposed emission limitations, OEPA provided dispersion modeling analyses using USEPA reference models. In accordance with USEPA Modeling Guidelines, these analyses focused on air quality impacts within 50 kilometers of the sources since

maximum impacts are expected within that range and USEPA reference models are generally considered reliable only within that distance. In the cases of sources whose maximum impact area is located in another state, OEPA considered the source's impact on the other state's air quality. At present, USEPA has not approved use of long-range transport models for regulatory purposes. USEPA therefore lacks adequate tools to conduct source-specific analysis of SO<sub>2</sub> impacts over long distances. In view of current modeling capabilities, OEPA has conducted inter-state impact analyses sufficient to meet the requirements of Section 110(a)(2)(E) and USEPA's regulations.

As for the allowable increases cited by the commentor, each of these revisions has been evaluated for its interstate impact using USEPA's currently approved models. No impermissible interstate impacts were found.

The commentors claim that the infringement on Pennsylvania air quality by sources in other states violates Section 301 of the Act misconstrues that section. Section 301 requires " \* \* \* fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the Act." USEPA interprets this requirement provision to require national consistency in carrying out the Clean Air Act and USEPA regulations, but not to prohibit infringement by one state on the air quality of other states. However, review of interstate impacts is required under Section 110(a)(2)(E). As noted, OEPA has analyzed interstate effects to the extent possible with approved modeling techniques.

#### H. Regulatory Requirements

Comment: One commentor stated that the OEPA plan does not satisfy the requirements of Part D of the Clean Air Act, as amended. The commentor maintained that Part D is appropriate since several Ohio counties are currently designated as nonattainment for SO<sub>2</sub>.

Response: The Ohio plan was not meant to correct any control strategy deficiencies in the existing federal plan which may have caused a nonattainment problem. Therefore, the plan is not submitted pursuant to Part D. Instead, the Ohio Plan is intended to replace the federal plan pursuant to Section 110 of the Clean Air Act.

Comment: Several commentors stated that it appeared that neither OEPA in developing its SIP nor USEPA in reviewing OEPA's SIP has dealt with the issue of PSD increment consumption.

The commentors state that since several OEPA emission limits represent relaxations from the existing federal limits, a determination must be made whether these relaxations consume PSD increment.

Response: The PSD regulations (45 FR 52676, 7 August 1980) were considered by USEPA in their review of the OEPA SO<sub>2</sub> SIP. Under the PSD regulations, SIP relaxations must be evaluated for possible increment consumption.

As discussed in the regulations, a review of increment consumption is necessary if: (a) the baseline date for § 107 attainment/unclassified area has been triggered, and (b) the proposed SIP revision is expected to result in any increase over baseline emissions.

For SO<sub>2</sub> in Ohio, the § 107 designations apply on a county-by-county basis. USEPA has determined that the baseline date for SO<sub>2</sub> has been triggered in six counties (i.e., Union, Noble, Pickaway, Harrison, Butler, and Hamilton).

The regulations require an increment consumption analysis for SIP revisions in cases where the revision results in an increase over baseline emissions. In this case baseline emissions are represented by the existing federal SIP.

Consequently an increment analysis is necessary in those cases where Ohio has proposed a relaxation of the federal emission limits.

In four of the counties (Union, Noble, Pickaway, and Harrison), Ohio EPA has not proposed any relaxations from the existing USEPA SIP. Thus, no review of PSD increment consumption is necessary.

In the other two counties (Butler County and only E. I. DuPont-Fort Hill in Hamilton County), however, possible emission increases over baseline emissions must be reviewed for increment consumption. Therefore, these sources are not included in this final rulemaking. The issue of PSD will be addressed by USEPA in a separate notice of proposed rulemaking on these counties.

#### I. Compliance and Attainment Dates

Comment: One commentator argued that OEPA's December 31, 1982 attainment date is appropriate for sources that either do not significantly affect a nonattainment area or have tighter limits under the OEPA plan.

Response: The reasons for the Agency's proposed disapproval of OEPA's attainment date are outlined in II(b) of this notice.

Comment: One commentator contended that an attainment date of December 31, 1982 is approvable in light of OEPA's Variance Rule. OAC Rule 3745-35-03

allows for variances to be issued up to the attainment date. OAC Rule 3745-35-03(G)(6)(c) prohibits any variance from becoming effective until approved by USEPA. Thus, the commentator argued that a December 31, 1982 date is acceptable since the USEPA must either approve or disapprove any State-issued variance.

Response: An attainment date of December 31, 1982 is not acceptable for the reasons stated in II(b) of this notice. The comment does not make it clear why the December 1982 date should be approved.

Comment: One commentator argued that USEPA's proposed disapproval of OAC Rule 3745-18-03(C)(3) is not justified in view of OAC Rule 3745-35-02. OAC Rule 3745-35-02 requires compliance "as expeditiously as practicable." The commentator asserted that if a source is currently in compliance, "as expeditiously as practicable" does not provide any compliance extensions.

Response: The Agency cannot approve Ohio's compliance date (June 17, 1980) for fuel burning sources using complying fuel since it represents an unsupported extension from the existing federal compliance date (October 19, 1979) for these sources. OAC Rule 3745-35-02 has little effect on sources not in compliance or on sources certified as being in compliance on October 19, 1979 that go out of compliance after that date. The OEPA compliance date may allow an unauthorized extension that could jeopardize the mandatory attainment dates. The appropriate mechanism to extend the date for final compliance is a Section 113(d) order.

#### J. Economic Feasibility

Issue: Several comments were received on the economic impact of the regulations. Some commentors stated that cost/benefit factors should have been used in developing the emission limitations. The commentors stated that emission limitations which are more stringent than necessary to protect the NAAQS will cause significant, adverse economic impact.

Response: The Supreme Court held in *Union Electric v. Environmental Protection Agency* 427 U.S. 246 (1976), that consideration of economic and technical feasibility in the state's responsibility. Therefore, USEPA is not authorized by the Clean Air Act to consider economic and technological feasibility of emission limitations in its review of State Implementation Plans. Further, as discussed above, a state has authority under Section 116 of the Act to adopt emission limitations which are more stringent than necessary to protect

the NAAQS. Therefore, any comments on the economic impacts of the emission limitations should be raised at the state level.

One commenter (PPG) maintained that the disapproval of the proposed OEPA limits and the promulgation of the previously proposed USEPA limits will necessitate the installation of expensive flue gas desulfurization (FGD) equipment or the use of costly low sulfur fuel at the PPG Barberton Plant. It asserts that economic realities of these compliance measures leave PPG no alternative but to close its Barberton facility. Rather than be faced with this, PPG urged the Agency to adopt the OEPA limits, which are acceptable to PPG.

Response: As discussed earlier in this notice, the OEPA Summit County limits cannot be approved since the Agency's receptor resolution analysis demonstrated that the limits would not protect the ambient standards.

#### K. Miscellaneous

Comment: Several commentors objected to OEPA's restriction on operating levels. The commentors requested that either the restriction on operating levels be eliminated or that, if it is maintained, OEPA should include: a) provisions for emergency full capacity operation; b) a mechanism for possible future revisions to full capacity; and c) exemptions from new source review for possible future revisions to full capacity.

Response: The Agency has determined that OEPA's methodology incorporating the use of restricted operating levels will attain and maintain the NAAQS and its use therefore constitutes no basis for disapproval. Any proposed changes in the methodology should be addressed to the State.

Comment: Several commentors urged that the OEPA regulations incorporate all site-specific revisions to the existing federal plan.

Response: The Agency agrees that the OEPA regulations should incorporate all site-specific SIP revisions to the existing federal plan. In many cases the individual sources are now working with the State to incorporate these changes.

Comment: One commentator viewed OEPA's seasonal restriction on operating levels as an intermittent or supplemental control system which is prohibited by Section 123 of the Clean Air Act. In addition, it noted that the Agency incorrectly stated that only two sources were subject to this reduced seasonal load condition.

Response: The Agency has determined that OEPA's seasonal load

restrictions do not constitute an intermittent or supplemental control system (see 45 FR 12266 and Docket #5A-80-3). The Agency recognizes that the reduced load requirement applies to many sources. As clearly stated in the proposed rulemaking, two sources were singled out only because they have seasonal emission limits, in addition to the reduced seasonal load limits. The two sources are the Republic Steel Corporation, Union Drawn Division in Stark County and the General Tire and Rubber Company in Summit County. Due to deficiencies in the control strategy, the emission limitations for Summit County are being disapproved in this notice and the limits for Stark County are being disapproved in a separate notice.

**Comment:** Three commentors objected to the Agency's proposed approval and disapproval of different portions of a regulation. The commentors questioned the acceptability of approving emission limits while disapproving enforcement procedures and compliance schedules. The commentors felt that this approach may not satisfy the requirements of Section 110(a)(2) of the Act.

**Response:** Section 110(a)(2) of the Act expressly provides that for each SIP submission, the Administrator must "approve or disapprove such plan or each portion thereof." The section further provides that the Administrator must "approve such plan, or any portion thereof" if he determines that it was adopted after reasonable notice and hearing and that it satisfied specified criteria. Consequently, USEPA believes it is authorized by the Clean Air Act to approve, disapprove and conditionally approve different portions of a SIP.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels proposed regulations, "specialized." I have reviewed this regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979, by the Administrator, and has determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of

today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This Notice of Final Rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: January 19, 1981.

Douglas Costle,  
Administrator.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1980.

Title 40 of the Code of Federal Regulations Chapter I Part 50 is amended as follows:

#### Subpart KK—Ohio

1. Section 52.1870(c) is amended by adding new subparagraphs (25) to read as follows:

##### § 52.1870 Identification of plan.

(c) \* \* \*

(25) On February 12, 1980 the Director of the Ohio EPA submitted the Ohio Administrative Code (OAC) Rules 3745-18-01 to 3745-18-94, *Sulfur Dioxide Standards* adopted on November 14, 1979 effective December 28, 1979. The following portions of these regulations were withdrawn by the Governor of Ohio on May 16, 1980: OAC Rules 3745-18-08(H), 3745-18-15(B), 3745-18-53(E), 3745-18-63(K), 3745-18-77(B) and 3745-18-90(C).

2. Section 52.1881(a) is revised as follows:

##### § 52.1881 Control strategy: Sulfur Oxides (sulfur dioxide).

(a) USEPA is approving the portions of the Ohio sulfur dioxide control plan listed in § 52.1881(a) (1), (2), (3) and (4); disapproving the portions listed in § 52.1881(a) (5), (6) and (7); and is neither approving nor disapproving the emission limitations listed in § 52.1881(a)(8) pending further review. The disapproved portions of the Ohio plan do not meet the requirements of § 51.13 of this chapter in that they do not provide for attainment and maintenance of the national standards for sulfur oxides (sulfur dioxide).

(1) Approval—USEPA approves the following OAC Rules: 3745-18-01 Definitions, 3745-18-02 Ambient Air Quality Standards-Sulfur Dioxide, 3745-18-05 Ambient and Meteorological Monitoring Requirements, 3745-18-06 General Emission Limit Provisions.

(2) Approval—USEPA approves the Ohio Rules 3745-18-03 Attainment Dates and Compliance Time Schedules

except for those provisions listed in § 51.1881(a)(5).

(3) Approval—USEPA approves the Ohio Rules 3745-18-04 Emission Measurement Methods except for those provisions listed in § 51.1881(a)(6).

(4) Approval—USEPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light—Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County (except Columbus & Southern Ohio Electric—Poston), Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County (except Cincinnati Gas & Electric—Beckford), Clinton County, Columbiana County, Coshocton County (except Columbus & Southern Ohio Electric—Conesville), Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County (except Ohio Valley Electric Company—Kyger Creek and Ohio Power—Gavin), Geauga County, Guernsey County, Hamilton County (except Cincinnati Gas & Electric Company—Miami Fort, Monsanto, Gulf Oil, Chevron Asphalt, and Du Pont), Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lawrence County (except Allied Chemical—South Point), Licking County, Logan County, Lorain County (except Ohio Edison—Edgewater, Cleveland Electric Illuminating—Avon Lake, U.S. Steel—Lorain and B.F. Goodrich), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County (except Ohio Power—Muskingum River), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Scioto County, Seneca County, Shelby County, Tuscarawas County, Union County, Van Wert County, Warren County, Washington County (except Shell Chemical and Ohio Power—Muskingum River), Wayne County (except Orrville Municipal Power Plant), Williams County, Wood County (except Libbey-Owens-Ford Plant Nos. 4 and 8 and No. 6), and Wyandot County.

(5) Disapproval—USEPA disapproves the Ohio Rule 3745-18-03(A), Attainment Dates and also disapproves Ohio Rule 3745-18-03(C)(3) Compliance

Time Schedules for all sources electing to comply with the regulations by utilizing complying fuels.

(6) Disapproval—USEPA disapproves the Ohio Rules 3745-18-04(D)(2), 3745-18-04(D)(3), 3745-18-04(E)(2), 3745-18-04(E)(3) and 3745-18-04(E)(4) Emission Measurement Methods.

(7) Disapproval—USEPA disapproves Ohio Rule 3745-18-83, Emission Limitations for Summit County.

(8) No action—USEPA is neither approving nor disapproving the emission limitations for the following counties or sources pending further review: Adams County (Dayton Power & Light—Stuart), Allen County (Cairo Chemical), Athens County (Columbus & Southern Ohio Electric—Poston), Butler County, Clermont County (Cincinnati Gas & Electric—Beckjord), Coshocton County (Columbus & Southern Ohio Electric—Conesville), Cuyahoga County, Franklin County, Gallia County (Ohio Valley Electric Company—Kyger Creek; and Ohio Power—Gavin), Greene County, Hamilton County (Cincinnati Gas & Electric Company—Miami Fort, Monsanto, Gulf Oil, Chevron Asphalt, Du Pont), Lake County, Lawrence County (Allied Chemical—South Point), Lorain County (Ohio Edison—Edgewater Plant, Cleveland Electric Illuminating—Avon Lake, U.S. Steel—Lorain and B. F. Goodrich), Lucas County, Mahoning County, Montgomery County, Morgan County (Ohio Power—Muskingum River), Pike County, Ross County (Mead Corporation), Sandusky County, Stark County, Trumbull County, Vinton County, Washington County (Shell Chemical Company and Ohio Power—Muskingum River), Wayne County (Orrville Municipal Power Plant), and Wood County (Libbey-Owens-Ford Plant Nos. 4 and 8 and No. 6).

[FR Doc 81-2736 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 55

[A-5-FRL 1726-4]

#### Federal Administrative Orders Issued Under Section 113(d)(5) of the Clean Air Act; Delayed Compliance Order for the Department of Energy, Argonne National Laboratory

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** By this rule, the Environmental Protection Agency (EPA) issues an Administrative Order to the Department of Energy (DOE) requiring

its Boiler No. 5 at the Argonne National Laboratory in Argonne, Illinois, to achieve compliance with air pollution requirements under the Illinois State Implementation Plan by March 15, 1982. The Department of Energy has issued a proposed prohibition order under the Power Plant and Industrial Fuel Use Act which would preclude Boiler No. 5 from burning natural gas or petroleum as its primary energy source.

**DATES:** This Order takes effect January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Louise C. Gross, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6844.

**SUPPLEMENTARY INFORMATION:** On November 17, 1980, the Regional Administrator of EPA's Region V Office published in the Federal Register a notice of proposed rulemaking for a Federal Delayed Compliance Order to be issued to DOE. The proposed Order was also included. 45 FR 75710. This Order, to be issued to DOE pursuant to Section 113(d)(5) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (the Act), would require Boiler No. 5 at the Argonne National Laboratory in Argonne, Illinois to achieve compliance with Illinois State Implementation Plan Rules 202 (opacity), 203 (particulate matter) and 204 (sulfur dioxide) by March 15, 1982. The Argonne facility is owned by the United States Government, managed by the Chicago and Regional Operations Office of DOE and operated by the University of Chicago.

Argonne Boiler No. 5 is located in the Metropolitan Chicago Interstate Air Quality Control Region (AQCR), a nonattainment area with respect to the national primary ambient air quality standards for particulate matter. Consequently, DOE was required to submit evidence satisfactory to the Administrator that the requirements of Section 113(d)(5)(D) had been met: that the emissions from this unit would have an infrequent and insignificant effect on the primary nonattainment portions of the primary standard for particulate matter. To satisfy this requirement, DOE prepared a modeling study analyzing the ambient air quality impact of the proposed conversion. EPA preliminarily determined that this analysis satisfied the requirements of Section 113(d)(5)(D) of the Act.

The November 17, 1980, notice asked for public comment as to the issuance of the Order and as to DOE's satisfaction of the requirements of Section 113(d)(5)(D). In addition, the notice offered the opportunity for public

hearing on both issues. No public comments and no request for a hearing were received.

Therefore, a Delayed Compliance Order effective this date is issued to the Department of Energy by the Administrator of EPA, pursuant to Section 113(d)(5) of the Clean Air Act, 42 U.S.C. 7413(d)(5).

The Order requires DOE to install control equipment according to the schedule set forth therein, such that final compliance with the Illinois State Implementation Plan will be achieved by March 15, 1982. It contains interim emission reduction requirements, specified emission limitations and coal pollutant characteristics. The Order also requires monitoring and reporting of air quality and air pollutant emissions data. Source compliance with its terms will preclude any further EPA enforcement action under Section 113 of the Act and any citizen suits under Section 304 of the Act against the source for violations of the Illinois State Implementation Plan provisions covered by the Order. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order is issued or occur after its termination.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this Order is available only by the filing of a petition for review in the United States Court of Appeals for the Seventh Circuit within sixty (60) days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

EPA has determined that the Order shall be effective upon publication of this Notice because of the need to place DOE immediately on a schedule for compliance with the Illinois State Implementation Plan.

(42 U.S.C. 7413, 7601)

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

In consideration of the foregoing, 40 CFR Part 55 is amended as follows:

#### PART 55—FEDERAL ADMINISTRATIVE ORDERS ISSUED UNDER SECTION 113(d)(5) OF THE CLEAN AIR ACT

I. By adding § 55.310 to read as follows:

**Subpart O—Illinois****§ 55.310 Federal administrative orders issued under Section 113(d)(5) of the Act.****ORDER**

Therefore, it is hereby ORDERED that:

I. Boiler No. 5 at Argonne shall achieve and demonstrate compliance with Illinois Pollution Control Board Rules 202(b), 203(g)(1)(A) and 204(c)(1)(A) in accordance with the following schedule:

A. Award contracts for the design and installation of new emission control system by October 30, 1980.

B. Initiate on-site construction by May 15, 1981.

C. Complete on-site construction by January 15, 1982.

D. Perform final compliance testing by February 15, 1982.

E. Submit results of final compliance testing and demonstrate compliance with the Illinois SIP by March 15, 1982.

II. DOE and its operating contractor shall achieve and demonstrate final compliance with the applicable rules by performing emission tests in accordance with 40 CFR Part 60. DOE shall notify U.S. EPA in writing at least thirty (30) days in advance of performing the required tests.

III. Not later than ten (10) working days after any date for achievement of any step specified in this ORDER, DOE shall notify U.S. EPA in writing of its compliance or noncompliance with the requirement. In addition, progress reports shall be submitted to U.S. EPA on February 1, 1981 and September 15, 1981. Furthermore, if any event occurs which causes or may cause a delay in meeting any requirement contained in this ORDER, DOE shall immediately notify U.S. EPA in writing of the delay or anticipated delay as appropriate, describing in detail the precise cause or causes of the delay, the measures taken and to be taken by DOE and its operating contractor to prevent or minimize the delay and the timetable by which those measures will be implemented. DOE and its operating contractor will adopt all reasonable measures to avoid or minimize any such delay.

IV. Pursuant to Sections 113(d)(5)(B) and 113(b)(7) of the Act, Boiler No. 5 at Argonne shall comply with the following interim requirements. Such requirements are necessary to insure compliance with the federally approved Illinois State Implementation Plan, insofar as Boiler No. 5 is able to during the period in which this ORDER is in effect. If these requirements are proposed to be modified, such proposal shall be published in the *Federal Register* and promulgated in accordance with procedures for informal rulemaking:

A. Boiler No. 5 at Argonne shall not burn coal with an ash content greater than 6.5 pounds ash per million BTU, and a sulfur content greater than 1.3 pounds sulfur per million BTU.

B. Boiler No. 5 at Argonne shall not emit in excess of 0.63 pounds of particulate matter per million BTU and 2.39 pounds of sulfur dioxide per million BTU.

C. DOE and its operating contractor shall operate and maintain the existing multicline

of Boiler No. 5 to insure a minimum removal efficiency of eighty-five percent (85%) at total capacity.

V. DOE and its operating contractor shall install and operate an ambient air quality monitoring network in the vicinity of Boiler No. 5 at Argonne from which they will collect ambient air quality data as follows:

A. The network shall contain monitors capable of measuring 24-hour and annual average particulate matter concentrations.

B. The network shall be approved by U.S. EPA prior to installation and operation.

C. The network shall be operational by the time that DOE and its operating contractor commence use of coal in Boiler No. 5 at Argonne.

D. DOE shall keep monthly records of the air quality monitoring data from the network. Copies of these records shall be submitted within twenty (20) days of the end of each calendar month.

VI. The period of effectiveness of this ORDER shall not include any interval after U.S. EPA finds and notifies DOE that (1) a national primary ambient air quality standard for any pollutant is being exceeded in the Metropolitan Chicago Interstate Air Quality Control Region and (2) DOE has failed to submit adequate evidence showing that the requirements of Section 113(d)(5)(D)(i) through (iii) of the Act have been satisfied. During such intervals, if any, full compliance with the Illinois State Implementation Plan (excluding this ORDER) shall be required of DOE and its operating contractor, and violations by them of the Plan shall be subject to enforcement action under Section 113 of the Act.

VII. DOE and its operating contractor shall install a continuous emission monitoring and recording system for the measurement of opacity in the control device stack of Boiler No. 5 as follows:

1. Such a system shall be installed in appropriate locations, calibrated, maintained and operated in accordance with the procedures set forth at 40 CFR Part 60, Appendix B.

2. Prior to the actual installation of the continuous opacity monitoring system, DOE shall submit drawings showing the proposed locations of such equipment for U.S. EPA's review and approval.

3. The continuous monitoring devices shall be installed and calibrated, and the continuous monitoring and recording system shall be fully operational by the time that the use of coal is commenced. Monitor data from this system shall be retained by DOE's operating contractor for two years.

VIII. Nothing in this ORDER shall affect DOE's and its operating contractor's responsibility to comply with any other Federal, State or local regulations.

IX. Nothing in this ORDER shall be construed as a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. Section 7603.

X. All submissions and notifications to the U.S. EPA pursuant to this ORDER shall be made to the Chief, Air Compliance Section, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. A copy of all such submissions and notifications shall be

to Director, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

XI. DOE and its operating contractor are hereby notified that their failure to achieve and demonstrate final compliance at Boiler No. 5 with the applicable regulations of the Illinois State Implementation Plan by March 15, 1982 may result in a requirement to pay a noncompliance penalty under Section 120 of the Act, 42 U.S.C. 7420. Such requirement may be imposed at an earlier date, as provided by Section 113(d) and 120 of the Act, either in the event that this ORDER is terminated in accordance with Section 113(d)(8) of the Act, or in the event that any requirement of this ORDER is violated, as provided in Section 113(d)(9) of the Act. In any event, DOE will be formerly notified, pursuant to Section 120(b)(3) of the Act and any regulations promulgated thereunder, of its noncompliance.

XII. This ORDER shall be effective January 27, 1981.

Dated: January 19, 1981.

**Douglas M. Costle,**  
*Administrator.*

The United States Department of Energy and the University of Chicago reviewed this ORDER and believe it to be a reasonable means by which Boiler No. 5 can achieve final compliance with the Illinois State Implementation Plan. The United States Department of Energy and the University of Chicago stipulate as to the correctness of all facts stated above and consent to the requirements and terms of this ORDER.

Dated: December 11, 1980.

**Fred C. Matmueller,**  
*Manager/Regional Representative, United States Department of Energy, Chicago Operations and Regional Office.*

Dated: December 11, 1980.

**Walter E. Massey,**  
*Director, Argonne National Laboratory, University of Chicago.*

[FR Doc. 81-2859 Filed 1-26-81; 8:45 am]  
BILLING CODE 6560-36-M

**40 CFR Part 55****[A-3-FRL 1724-5]****Delayed Compliance Order for Virginia Electric and Power Company's Chesterfield Generating Station**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final Rule.

**SUMMARY:** This notice announces that the Environmental Protection Agency (EPA) is issuing an administrative order to the Virginia Electric and Power Company's Chesterfield Generating Station requiring its Boiler Number 4 at Chesterfield County, Virginia to achieve compliance by June 1, 1982 with air



pollution requirements under the Virginia State Implementation Plan.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Denis M. Zielinski, U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106 (215/597-0804).

**SUPPLEMENTARY INFORMATION:** EPA has developed an administrative order it proposed to issue under Section 113(d)(5) of the Clean Air Act (the "Act") 42 U.S.C. § 7413(d)(5), to the Virginia Electric and Power Company (the "Company") requiring its Boiler Number 4 at the Chesterfield Power Station in Chesterfield County, Virginia to achieve compliance with Virginia State Air Pollution Control Board, Section IV, Rules 2 and 3 of the Virginia State Implementation Plan by June 1, 1982. The order requires the Company to install control equipment on Boiler Number 4 according to the compliance schedule set forth in the order, contains interim emission reduction requirements, specifies emission limitation, fuel quality characteristics, and requirements, specifies emission limitations, fuel quality characteristics, and requires monitoring and reporting of air quality and air pollutant emissions data. Compliance with the terms of the order precludes any further enforcement by EPA under Section 113 of the Act and any citizens suits under Section 304 of the Act against the source for violations of the Virginia State Implementation Plan provisions covered by the order. The entire contents of the order were proposed in the Federal Register on October 15, 1980 (45 Fed. Reg. 68406). In this notice EPA invited the public to submit written comments and request for a public hearing as to whether EPA should issue the order. During the 30-day public comment period ending November 14, 1980 the only comment that was received by EPA was from Vepco which pointed out several minor mistakes and clarified one point. This clarification dealt with the Company's particulate emission test. In the proposed DCO this test was to demonstrate compliance with Rules 2 and 3, but in actuality it would only demonstrate compliance with the particulate emission limitation in Rule 3. Rule 2, the opacity limitation, would be demonstrated by taking visible emission observations concurrently with the particulate emission test. These changes are reflected in the final rule.

Therefore, based upon the request by the Virginia Electric Power Company, EPA's findings, and the written concurrence from Governor John N.

Dalton, this order is hereby issued. In addition, this order is being made effective immediately since no purpose would be served by delaying its effective date.

Dated: January 19, 1981.

(42 U.S.C. 7413(d))

Douglas M. Costle,  
Administrator.

Before the United States Environmental Protection Agency, Region III

Curtis Building, Sixth and Walnut Streets,  
Philadelphia, Pennsylvania 19106

Order No. R-III-CC-008

In The Matter Of: Virginia Electric & Power Company, Chesterfield Power Station.

This ORDER is issued pursuant to Section 113(d)(5) of the Clean Air Act ("the Act"), as amended 42 U.S.C. § 7413(d)(5). This ORDER contains a schedule for compliance, interim requirements, monitoring and reporting requirements, and other requirements of this Section of the Act. Public notice has been provided pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and a copy of this ORDER has been provided to the Governor of the Commonwealth of Virginia to seek his concurrence.

**Order**

It is hereby ORDERED that:

**SIP Limitation**

I. During the period this ORDER is in effect, Unit 4 shall not be subject to Sec. IV, Rule 2 (effective March 17, 1972) and Rule 3 (effective March 17, 1972, as amended, August 11, 1972) of the Federally-approved Virginia Regulations for the Control and Abatement of Air Pollution (hereinafter referred to as "Rules 2 and 3"), but must comply with the interim limitations and compliance schedule set forth in this ORDER.

Chesterfield Units 1, 2, 3, 5 and 6 shall remain subject to Rules 2 and 3. During the period this ORDER is in effect, the total heat input for Chesterfield Units 1, 2, 3, 5 and 6 shall not exceed 13,291 million BTU's per hour, and this maximum heat input rate will be used for determining the maximum allowable amount of particulate matter that may be emitted from these units pursuant to Rule 3. At this heat input rate, Rule 3 allows a maximum emission rate of 1,329 pounds of particulate matter per hour.

**Compliance Schedule**

II. The Company's Unit 4 shall comply with the requirements of Rules 2 and 3 as expeditiously as practicable, but in no event later than the dates specified in the following schedule:

A. Not later than March 1, 1981: Initiate on-site construction or installation of continuous particulate emission control systems.

B. Not later than March 1, 1982: Complete on-site construction or installation of continuous particulate emission control systems.

C. Not later than June 1, 1982: Perform particulate emission tests and submit the test report. The test report results must

demonstrate compliance with Rule 3 and said results must be obtained in conformance with the procedures set forth in Appendix A to 40 C.F.R. Part 60. A visible emission observer certified pursuant to EPA Method 9 (40 C.F.R. Part 60, Appendix A) must take concurrent visible emission observations which must demonstrate compliance with Rule 2.

D. In the event the Company is unable to comply with any of the schedule increments established in subparagraphs (A) through (C) above, and such failure is caused by or due to circumstances beyond the control of the Company, the time for compliance with such schedule increment and all subsequent schedule increments shall be extended for a period equal to the delay resulting from such circumstances. Any delay that is caused by such circumstances shall not be deemed a violation of this ORDER. Increased costs or expenses associated with the implementation of actions called for by this ORDER shall not, by themselves, be considered circumstances beyond the control of the Company for the purposes of this Paragraph. The burden of proving that any delays were caused by circumstances beyond the control of Company shall rest with the Company.

III. With respect to the interim milestones contained in the compliance schedule set out in subparagraphs (A) through (C) of Paragraph II hereinabove, the Company shall submit written notice to the Director, Air, Toxics and Hazardous Materials Division, EPA Region III, no later than ten (10) calendar days after each milestone has been satisfied, but no later than ten (10) calendar days after the final date set for achieving each such milestone, if it has not been achieved. Furthermore, the Company shall submit a construction progress report to said Director no later than four (4) months after the effective date of this Order, and every four (4) months thereafter.

**Interim Requirements**

IV. During the period this ORDER is in effect, Unit 4 at the Station shall comply with the following interim requirements:

A. Unit 4 shall burn coal with an ash content not to exceed 9.2 pounds of ash per million BTU's (e.g., coal having an ash content of eleven percent (11%) and a heating value of twelve thousand (12,000) BTU's per pound, or the equivalent).

B. Unit 4 shall not at any time emit in excess of two thousand fifty-eight (2,058) pounds of particulate matter per hour.

C. The Company shall continue to take measures to improve the performance of the particulate emission control equipment on Unit 4 where it is reasonable and practicable to do so. Such measures may include, but are not limited to, adjustments and modifications to the existing control equipment or the training of operators to optimize particulate emission control equipment performance.

Any modifications to this ORDER shall be made by the Administrator pursuant to Section 113(d)(5) of the Act and promulgated pursuant to the procedures for informal rulemaking.

V. The Company is not relieved by the terms of this ORDER from compliance with any requirement imposed by EPA and/or the courts pursuant to Section 303 of the Act.

### Emission Monitoring and Reporting Requirements

VI. The Company shall comply with the following emission monitoring and reporting requirements at the Chesterfield Power Station on or before the date specified below:

#### A. Emission and Ambient Air Quality Monitoring

1. No later than thirty (30) calendar days after the effective date of this ORDER, the Company shall submit to the Director, Air, Toxics and Hazardous Materials Division, EPA Region III, a proposal for an air quality monitoring network to be set up by the Company in the vicinity of the Chesterfield Power Station. Said network shall include monitors capable of measuring 24-hour average particulate concentrations and may include the monitors currently owned and operated by the Company.

2. No later than ninety (90) calendar days after receiving EPA approval of the network proposed under subparagraph A.1. of this paragraph, the Company shall complete installation of and begin operation of the EPA-approved network, including any modifications made in the network by the Director, Air, Toxics and Hazardous Materials Division, EPA Region III.

3. No later than ninety (90) calendar days after the effective date of this ORDER, the Company shall submit to the Director, Air, Toxics and Hazardous Materials Division, EPA Region III, the methods, procedures and devices the Company intends to use to obtain the information required by subparagraph B of this paragraph.

4. No later than thirty (30) calendar days after receiving EPA approval of the monitoring and information gathering system proposed under subparagraph A.3. of this paragraph, the Company shall implement such system as approved by EPA, including any modifications to the proposed system made by the Director, Air, Toxics and Hazardous Materials Division, EPA Region III. Said Director may allow additional time to install monitoring equipment.

5. No later than sixty (60) calendar days after commencing the burning of coal as the primary energy source in the Company's Boiler Number 4, the Company shall perform particulate emissions tests on Unit 4. Such tests shall be performed in accordance with Appendix A of 40 CFR Part 60 (1979). The Company shall provide written notification to the EPA Region III Regional Energy Coordinator a minimum of fifteen (15) days prior to the scheduled date for conducting such tests. The Company shall submit to the Regional Energy Coordinator a complete written report containing all information pertinent to the performance and results of the particulate emissions tests on Unit 4 no later than thirty (30) calendar days after completing such tests.

6. No later than thirty (30) calendar days after the effective date of this ORDER, the Company shall install and operate continuous opacity monitors required under subparagraph VI.B.1.c of this ORDER.

7. No later than ninety (90) calendar days after the effective date of this ORDER, the Company shall conduct a Performance Specification Test (PST) for the continuous

opacity monitors required in subparagraph VI.A.6. of this ORDER in accordance with Performance Specification 1, Appendix B of 40 CFR Part 60 (1979). The Company shall submit written notice to the Regional Energy Coordinator, EPA Region III, at least thirty (30) days prior to conducting the PST.

8. No later than forty-five (45) calendar days after the completion of the PST required under subparagraph VI.A.7. of this ORDER, the Company shall submit a written report containing all information pertinent to the PST to the Regional Energy Coordinator, EPA Region III.

#### B. Recordkeeping and Noncompliance Reporting

1. The Company shall maintain monthly records both of air quality monitoring data and of air pollutant emissions. The Company shall submit copies of these records to the Regional Energy Coordinator, EPA Region III, no later than fifteen (15) calendar days after the end of each calendar month. Said air pollutant emission records shall detail daily particulate emissions from Unit 4 as determined by the application of EPA emission factors and shall at minimum include:

a. A description of the types and amounts of fuel consumed each day of the preceding month;

b. An analysis of the fuel received each week including sulfur content, ash content and high heating value; and

c. For Unit 4, a record of the opacity acquired by means of a continuous opacity monitoring device in the stack. Such continuous opacity monitoring device shall be installed, calibrated, and maintained in accordance with Performance Specification 1, Appendix B of 40 CFR Part 60.

2. No later than thirty (30) days after the effective date of this ORDER, the Company shall submit for EPA approval procedures by which the Company will obtain and record data about the operating parameters of the electrostatic precipitators on each coal-fired unit at the Chesterfield Power Station. Said procedures shall be implemented within thirty (30) days after they are approved by EPA. The Company shall also maintain records of discharge electrodes which are shorted or cut out. The records and data collected pursuant to this subparagraph shall be kept on file at the Chesterfield Power Station for not less than twelve (12) months after they are collected and shall be available for inspection by EPA during that time.

3. If, for any reason, the Company does not comply or will be unable to comply with any requirement of this ORDER, the Company shall submit written notice to the Director, Air, Toxics and Hazardous Materials Division, EPA Region III, no later than five (5) calendar days of becoming aware of such noncompliance. Such notice shall include:

a. A description of the noncompliance and its cause;

b. The period during which noncompliance has occurred and/or is expected to occur; and

c. The steps taken to reduce, eliminate and prevent recurrence of the noncompliance.

4. If the air quality monitoring data collected by the Company pursuant to subparagraph VI.A. of this ORDER indicate

that the national primary ambient air quality standards for particulates are being exceeded, the Company shall notify the Director, Air, Toxics and Hazardous Materials Division, EPA Region III, of such occurrence by telephone or other means, no later than seventy-two (72) hours after the Company becomes aware of such noncompliance. This notification shall be followed by a letter no later than seven (7) days after such notification.

5. Notification of noncompliance pursuant to subparagraph VI.B.3. of this ORDER shall not excuse such noncompliance or prevent EPA from initiating appropriate enforcement action pursuant to paragraph XII of this ORDER.

#### C. Control Equipment Performance

1. No later than sixty (60) calendar days after the effective date of this ORDER, and every six months thereafter, the Company shall submit to the Director, Air, Toxics and Hazardous Materials Division, EPA Region III, a report that describes the Company's efforts during the reporting period to improve the performance of the particulate emission control equipment on Unit 4, as required in subparagraph IV.C. of this ORDER.

VII. The period of effectiveness of this ORDER shall not include any interval after EPA finds and notifies the Company that (1) a national primary ambient air quality standard for particulates is being exceeded in the State Capital AQCR of Virginia and (2) the Company has failed to submit evidence, or, if such evidence has been submitted, it is inadequate in the judgment of EPA to show, that the requirements of Sections 113(d)(5)(D)(i) through (iii) of the Act have been satisfied. During such intervals, if any, full compliance with the standards and limitations of the SIP (excluding this ORDER) shall be required of the Company, and violations by the Company of the SIP shall be subject to enforcement action under any and all authorities of Section 113 of the Act.

VIII. Nothing herein shall affect the responsibility of the Company to comply with any other applicable State, local or other Federal Law or Regulation.

IX. The Company shall submit a copy of all correspondence and reports required under this ORDER to the Director, Enforcement Division, EPA Region III.

X. The Company is hereby notified that its failure to achieve final compliance at its Chesterfield Power Station with the applicable particulate emission regulations of the Virginia SIP by June 1, 1982, or such other date as may be specified in a second ORDER pursuant to Subsection 113(d) of the Act, if issued, may result in a requirement to pay a noncompliance penalty under Section 120 of the Act, 42 U.S.C. § 7240. Such requirement may be imposed at an earlier date, as provided by Section 113(d) and Section 120 of the Act, in the event that either this ORDER is terminated as provided in Paragraph XI below, or in the event that any requirement of this ORDER is violated as provided in Paragraph XII, below. In any event, the Company will be formally notified, pursuant to Section 120(b)(3) of the Act and any regulations promulgated thereunder, of its noncompliance.

XI. This ORDER shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator or his delegatee determines, on the record, after notice and hearing, that the inability of the Company to comply with Rules 2 and 3, as approved by EPA, no longer exists with respect to its Chesterfield Power Station. In addition, if the Company is able to demonstrate compliance with Rules 2 and 3 prior to June 1, 1982, then this ORDER may be terminated at that earlier date by mutual agreement of the Administrator and the Company.

XII. Violation of any requirement of this ORDER shall result in one or more of the following actions:

- a. Enforcement of such requirement pursuant to Section 113 (a), (b) or (c) of the Act, 42 U.S.C. § 7413 (a), (b) or (c);
- b. Revocation of this ORDER, after notice and opportunity for a public hearing;
- c. Notification of noncompliance and commencement of action pursuant to Section 120 of the Act.

XIII. This ORDER is effective upon publication in the *Federal Register* and after having received concurrence from the Governor of the Commonwealth of Virginia.

Date: January 19, 1981.

Douglas M. Costle,

Administrator or Delegatee, U.S. Environmental Protection Agency.

#### Waiver of Rights to Challenge Order

Virginia Electric and Power Company (the "Company"), by the duly authorized undersigned, hereby consents to the findings made and to the terms of this ORDER and waives any and all rights under provision of law to challenge this ORDER; however, the Company expressly reserves the right to assert any other defense or to seek such other relief as may be available to it in any enforcement action or other action taken pursuant to this ORDER or otherwise.

(42 U.S.C. 7413(d))

Dated: December 19, 1980.

Morris Brehmer.

Dated: January 7, 1981.

Jack Scramm,

Regional Administrator.

[FR Doc. 81-2749 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 81

[A-2-FRL 1627-1]

#### Designation of Areas for Air Quality Planning Purposes; Revisions to Section 107 Attainment Status Designations for New York State

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this notice is to announce Environmental Protection Agency approval of certain changes to designations with regard to the national ambient air quality standard attainment

status of areas in the State of New York. Such designations are required by Section 107(d) of the Clean Air Act and may be revised from time to time at the request of the State. Such a request was received from New York State and is the subject of this notice.

**EFFECTIVE DATE:** This action is effective on January 27, 1981.

**ADDRESSES:** Copies of the proposal submitted by New York State and public comments received are available for public inspection during normal business hours at the following addresses:

U.S. Environmental Protection Agency,  
Air Programs Branch, Room 1005,  
Region II Office, 26 Federal Plaza,  
New York, New York 10278

U.S. Environmental Protection Agency,  
Public Information Reference Unit, 401  
M Street, S.W., Washington, D.C.  
20460

New York State Department of  
Environmental Conservation, 50 Wolf  
Road, Albany, New York 12233

**FOR FURTHER INFORMATION CONTACT:**  
William S. Baker, Air Programs Branch,  
U.S. Environmental Protection Agency,  
Region II Office, 26 Federal Plaza, New  
York, New York 10278, 212-264-2517.

**SUPPLEMENTARY INFORMATION:** Section 107(d) of the Clean Air Act, as amended in August 1977, directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of national ambient air quality standard attainment status designations for all areas within the state. EPA received such designations and promulgated them on March 3, 1978 (43 FR 8962). Subsequently, on January 25, 1979 (44 FR 5119), revisions to the designations for the states administered by the Region II Office of EPA (New York, New Jersey, the Commonwealth of Puerto Rico and the U.S. Virgin Islands) were promulgated.

On May 8, 1980 New York State requested that portions of certain of its upstate Air Quality Control Regions (AQCRs) be redesignated with respect to the national ambient air quality standards for particulate matter and sulfur dioxide. Supplemental information regarding this request was submitted on June 6, 1980 and July 2, 1980. These redesignations were proposed for approval by EPA in the September 15, 1980 issue of the *Federal Register* at 45 FR 60941. The reader is referred to this notice of proposed rulemaking for a full description of the redesignations being approved today.

#### Comments Received

Comments on EPA's September 15, 1980 notice were received in a letter

September 29, 1980 from the New York State Department of Environmental Conservation (NYSDEC), a November 7, 1980 letter from the Erie and Niagara Counties Regional Planning Board (ENCRPB), and an October 3, 1980 letter from the Connecticut Department of Environmental Protection (DEP).

Both NYSDEC and ENCRPB point out two errors in EPA's proposal. These were as follows:

- The entire City of North Tonawanda rather than that part "west of Military Road" (as incorrectly stated on the fifth line of the second paragraph under "Particulate Matter" in the third column on page 60941 of the September 15, 1980 proposal) was designated nonattainment with regard to the secondary particulate matter standard.

- The following statement should have appeared in the "Particulate Matter" discussion which began in the third column on page 60941 of EPA's September 15, 1980 proposal:

The City and Town of Tonawanda, east of Military Road were designated as unclassifiable for the secondary particular matter standard. These areas are proposed to be reclassified as "better than national standards."

EPA acknowledges the validity of the comments made by NYSDEC and ENCRPB and has incorporated appropriate changes to reflect them in the redesignations being promulgated at the end of today's notice.

In addition, in the first column on page 60942 of the September 15, 1980 proposal, EPA found an error in the fifth criterion used by EPA in determining whether or not to approve a proposed redesignation. The last three words of this criterion were incorrectly transcribed to "monitoring data" and the criterion should read:

- Although monitoring data are preferred, determination of nonattainment and nonattainment boundaries may also be based on air quality modeling.

The Connecticut DEP commented that it was their belief that there must be eight consecutive quarters without a national ambient air quality standard violation for an area to be designated as attainment. This is correct. As indicated in EPA's September 15, 1980 notice of proposed rulemaking, this criterion for redesignation was satisfied by New York in its submittal.

Connecticut DEP also voiced particular concern about the validity of the sulfur dioxide reclassifications in the Southern Tier East and West AQCRs. In this regard Connecticut DEP may have noted a July 12, 1976 *Federal Register* notice (41 FR 28618) in which the results of an uncalibrated air pollution

modeling effort conducted by an EPA consultant are discussed. This study indicated the potential for exceedances of the 24-hour sulfur dioxide standard of 0.014 ppm in the vicinity of the Jennison and Hickling generating stations, located in Bainbridge and East Corning, respectively.

As a result of this study and the uncertainty of Valley Model predictions, Region II recommended that a field study be conducted to verify the modeling results. New York State Electric and Gas Corporation committed to monitor sulfur dioxide for a two-year period in the vicinity of these stations. Final results of this study indicated no violations of any short term or long term standards during its duration.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings

brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this package and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sections 107, 301 of the Clean Air Act, as amended (42 U.S.C. 7407, 7601))

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Part 81, Code of Federal Regulations is amended as follows:

**Subpart C—Section 107 Attainment Status Designations**

1. Section 81.333 is amended by revising the attainment status designation tables for TSP and SO<sub>2</sub> as follows:

**§ 81.333 New York.**

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
<b>New York State—TSP</b>				
<b>Niagara Frontier AQCR:</b>				
The City of Buffalo (south of I-190; except an area one-half mile inland and parallel to Furman Blvd. between I-190 and Tift St.)	X			
The City of Buffalo (south of Genesee St.; except an area one-quarter mile wide bordering Lake Erie and parallel to Furman Blvd. between I-190 and Tift St.)		X		
The City of Lackawanna	X	X		
The City of Tonawanda				X
The Town of Tonawanda				X
The City of Niagara Falls (south of Pine Ave., east of Hyde Park Blvd. and west of I-190)	X			
The City of Niagara Falls		X		
The Town of Niagara		X		
The City of North Tonawanda				
The Village of Blasdell		X		
The Town of Cheektowaga (south of Genesee Rd. and west of Union Rd.)		X		
The Town of West Seneca				X
The City of Lockport (north of Rtes. 93 and 31)		X		
Remainder of AQCR				X
Genesee-Finger Lakes AQCR				X
Southern Tier West AQCR: The City of Jamestown		X		
Remainder of AQCR				X
Southern Tier East AQCR				X
<b>Central AQCR:</b>				
The City of Syracuse		X		
The Village of East Syracuse		X		
The Village of Solway		X		
Remainder of AQCR				X
<b>Northern (Champlain Valley) AQCR:</b>				
<b>Hudson Valley AQCR:</b>				
The City of Albany (east of Rt. 32 and south of Rt. 20)		X		
The Town of Catskill (east of Rt. 9W and south of Embought Rd.)		X		
Remainder of AQCR				X
<b>New Jersey-New York-Connecticut Interstate AQCR:</b>				
The Borough of Manhattan		X	1X	
The Boroughs of the Bronx, Brooklyn, and Queens (south of the Cross Bronx Expressway, west of the Hutchinson River Parkway and Bronx-Whitestone Bridge, west of the Whitestone Expressway, west of the Van Wyck		X	1X	

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
<b>New York State—TSP —Continued</b>				
Expressway, north of the Southern Parkway, north of Conduit Blvd., north of Linden Blvd., north of Caton Ave., north of the Ft. Hamilton Parkway, and north of 39th Street)				
The Borough of Staten Island (south of I-278; west of Richmond Ave., and north of Arthur Kill Road as far west as Roseville Ave.)		X		
Remainder of AQCR				X
<b>New York State—SO<sub>2</sub></b>				
Niagara Frontier AQCR				
The City of Buffalo (an area bounded on the north by Tift Street, on the east by Hopkins Street, on the south by the City of Lackawanna and on the west by Lake Erie)	X			
The City of Lackawanna (west of South Park Avenue)	X			
Remainder of AQCR				X
Genesee-Finger Lakes AQCR				X
Southern Tier West AQCR				X
Southern Tier East AQCR				X
Central AQCR				X
Northern (Champlain Valley) AQCR				X
Hudson Valley AQCR				X
New Jersey-New York-Connecticut Interstate AQCR:				
The Borough of Manhattan (except between 59th and 125th Sts.)			X	
The Boroughs of Brooklyn and Queens (south of the Queensborough Bridge and Queens Blvd., west of 44th St., west of I-278, and north of the Brooklyn Bridge)			X	
The Borough of the Bronx (south of I-95 and west of I-278)			X	
Remainder of AQCR				X

<sup>1</sup>EPA designation replaces State designation.

[FR Doc. 81-2855 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 205

(NH-FRL 1736-7)

#### Noise Emission Standards: Medium and Heavy Trucks and Truck-Mounted Solid Waste Compactors

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Deferral of Effective Dates: Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency, (EPA) hereby defers the effective date for the 1982 noise emission standard of 80 decibels (dB) for medium and heavy trucks from January 1, 1982, to January 1, 1983. This action is taken in response to petitions for reconsideration of that standard which were submitted by International Harvester Company and Mack Trucks, Incorporated. The purpose of this action is to provide temporary relief to the truck manufacturing industry from expenditures otherwise needed to bring their medium and heavy trucks into compliance with the 1982, 80 dB standard. The basis for this action is the recent downturn in the economic condition of the truck manufacturing industry and an unforeseen increase in

the demand for medium diesel trucks, which are the most costly to quiet.

Because the 76 dB noise emission standard for truck-mounted solid waste compactors is related to the 80 dB level for truck chassis, the effective date for the 76 dB compactor standard is also deferred, from July 1, 1982, to July 1, 1983.

**DATES:** All medium and heavy trucks manufactured after January 1, 1983, must not emit a noise level (A-weighted) in excess of 80 dB when measured as prescribed in 40 CFR Part 205, Subpart B, Noise Emission Standards for Medium and Heavy Trucks (41 FR 15538).

All truck-mounted solid waste compactors manufactured after July 1, 1983 must not emit a noise level (A-weighted) in excess of 76 dB when measured as prescribed in 40 CFR Part 205, Subpart F, Noise Emission Standards for Truck-Mounted Solid Waste Compactors (44 FR 56524).

These amendments take effect on (30 days from date of Federal Register publication). EPA will consider any comments on this action, and on whether or not a further deferral of the 80 dB standard for medium and heavy

trucks would be appropriate, which are submitted before 4:30 p.m., April 24, 1981, and will respond to any comments as appropriate.

**ADDRESSES:** Written comments to the docket should be mailed to: Director, Standards and Regulations Division, Attention: ONAC Docket 81-02 (Medium and Heavy Trucks), ANR-490, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Copies of the International Harvester and Mack Trucks petitions can be obtained from Mr. Charles Mooney, U.S. Environmental Protection Agency, EPA Public Information Center (PM-215), Room 2194D—Waterside Mall, Washington, D.C. 20460. Copies of those documents, related correspondence, and other supporting documents are available for public inspection between the hours of 8:00 a.m. and 4:00 p.m. at the Central Docket Section of the Environmental Protection Agency, West Tower, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Timothy Barry, Project Officer, Standards and Regulations Division, (ANR-490), U.S. Environmental Protection Agency, Washington, D.C. 20460; or phone (202) 557-2710.

#### SUPPLEMENTARY INFORMATION:

##### 1.0 Introduction

EPA published noise emission regulations for newly manufactured medium and heavy trucks on April 13, 1976 (41 FR 15538). Those regulations require, in part, that vehicles subject to the regulations manufactured after January 1, 1978, meet a not-to-exceed noise level of 83 dB, and that vehicles manufactured after January 1, 1982, meet a not-to-exceed noise level of 80 dB when measured in accordance with a specified test procedure.

On September 2, 1980, International Harvester (IH) submitted a petition for reconsideration of the regulation which proposed that the 1982 medium and heavy truck noise emission standard of 80 dB be withdrawn. IH promised in its initial petition to submit an analysis supporting the issues raised by their petition within 30 days, and to submit an analysis of the community noise impact of the 1982 standard within 60 days. Those documents were forwarded to the Agency on October 2, and November 18, 1980, respectively.

In these submittals, IH contended that the 1982 standard will impose an

unnecessary burden and cannot, under the present conditions, be justified under a cost-benefit analysis. In support of this position, IH argued that circumstances have changed since the publication of the regulations in 1976. Specifically, IH contended that: (1) The Agency justified the 1982 standard based on the fuel savings from quiet fans, which are now being installed solely for their fuel benefit; (2) the growth in demand for medium-duty diesels, the class of vehicle costing the most to quiet, was grossly underestimated by the Agency; (3) the trucking industry is highly sensitive to interest rates, and interest rates are much higher now than projected in 1975; (4) because of inflation, the negative effects of the 1982 standard will be amplified; (5) the cost of the loss in fuel efficiency due to increased weight will be much greater than anticipated due to higher fuel prices; and (6) the Agency did not take into account in the original analysis that some transmissions would require quieting to meet the 1982 standard.

In a November 18, 1980 letter, the Agency asked IH for information to fill in gaps in the data used by IH to support several of its major contentions. On December 18, 1980, EPA staff met with IH staff at their Ft. Wayne, Indiana, facility to receive this information. A December 23, 1980 letter with enclosures from IH to EPA summarized the December 18 meeting and provided certain additional information. This letter also raised more specifically the issue of the current depressed truck market and the general economic state of the truck manufacturing industry.

Communications during the summer of 1980 from the Ford Motor Company and the General Motors Corporation requesting a delay in the effective date of the 80 dB standard for medium and heavy trucks also raised the issue of the economic state of the trucking industry.

On November 7, 1980, Mack Trucks, Incorporated (Mack) also submitted a petition for reconsideration of the 1982 medium and heavy truck noise emission regulation. Mack stated that its petition was basically in support of the IH petition, and raised the following concerns: (1) EPA has wrongly identified trucks as the number one surface transportation noise problem; (2) further reductions in truck noise will be masked by unregulated sources at highway speeds, especially tires; (3) the \$400 to \$500 price increase to meet the 80 dB standard may not be justified by the

benefits; (4) sound barriers will impose additional loads on truck cooling systems and lead to reduced preventive maintenance; (5) transmission sound levels may have to be reduced; (6) cost savings from the greater fuel efficiency of clutched fans cannot be ascribed to the noise regulation; (7) some highly customized vehicles may have higher than anticipated noise abatement costs; (8) larger mufflers may encroach on space for cab entrance and egress; and (9) the truck-mounted solid waste compactor noise emission regulation appears inconsistent with the truck noise regulation.

During this period, the Agency also received letters from several States opposing a withdrawal or deferral of the 1982, 80 dB standard, disagreeing with IH's characterization of the benefits as being minimal, and expressing their judgment that the standard is reasonable. Illinois suggested that if the 80 dB standard were withdrawn, it should be withdrawn in a manner that would allow Illinois to adopt an 80 or 75 dB standard. Three States expressed concerns with the Federal preemptive aspect of the existing 83 dB standard.

## 2.0 Discussion

The Agency has completed its analysis of the petitions submitted by IH and Mack, and the supporting information. The Agency finds that there is insufficient basis with respect to available technology, health and welfare benefits, and compliance costs, for a withdrawal of the 1982, 80 dB standard. The issues raised by IH and Mack in their petitions and EPA's response to those issues are discussed in detail in Section 3.0. However, on the basis of the current economic state of the industry, and the fact that both the industry and EPA did not predict the dramatic growth of medium diesel demand, the type of vehicle bearing the highest cost of compliance, the Agency believes that it is appropriate to defer the 80 dB standard for one year. When the regulation was promulgated, the truck manufacturing industry was on a healthy growth curve and there was adequate evidence that the industry could meet the 80 dB standard in 1982 and subsequent years. At that time, and in the intervening years, the issue of availability of noise abatement technology to meet an 80 dB standard has never been, and is not now, a serious contention by any party. Further, EPA has not found that its original cost estimates for the regulation, when compared in constant dollars, have

changed substantially today. However, the truck manufacturing industry has experienced an economic downturn in terms of total sales and corporate profits which is projected to continue into 1981, and in view of the unanticipated dramatic market shift from gasoline-engined medium trucks to the more costly-to-quiet diesel-engined medium trucks, the one year delay of the 80 dB regulation is expected to immediately provide some relief to the industry's cash-flow problems, which appear to be particularly acute at this time.

The data presented by the industry and other information immediately available to EPA support the general economic plight of the industry. Although EPA would have preferred more specific data concerning the immediate cash flow problems of the industry and the extent to which the 1982 standard would contribute to such cash flow problems, there remains inadequate time in which to examine these issues fully and still be in a position to grant necessary relief since purchasing commitments for the 1982 standard are now being made. Since the environmental consequences of granting the relief are mitigated by the fact that the deferral is for one year only, during which time the present 83 dB standard will remain in effect, the Agency concludes that such a short deferral is justified based on the available data.

The Agency does not believe that a longer postponement is appropriate or in the best interests of the public. Trucks are the nation's greatest single source of environmental noise. Traffic noise ranks as the number one noise problem in our urban areas and trucks contribute over half the noise due to traffic. The 80 dB regulation is expected to bring a substantial reduction in impact over the current 83 dB regulation. In addition, the greatest relative benefits are expected to accrue to those citizens who are presently exposed to the highest levels of traffic noise around their homes. Also, without a further reduction below the current 83 dB standard for trucks, reducing the levels of other sources of traffic noise would provide dramatically fewer benefits because of the otherwise masking and dominant effect of truck noise. Thus, the Agency considers the 80 dB regulation for medium and heavy trucks to be a crucial element in bringing about a significant reduction in community noise levels in the U.S.

In addition, in view of the fact that the current 83 dB Federal standard is

preemptive of conflicting State and local noise standards for newly manufactured trucks, that many State and local governments have been and are increasingly becoming active in the control of truck noise, and that several States have recently expressed concern about a deferral of the 80 dB standard, the Agency believes it is in the public interest to limit the length of any period of deferral.

However, recognizing that some parties affected by this action may argue that a one year deferral is either too long or too short, the Agency invites comments from interested parties on this issue, and specifically on whether or not a further deferral of the 80 dB regulation for medium and heavy trucks would be appropriate. Of particular interest to the Agency is information regarding: (1) the impact of any deferral on suppliers of components that would otherwise be used in the manufacture of new trucks to meet the 80 dB level; (2) the impact on State and local jurisdictions of any deferrals; and (3) the impact of the 80 dB regulation on cash-flow and corporate profits in the truck manufacturing and trucking industries.

### 3.0 Issues and Responses

The following is a summary of the primary issues raised by manufacturers in written submittals to petition the Environmental Protection Agency to defer or withdraw the 1982 regulatory level and the Agency's response to those issues.

#### 3.1 Issue

It has been claimed that the Agency grossly underestimated the growth of the medium diesel market share, the vehicle class that bears the highest cost of compliance per vehicle. Thus, the inflationary impact of the 80 dB regulation will be much greater than originally estimated.

#### Response

Historical analysis and forecasting indicate that the medium truck market is rapidly becoming dieselized, as claimed. The EPA cost elements (see Appendix) have been updated to 1980 dollars and the economic effects reassessed based on the current fleet growth projection of Data Resources Institute (DRI), which averages 2.1% per year. A nearly identical growth rate (2%) is currently projected by the U.S. Department of Commerce. The Agency's original estimates of incremental quieting costs to meet the 80 dB level are presented in the table below.

**Table 3.1.—Comparison of Estimated Quieting Costs, in Millions of Dollars, for Truck Manufacturers To Meet the 80 dB Regulation for the First Three Years Following the Effective Date of the Standard**

Year	Original EPA estimates		Revised EPA estimates <sup>1</sup> (1980 dollars)	1980 manufacturer's estimates <sup>2</sup> (1980 dollars)
	(1975 dollars)	(1980 dollars)		
1982	110.2	187.2	145.0	111.2
1983	113.9	193.5	157.9	128.4
1984	117.9	200.3	165.2	145.6

<sup>1</sup>Revised EPA estimates are based on current (Fall 1980) econometric forecasts of aggregate fleet growth prepared by Data Resources Incorporated (Reference 4) and EPA market share projections reflecting current and projected market trends (Appendix, Figure A-3).

<sup>2</sup>Supplied to EPA by International Harvester Company 12/18/80.

Also presented are the original 1975 estimates updated to 1980 dollars, and further revised to reflect recent changes in market share and the more conservative 1980 estimate of sales trends. A comparison between the original EPA estimates of annual incremental costs to meet the 80 dB level (in 1980 dollars), and the estimates furnished by the claimant show that EPA was conservative; compared to the manufacturer's estimates, there would be a substantial reduction in inflationary effects. When EPA's revised 1980 estimates, which take into account medium truck market shifts and a more conservative sales forecast than used in 1975 (2.1% vs 3.3% per year), are compared with its original estimates (1980 dollars), a reduction of 22.5%, 18.4%, and 17.5% is seen for the years 1982, 1983, and 1984 respectively. On this basis the 80 dB regulation would be considerably less inflationary than EPA originally projected. While there are increased costs associated with the growing dieselization of medium trucks, these costs are, to some degree, counterbalanced by a reduction of costs to manufacturers due to a decline in truck sales. The total cost of the regulation is consequently not as great as originally estimated.

#### 3.2 Issue

It has been claimed that EPA underestimated the noise abatement costs required for trucks to comply with the 80 dB regulation.

#### Response

In the Appendix contained in this notice, EPA has updated the noise abatement costs for medium and heavy trucks. This updating takes into account inflation and real cost increases that have occurred between 1975, when the original costs were determined, and December 1980. Not all truck manufacturers will experience the same abatement costs to comply with the 80

dB regulation. Some trucks are more costly to quiet than others. EPA has determined abatement costs on a per truck basis for each of the four categories considered in our original economic analysis. These costs represent sales-weighted industry averages that take into account abatement costs incurred by individual manufacturers which are then weighted to reflect their respective market shares. The table below summarizes EPA's updated noise abatement estimates and includes estimates supplied to EPA by three major truck manufacturers.

**Table 3.2.—1980 Estimate of Noise Abatement Costs per Truck To Comply With 80 dB Regulation**

Truck category	EPA	Manufacturer		
		1	2	3
<b>Medium:</b>				
Gasoline	\$307	\$120		
Diesel	876	360		
<b>Heavy:</b>				
Gasoline	269			
Diesel	489	515	\$400-500	\$500

As noted in the issue dealing with the increasing sales of medium diesel trucks, there is a discrepancy between the manner in which EPA and, in particular, one manufacturer classify trucks. EPA uses the weight classifications in common usage by the Department of Transportation, Interstate Commerce Commission and Motor Vehicle Manufacturers Association. EPA believes that differences in the cost data in the above table are partially due to the different truck classification schemes used, and the fact that EPA costs are sales-weighted in contrast to the manufacturer supplied costs. EPA has been unable to resolve these differences and, therefore, the data are not in complete agreement. However, EPA's noise abatement cost estimates are, on the average, higher and, therefore, more conservative than the manufacturers' estimates. EPA, in updating the economic analysis of the regulation, has used the more conservative cost figures and believes that the resulting economic impact projected by EPA overstates the actual cost of the regulation.

#### 3.3 Issue

It has been requested that the 80 dB truck regulation be set aside because the Council on Wage and Price Stability (COWPS) in two statements, May 9, 1975 and July 8, 1975, evaluated the proposed 80 dB regulatory level as lacking economic justification.

*Response*

Both EPA and COWPS endeavor to determine the economic effects of compliance of a regulation by examining both the costs and potential benefits; therefore, the two assessments are similar in scope and magnitude. However, the benefits evaluation criteria differ substantially. The COWPS examines the cost effectiveness of a regulation purely in economic terms by assigning costs to the technology required to reduce the noise and examining such economic benefits as enhanced fuel economy and improved property values. COWPS does not attempt to place a dollar value on the potential public health and welfare benefits that are expected to occur from noise control, nor do they consider persons removed from impact, except to the extent these benefits are reflected in increased property values. The EPA evaluation considers all manufacturer and user costs related to the regulation. While the potential economic benefits of fuel economy are assessed, principal emphasis is placed on the potential health and welfare benefits to the public. Indeed, these latter benefits are the primary basis for the regulation, as required by the Noise Control Act. These health and welfare benefits are not assigned a dollar value, but rather are examined in terms of reduced adverse impact on people. Therefore, since the primary aim of EPA regulatory actions is to achieve health and welfare benefits, and since COWPS does not evaluate this element, it stands to reason that the COWPS assessment of the 80 dB truck regulation would be less favorable than EPA's assessment.

**3.4 Issue**

There is a contention that the trucking industry will be placed under a greatly increased burden as current interest rates are considerably greater than EPA predicted in 1975.

*Response*

EPA gave careful consideration to the trucking industry's sensitivity to high interest rates in 1975, in the context of possible delays in the granting of rate increases by the Interstate Commerce Commission. To avoid a drain on trucking industry cash resources, EPA stated that rate increases should be allowed to coincide with cost increases, including higher interest payments and capital costs. The U.S. Congress has recently eased the Interstate Commerce Commission's regulatory constraints on rate increases for trucking services. This deregulation of the trucking industry

mitigates the earlier potential problem of delays in rate increase pass-throughs needed to cover costs.

A higher interest rate due to inflationary pressures does not, by itself, pose a burden on an industry, provided that the resulting higher operating costs are passed-through to customers, thereby generating an equal increase in revenue. The increase in the price of trucking services would not necessarily cause a loss of business, since it would only bring the relative cost of trucking in balance with the concurrent increase in costs due to the same inflationary pressures on alternative modes of transportation.

The actual availability of capital at the interest rates being experienced in 1980 cannot be determined based on the information submitted and immediately available to the Agency.

The present economic analysis has de facto corrected for any errors in inflation and discount rates as predicted in 1975 by updating the economic baseline to actual 1980 data. The present growth trends and discount rates are considered reliable for predictions from the present into the future.

**3.5 Issue**

It was alleged that the 1982 regulation cannot, under the present conditions, be justified under a cost/benefit analysis.

*Response*

EPA's health and welfare analysis is based on fractional noise impact assessment, e.g., four real persons that are each 25 percent impacted are equivalent to one "level weighted person" (LWP) who is 100 percent impacted.

EPA's original health and welfare estimates indicated an additional reduction in LWP of 2.8 million achieved by the 80 dB regulation over those health and welfare benefits associated with the 83 dB regulation. Attendant with this reduction in LWP, EPA had originally estimated that the average incremental cost to manufacturers to comply with the 80 dB regulation would be \$193.7 million (1980 dollars) averaged over the first three years of the regulation. EPA has reassessed the health and welfare benefits expected from the 80 dB regulation, taking into account growth in the nation's population and the reduced growth rate in the truck fleet. This reassessment indicates a 57% increase in benefits (a reduction in LWP of 4.4 million) over that originally projected by EPA in 1975.

EPA has also reassessed the cost to manufacturers of complying with the 80 dB regulation, taking into account recent

market share trends and econometric projections for truck sales. The Agency's updated estimate of manufacturers' cost to comply averages \$156 million (1980 dollars) over the first three years of the regulation. This represents a 19.5% reduction in EPA's original estimate of the cost to comply with the 80 dB regulation.

Thus, the Agency's recent analyses of health and welfare benefits and compliance costs, indicates that the 80 dB regulation is more cost-effective than originally estimated.

**3.6 Issue**

It has been alleged that EPA included fuel savings due to the use of clutched fans in its cost benefit analysis, and that such inclusion is inappropriate since these components are being installed voluntarily.

*Response*

The Agency examined the fan clutch issue in detail during the regulatory development process and examined the cost of the regulation with and without the cost savings due to the greater fuel efficiency of clutched fans. However, the Administrator, in making his decision on the truck regulation, took into consideration the cost of the "worst case" situation, i.e., no fuel saving credit, and determined that the rule was justified based on the potential health and welfare benefits. Therefore, any savings due to fan clutches were not a determining factor in the original regulatory decision.

**3.7 Issue**

It has been noted that current fuel prices have increased by more than 100% over those used in the EPA's 1975 analysis. The manufacturers argued, therefore, that the cost of fuel efficiency loss due to the added weight of noise abatement components will be much greater than originally forecasted. Projected fuel price increases will continue to compound this situation.

*Response*

EPA has conducted an updated analysis, using current fuel cost figures based on the industrial products indices for gasoline and diesel fuel. This analysis was carried out to assess any changes in the annual incremental cost of fuel due to the weight of quieting hardware. The following table presents a comparison between the annual incremental costs estimated by EPA in 1975 and 1980.



**Table 3.7—Incremental Cost per Year per Truck**

	Original estimate	Revised estimate
Medium:		
Gasoline.....	\$1	\$3
Diesel.....	9	25
Heavy:		
Gasoline.....	2	5
Diesel.....	15	41

These fuel costs are only a small part of the annual overall operating costs. We find this cost acceptable for the resulting reduction in noise.

### 3.8 Issue

It has been claimed that, with certain drivetrain combinations, transmission covers will be needed to meet the 80 dB regulatory level. Neither the product cost increase associated with the transmission redesign nor the cost of transmission covers was included by EPA in its original analysis. The claim is also made that the addition of transmission covers will increase the servicing costs above those originally projected by EPA.

#### Response

EPA has determined that widespread changes in transmission design are currently underway by several of the major transmission manufacturers. These changes were not initiated to accommodate the noise regulations. Rather, truck fuel efficiency and performance have dictated transmission redesign, in addition to the derating of engines and changes in axle ratios.

Noise reductions which can be achieved in parallel with this redesign are being incorporated with far less expense than would be the case if dealt with as the sole reason for redesign. The need for a specially designed quieted transmission to meet the 80 dB level is dependent on the noise level of the transmission in combination with other noise generating components of the truck, such as the engine, fan and exhaust. A reduction in noise emission of these other components may well negate the need for quieter transmissions.

EPA investigations indicate that certain drivetrain configurations will need transmission covers to comply with the 80 dB regulation. Using the manufacturer's estimates of the cost of these covers, the capital cost calculations have been updated as detailed in the Appendix. The resultant average increase in unit cost was 0.02% due to the small number of units affected.

Investigations and demonstrations currently underway by the

Environmental Protection Agency indicate that reasonable engineering design of enclosures for oil sumps, engines, and transmissions will result in minimal impact to serviceability.

### 3.9 Issue

It has been alleged that some medium duty diesel engine lines may not be usable in truck chassis regulated to the 80 dB level in 1982.

#### Response

EPA is aware that some models of medium duty diesel engines are more difficult to quiet to meet the 80 dB regulation than other models of medium diesels. The industry has been aware of this for a number of years. To quiet the noisier models imposes certain cost and weight penalties not encountered by competing models, thus reducing the attractiveness of the noisier designs. Such models will encounter reduced demand, and some lost sales may result. EPA has received information that alternative uses for these engines are available, for example, in marine applications. Thus, the Agency anticipates that truck-application engine sales losses due to the 80 dB noise regulation will be recovered, at least in part, by alternative applications. Furthermore, the industry has announced that several new and redesigned medium duty diesel engine lines will be introduced for sale in the 1982 timeframe. These engines are being designed to concurrently achieve greater power, less weight, higher fuel economy, reduced air emissions, and less noise. EPA expects that these new engine lines will substantially offset any lost sales in specific model lines due to potential engine obsolescence resulting from the 80 dB regulation.

### 3.10 Issue

It has been claimed that the noise treatments, especially sound barriers, needed by some manufacturers to comply with the 80 dB regulation will impose additional loads on truck cooling systems and promote a reduction in truck preventive maintenance.

#### Response

In the Background Document supporting the truck noise regulation, EPA acknowledged that, for many truck configurations, sound barriers would be necessary to comply with the 80 dB standard and that, for these configurations, additional cooling loads may be imposed. To handle the increased cooling loads, EPA's analysis took into account the incorporation of "off the shelf" components, which included improved fan and fan shroud

designs, as well as more efficient heat transfer radiators. These components were, and are, available for long-haul tractor/semi-trailers, as well as construction trucks. EPA has no reason to believe that the original assessment of the sound barrier requirements and cooling system changes was incorrect. EPA presumed, and continues to presume, that manufacturers will design their cooling systems with the eventual use of their trucks in mind. In so doing, manufacturers would likely incorporate fan, shroud, and radiator designs compatible with the sound barrier treatments applied to the trucks in their product lines.

As to the possible reduction in vehicle preventive maintenance, EPA recognized in the analysis supporting the regulation ("Background Document for Medium and Heavy Truck Noise Emission Regulation" (EPA 550/9-76-008), pages 6-25 through 6-28) that vehicle maintenance cost would be affected, and estimated the yearly cost increment to be \$103 (1975 dollars), which translates to about \$150 in 1980 dollars. EPA presumed that truck operators would protect their substantial investment by incurring the necessary increased maintenance costs, rather than reducing vehicle preventive maintenance. If the preventive maintenance were reduced, the increased cost could be foregone, although in the longer term substantial maintenance and/or operating cost consequences might result.

### 3.11 Issue

The claim has been made that the 80 dB regulation will result in the elimination of naturally aspirated diesel engines due to the inability of some engines to be turbocharged, and that this elimination will create an economic hardship to the customer by forcing the purchase of a turbocharged engine.

#### Response

EPA has ascertained that the diesel truck industry has made a wholesale move toward turbocharged engines. Evidence indicates that by 1982 the majority of engines will be turbocharged as a matter of course. This position is supported by the large percentage of turbochargers being installed on diesels today, although they are not required in order to meet the 1978, 83 dB noise standard. One manufacturer indicated that 99.5% of the engines in their chassis are currently turbocharged. The major motivations for turbocharging at this time appear to be customer demand for greater power, fuel economy, and air emissions benefits. In the near future, as truck engines become predominantly

turbocharged, EPA expects the cost ratio of turbocharged to naturally aspirated engines to decrease due to production efficiencies to the point where the cost differential would be offset by attendant savings in fuel. It would be expected that purchasers will increasingly select turbocharged engines, and that this market would continue to increase even absent the EPA regulation. There is no reason, however, for the regulation to eliminate naturally aspirated diesel engines from the market since such engines can meet the regulation requirements at less capital cost than turbocharging, if turbocharging was demanded solely for its less-noisy attributes.

### 3.12 Issue

It is alleged that manufacturers' difficulties in standardizing side shield placement on highly customized trucks will result in higher than anticipated vehicle costs.

#### Response

EPA recognizes that some vehicle configurations will be more difficult and costly to quiet than others; however, projected noise abatement cost to meet the 80 dB standard supplied to EPA by several manufacturers presumably include these more costly configurations. Since these noise abatement cost estimates to comply with the 80 dB standard have been found to be in substantial agreement with those projected by EPA, we conclude that while these highly customized vehicles may fall in the upper reaches of each manufacturer's noise abatement cost range, the average costs to meet the 80 dB regulation for manufacturers' overall product lines are not significantly different than those projected by EPA. Whether the problem associated with highly customized vehicles is a unique and serious one deserving of particular attention cannot be determined based on the manufacturers' submissions.

### 3.13 Issue

It has been alleged that the use of larger mufflers will encroach on the available space for cab entrance and egress.

#### Response

This issue was not raised by any of the vehicle manufacturers or muffler manufacturers during the development of the proposed regulation or the attendant public comment period, nor was this problem encountered in either the DOT or EPA Quiet Truck Programs. The manufacturer raising this issue indicated that its concern was

speculative. Without detailed technical evidence that such a problem will exist, the seriousness of this alleged problem cannot be ascertained.

### 3.14 Issue

The question has been posed as to whether trucks are the major source of surface transportation noise as EPA claims, and whether reductions in truck emission levels below the current 83 dB regulation will be masked by unregulated sources, such as tires, at typical highway speeds of 35 mph and above.

#### Response

EPA has identified trucks as the number one source of surface transportation noise. This finding is based on a careful, detailed analysis by EPA of vehicles operating on the nation's roadway system.

EPA's analysis considered all categories of vehicles involved in surface transportation, their noise emission levels as determined through field studies by both the EPA and the Federal Highway Administration, vehicle operational characteristics, typical traffic conditions, and the distribution of the population relative to the nation's streets and highways. The time phasing of regulated vehicles into the vehicle fleet and the contribution from tire noise under high speed conditions were taken into account. Deviant vehicles (i.e., poorly maintained, jouncing body components, etc.) were explicitly excluded from EPA's analysis. By excluding these deviant vehicles, EPA projections of truck noise health and welfare impacts are conservative.

The EPA analysis of the extent and severity of traffic noise impacts as functions of where they occur (i.e., local roads and streets, collectors, major and minor arterials, freeways, and interstates) shows trucks clearly to be the dominant source of traffic noise impacts. Currently, in excess of 60% of the impacts from traffic noise are from medium and heavy trucks. EPA knows of no studies which contradict its findings or which indicate that trucks will not continue to be the major source, even when the preponderance of medium and heavy trucks meet the 80 dB level.

EPA's analysis clearly distinguished between benefits that accrue to people exposed to urban traffic noise (low speed) where tire noise is only a very minor contributor, and to those exposed to freeway traffic noise (high speed) where tire noise is a significant contributor. This analysis shows that approximately 92% of traffic noise

impacts occur in the urban environment where tire noise is a relatively insignificant contributor.

EPA believes that 95% of the benefits from the 80 dB truck regulation will accrue to those who live in an urban environment. The focus of the medium and heavy truck noise emission regulation is not primarily aimed at the control of vehicles when they are operating in excess of 35 mph. This latter impact is controlled by an existing Federal regulation (40 CFR 202) which specifies maximum high speed (greater than 35 mph) noise levels for vehicles over 10,000 lbs. GVWR operated by carriers in interstate commerce.

### 3.15 Issue

It has been alleged, based upon the results from a health and welfare computer model developed by Battelle Laboratories:

1. That nine (9) million people, or only 4% of the nation's population will benefit from the 80 dB regulation,

2. This 4% will receive an insignificant and imperceptible daily average benefit of 0.6 dB at the cost of \$3 billion, twenty-six years from now,

3. This analysis represents an ultraconservative estimate in that the EPA's most quoted baseline limit of Ldn greater than 55 dB is a very conservative low end value that includes a built-in margin of 5 dB to 7 dB, below a level of "significant complaint" community reaction,

4. The EPA analysis assumes that the effect of an 80 dB regulation would be immediate, when realistically this is not the case,

5. A 1.0 dB change in level is likely to be the minimum detectable by the human ear and that other studies have noted that as high as a 5 dB change is required before the majority of the population can differentiate a significant change in traffic noise levels, and

6. It makes little sense to go to an 80 dB regulation since most of the benefits will be gained at the 83 dB level.

#### Response

The contentions rely heavily on results from the roadway traffic noise prediction model developed by Battelle Laboratories. From the description of the Battelle model supplied to EPA by a manufacturer, the EPA and Battelle models appear sufficiently similar so as not to be a major point of contention. However, the manufacturer's and EPA's interpretations of the model(s) output data are substantially different. Specific responses to each of the issues raised are presented below:

1. The only regulatory benefit from an 80 dB regulation recognized by the

manufacturer is the benefit to people who would be 100 percent removed from any adverse impact due to noise, which is approximately 9 million people. The estimate of 9 million people benefiting from the 80 dB standard represents the difference between the Battelle estimate of 104 million people living in areas with excessive levels of noise with an 83 dB regulation, and the Battelle estimate of 95 million people not 100% removed from impact after an 80 dB regulation. This contention fails to acknowledge that the remaining 95 million persons, although not totally removed from impact, will realize varying levels of reduced impact, and thus would experience a quieter, more livable environment. In fact, those persons who are presently exposed to the highest levels of traffic noise will receive the greatest degree of relief, a fact not acknowledged in the contention. Therefore, the population potentially benefited is considerably greater than the "mere 4 percent" claimed. EPA's method of evaluating benefits has the endorsement of the National Academy of Sciences expert committee on bioacoustics.

The contention also fails to recognize an anticipated growth in the U.S. population and associated increases in traffic volume. Considering both population and traffic growth, EPA estimates that 136 million persons will be adversely impacted to some degree by traffic noise in the year 2001 with trucks regulated to 83 dB.

2. The contention that a benefit of 0.6 dB reduction in average daily noise level cannot be perceived, indicates a confusion of the concept of noise level with that of noise exposure. While noise level differences on the order of 0.6 dB between two successive truck pass-bys may be imperceptible, such differences in average community noise exposure over long periods of time are quantifiable and are quite meaningful in terms of overall community response. Further, the analysis is in error with respect to the time period over which costs will be incurred. The costs of the regulation will not accrue in one lump sum; they will be spread over the entire 26 year period required for total truck fleet turnover to 80 dB vehicles.

3. The analysis is in error in stating that its estimates of benefits are ultraconservative since EPA's identified level of 55 dB to protect public health and welfare includes a built-in margin of 5 to 7 dB below a level of significant community complaint reaction. The EPA identified level was agreed upon by internationally recognized experts as a level below which the U.S. population

would not be at risk from noise exposure. If anything, recent community survey data suggest the identified level of 55 dB may be too high.

4. EPA analysis has never assumed that the "effect" of this regulation would be immediate. The rate of vehicle turnover in the fleet was considered and the full benefits and full costs of the regulations were not expected to accrue until the truck fleet has been fully replaced by quieted trucks in the year 2000.

5. The statements about minimal detectable changes in sound level are valid when considering a single exposure to noise. However, as stated previously, the manufacturer has confused noise level changes with noise exposure changes. Even small changes in noise exposure are significant.

6. The argument that it makes little sense to go to an 80 dB truck regulation since most of the benefits would be gained with an 83 dB level, erroneously assumes that no significant benefits would be gained below an 83 dB level. EPA projects that in the year 2001, an 83 dB regulation would reduce impacts by 19.0 percent, while the 80 dB regulation would provide a benefit of approximately 27.3 percent, an additive 8.3 percent reduction. A more stringent limit of, say, 75 dB would yield benefits of about 35 percent. The benefits therefore, of going from an 83 dB to an 80 dB regulation, are significant.

### 3.16 Issue

The question has been raised as to the compatibility of the medium and heavy truck noise emission regulation with the noise emission regulation for truck-mounted solid waste compactors.

### Response

The truck-mounted solid waste compactor (compactor) regulation was developed to be compatible with the existing truck regulation. The noise emission levels established for compactors are predicated, in large part, on the noise emission of the truck chassis. Therefore, the 83 dB and 80 dB truck noise regulations and their attendant effective dates served as the basis for the 79 and 76 dB compactor regulations and their respective effective dates.

The relationship between the different noise emission measurement schemes and levels for the truck and compactor regulations was carefully assessed. Under the truck emission regulation, a truck accelerating to, or away from, a pick-up site is permitted to generate a higher peak noise level than is permitted during compaction. The contention that the regulations are not compatible,

based on a simple comparison of a distance-adjusted peak emission level during acceleration with a stationary compaction cycle level, is erroneous.

To properly compare the truck emission level and compactor level, the peak emission level during acceleration must be converted to an average or equivalent level by properly considering the acceleration noise level as a function of time and distance and then adjusting for the relative duration of acceleration as compared to compaction. When this is done, the comparison becomes 79 dB for the compactor and 78.1 dB for the 83 dB truck, not 79 vs. 89 as contended. For the 76 dB compactor and 80 dB truck, the proper comparison is 76 dB for the compactor and 75.1 dB for the truck. Thus the compactor and truck emission levels are quite compatible, and the compactor regulation is not overly stringent in comparison with the truck regulation.

In response to an assertion that the engine in some vehicles is still a major noise source, even at low speeds, without specific data it is impossible to evaluate this claim. Data from other manufacturers show the expected lower noise levels at lower engine speeds.

As presented in the Regulatory Analysis (Reference 2) for the compactor regulation, the compactor standard is easily met. Recent data indicate that the noise abatement costs for quieted compactors are actually less than the EPA original estimates. EPA has received no data or information which contradicts this analysis.

### 4.0 Conclusion

Therefore, for the reasons discussed above, the Agency has concluded that the 80 dB standard for medium and heavy trucks should not be withdrawn but should be deferred for one year.

Pursuant to the Administrative Procedure Act (5 U.S.C. 553b), EPA finds that the normal procedure of publishing a notice of proposed rulemaking and receiving public comment before establishing final amendments would be impracticable and contrary to the public interest with respect to this amendment of the truck regulation. The mandatory dates for manufacturers to make ordering commitments to suppliers for production of components for their 1982 trucks are imminent, and would be significantly passed if notice-and-comment procedures were followed. The basic purpose of this action is to allow the industry to defer those costs associated with the 80 dB standard for one year. Any further delay in effecting this deferral would substantially reduce the amount of expenditures that could

otherwise be deferred and would defeat the purpose of this action. However, even though this is a final action by the Agency, the Agency will accept comments from the public on this action until 4:30 p.m. on April 24, 1981.

With respect to amendment of the truck-mounted solid waste compactor regulation, the Agency finds further, that notice-and-comment procedures are unnecessary and contrary to the public interest because compliance with the 78 dB standard of this regulation is predicated upon the availability of truck chassis meeting an 80 dB standard.

EPA has determined that this action is not a "significant" regulation, and therefore, does not require a Regulatory Analysis in accordance with Executive Order 12044.

This amendment is issued under the authority of Section 6 of the Noise Control Act, 42 U.S.C. 4905.

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

#### §§ 205.52, 205.202 [Amended]

40 CFR Part 205 is amended by removing the word "1982" and inserting, in its place, the word "1983" in paragraph 205.52(a) of Subpart B, and in paragraph 205.202(a) of Subpart F.

(Sec. 6, Pub. L. 92-574, 86 Stat. 1237 (42 U.S.C. 4906))

**Editorial Note.**—This appendix is printed for information purposes only and will not be reprinted in the CFR.

#### Appendix to Preamble-Revised Economic Analysis of the Medium and Heavy Truck Noise Emission Regulation

Review of the baseline production and market share trend data submitted by two major truck manufacturers in their petitions to EPA indicated: (1) Significant shifts in truck class purchases, (2) a general decline in total sales and (3) reduced rate of fleet growth since 1975 when the EPA original economic analysis supporting the medium and heavy truck noise emission regulation was completed. Subsequent analysis by EPA of historical truck sales data and available projections for future sales tended to support the petitions' claims. These changes, which could not have been anticipated in 1975, have been taken into consideration in this revised EPA analysis. Projections of costs, sales, and market shares, have been updated to assess the potential economic effects on the industry. A principal element in this revised analysis is the categorization of trucks.

The industry categorizes trucks by three different schemes. The first of these is to classify a truck according to its intended use or "duty." This is usually a combination of load rating, engine power and torque, and truck configuration (i.e., fixed body, van, etc.). The second scheme is the gross vehicle weight rating or GVWR (Table A-1) which rates a truck purely on the load carrying capacity of the vehicle. The third scheme is a

further division of the GVW Rating into medium trucks as those in GVWR 3-6 and heavy trucks as those in GVWR 7 and 8.

Most truck manufacturers elect to use the medium/heavy split in classifying their vehicles as does the EPA. There is one manufacturer who elects to follow their own scheme. For this reason market share data from this source does not exhibit the same distribution of chassis, engine, and GVW Rating as the majority of the industry.

#### Market Analysis

Analysis of historical sales and market share data published by the Motor Vehicle Manufacturers Association (MVMA) in their statistical annual reports, show (Figure A-1) that, even in a fluctuating sales market:

- (1) GVWR category 8 is steadily capturing an increasing share of the truck market.
- (2) Taken separately, categories 3, 4, and 5 show similar market share trends and, when combined, their market share has generally declined.
- (3) After a 5-year period of sustained growth, the market share of category 6 vehicles appears to dramatically decline between 1979 and 1980.
- (4) For a 10-year period, category 7 represented a fairly constant share of the truck market. Beginning in 1978, however, the market share for category 7 shows a dramatic increase that continued through 1980. This dramatic growth in category 7 is in direct contrast to the decline of the market share of category 6.

The markedly diverse market behavior in 1979 and 1980 of categories 6 and 7 trucks raises questions as to the cause of the apparently inverse growth patterns. A review of the variations on basic medium truck models offered within the medium class indicate a consistent skewing toward those intended for heavy duty use rather than the lighter 3, 4, and 5 categories.

This skewing may be interpreted as an attempt of certain manufacturers to offer purchasers of medium truck chassis higher load-carrying capabilities at costs below the heavy duty truck category. The market share data in Figure A-1 shows that purchasers of category 6 trucks are apparently shifting to those of GVWR 7 and 8 which are basically medium truck chassis with greater horsepower engines and an additional axle to increase their load carrying capability. This shift could be the result of a desire to carry greater payloads to offset increased fuel and capital costs. EPA believes there will be insignificant downgrading of category 8 heavy trucks to category 7 medium trucks due to the normally high initial cost differential between the two categories; marginal needs for increased load carrying capability would not justify the added cost.

From a noise quieting perspective, medium trucks are more costly to quiet than heavy trucks since medium trucks offer less potential for chassis and engine compartment redesign. The "upgrading" of category 6 medium trucks produces in essence a heavy truck but at the higher quieting costs of a medium truck.

Thus, it now seems appropriate to include a percentage of GVWR category 7 trucks in the medium duty category for the purpose of

determining noise quieting costs. For this analysis EPA elected to combine the total market shares of GVWR categories 6 and 7 (Figure A-3). This conservative approach removes the dramatic market fluctuations in the period 1978-1980, as shown in Figure A-1, and more correctly applies the true quieting costs associated with GVWR 7 trucks.

The prediction of future market shares (Figure A-3) was developed from data prepared by Chase Econometrics and supplied to EPA by International Harvester. The dotted lines and circled points on Figure A-3 represent Chase Econometric predictions for future market shares and align very well with the historical trends. The boxed points in Figure A-3 represent EPA's estimate of the market share for the combination of categories, 3, 4, and 5. The industry did not provide data for these categories.

Dieselization of the truck fleet, shown in Figure A-4, was estimated from historical data obtained from MVMA (3) and a combination of industry and government forecasts for the future. (4) EPA's Mobile Source Air Programs Office estimated (5) full conversion to diesel engines in GVWR category 8 by 1984 and 20 percent diesel penetration for categories 3, 4, and 5 by 1990. Commercial Car Journal (6) claims that GVWR category 6 will be 80 percent diesel by 1990. Using this latter estimate for both categories 6 and 7, and the EPA Air Programs estimates for categories 3, 4, 5, and 8, straight line projections from current (1980) diesel penetration to 1990 were made. Beyond 1990 diesel penetration was assumed to hold constant.

To estimate the future growth of the total medium and heavy truck market, EPA consulted MVMA, the Engine Manufacturers Association (EMA), the Truck Manufacturers Association (TMA), Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Office of the Secretary of Transportation, Transportation Systems Center (DOT/TSC), the Department of Commerce Bureau of Industrial Economics (BIE), Office of Management and Budget (OMB), and the President's Automobile Industry Council. Of these sources, only BIE and TSC were prepared to provide growth forecasts. The BIE projection is a short term projection to the mid-1980's. TSC provided long-term projections made by Data Resources Incorporated (DRI). The DRI forecasts are generated by a national econometric model that incorporates both trend analysis and business cycle considerations. The DRI forecasts were made in the Fall of 1980 and therefore include data reflecting current economic conditions and the present state of the trucking industry. EPA has used the DRI projections because they appear to represent the best available forecasts.

#### Cost Comparison

A comparison of the estimated costs associated with the 80 dB regulation (given that the 83 dB regulation is already in place) is presented below. Tables A-2 thru A-4 present EPA's estimates of unit base prices, incremental noise abatement costs and operating costs. The 1975 estimates are from the Background Document supporting the

regulation. The 1980 estimates are based on the latest economic indices supplied by the Bureau of Labor Statistics.

Table A-2 shows a 70 percent increase over 1975 estimates of the sales-weighted unit price of an unregulated truck, i.e., cost increases due to factors other than 83 dB and 80 dB quieting requirements.

Table A-3 shows a comparable 70 percent increase in the 1975 estimated costs to reduce the noise level from 83 to 80 dB. Potential added cost increases due to the possible need for transmission covers, not considered in EPA's 1975 analysis, range from zero for heavy gas to less than 3 percent for medium gas trucks.

Table A-4 compares estimates of annual fuel and maintenance costs. The increases in fuel costs over that estimated in 1975 range from 150 percent for heavy gas to 200 percent for medium gas, based on average fuel costs of \$1.59 per gallon for gas and \$1.23 per gallon for diesel. The maintenance costs have also risen between 46 and 48 percent from those estimated in 1975.

The above increases in estimated costs, with the exception of transmission cover costs, do not represent any technology requirements different from those originally anticipated for the 80 dB regulation.

#### Comparative Economic Analysis

In order to assess the change in potential economic impact between 1975 and 1980, due to changing costs, shifts in market shares, and changes in general sales trends, a comparative analysis was carried out between: (1) The original 1975 EPA analysis, (2) the original EPA analysis adjusted for 1980 costs as listed in Table A-3, (3) a revised EPA estimate which incorporates 1980 cost elements, including transmission covers, plus the most recent and complete (DRI) predictions of fleet growth, shifts in market share, and dieselization projections, and (4) cost estimates submitted to EPA by International Harvester Company (12/18/80).

The sales forecasts for the EPA analyses are presented in Figures A-5, A-6, and A-7.

Comparison of Figures A-5 and A-6 illustrates the effects of increased dieselization between 1975 and 1980, and market shifts, all other factors being equal.

A comparison of Figures A-6 and A-7 illustrates the dramatic change in predicted aggregate growth rates for each vehicle category. The substantial reduction in anticipated fleet growth, compared to EPA's 1975 estimates, results in substantial reductions in present estimates of aggregate annual costs that manufacturers would incur in quieting their trucks to comply with the 80 dB regulation.

#### Summary

The results of the comparative analyses are presented in Table A-5 in terms of costs to meet the 80 dB regulation for the first three years following the effective date of the regulation.

The manufacturer's estimate of cost in 1980 dollars is substantially less than EPA's original cost estimate updated to 1980 dollars. Furthermore, comparing the Agency's revised

1980 estimates with its original estimates in 1980 dollars, reductions of 22.5%, 18.4%, and 17.5% are seen for the years 1982, 1983, and 1984 respectively. On this basis, the 80 dB regulation would be considerably less costly than originally projected by EPA.

#### References

- (1) "Background Document for Medium and Heavy Truck Noise Emission Regulations", USEPA, Washington, D.C., March 1976.
- (2) "Regulatory Analysis of the Noise Emission Regulations for Truck-Mounted Solid Waste Compactors", USEPA, Washington, D.C., August 1979.
- (3) "MVMA Motor Vehicle Facts and Figures '80", Motor Vehicle Manufacturers Association of the United States, Inc., Detroit, Michigan.
- (4) "Data Resources Long-Term Review", Data Resources Incorporated, Fall 1980.
- (5) "Regulatory Analysis and Environmental Impact of Final Emission Regulations for 1984 and Later Model Year Heavy Duty Engines", USEPA, Washington, D.C., December 1979.
- (6) "On What's Available in Mid-Range Diesel Truck", pgs 74-87, Commercial Car Journal, Chilton Publications, January 1980.

**Table A-1.—Comparison of Gross Vehicle Weight Rating and Truck Categorization Schemes**

Gross vehicle weight rating, in pounds	Truck category	Industry classification
10,001 to 14,000	3	Medium.
14,001 to 16,000	4	Medium.
16,001 to 19,500	5	Medium.
19,501 to 26,000	6	Medium.
26,001 to 33,000	7	Heavy.
Over 33,000	8	Heavy.

**Table A-2.—Sales-Weighted Unit Base Prices for Trucks (Unregulated)**

Truck category	1975	1980 <sup>1</sup>	Percent change <sup>1</sup>
Medium gas	\$7,070	\$12,019	+70
Medium diesel	8,916	15,157	+70
Heavy gas	14,068	23,91	+70
Heavy Diesel	31,021	52,73	+70

<sup>1</sup> Bureau of Labor Statistics (BLS): Producer Price Index (PPI), 1975 154.1, 1980 261.8.

**Table A-3.—Comparison of Estimated Incremental Noise Abatement Costs to Meet 80 dB Regulation From Current 83 dB Regulation by Truck category**

Truck category	EPA, 1975 excluding transmission covers	1980 <sup>1</sup> excluding transmission covers	1980 <sup>2</sup> including transmission covers
Medium gas	\$176	\$29	\$307
Medium diesel	513	872	876
Heavy gas	158	269	269
Heavy diesel	282	479	487

<sup>1</sup> BLS: PPI 1975 154.1, 1980 261.8.

<sup>2</sup> Sales-weighted costs based on data submitted to EPA by International Harvester Company (12/18/80).

**Table A-4.—Comparison of Estimated Increases in Operating Costs in Going From Current 83 dB to 80 dB Regulation**

Truck category	Increased average annual fuel costs at 80 dB		Increased average annual maintenance costs at 80 dB	
	1975	1980 <sup>1</sup>	1975	1980 <sup>2</sup>
Medium gas	\$1	\$3	\$23	\$34
Medium diesel	9	25	95	139
Heavy gas	2	5	45	66
Heavy diesel	15	41	103	150

<sup>1</sup> BLS: Industrial Products Index Gas 1975 226.8, 1980 599.4, diesel 1975 249.0 1980 631.1.

<sup>2</sup> BLS: Wage Price Index 1975 181.8, 1980 265.9.

**Table A-5.—Comparison of Estimated Quiet-ing Costs, in Millions of Dollars, for Truck Manufacturers To Meet the 80 dB Regulation for the First 3 Years Following the Effective Date of the Regulation**

Year	Original EPA estimates (1975 dollars)	Original EPA estimates (1980 dollars)	Revised EPA estimates <sup>1</sup> (1980 dollars)	1980 Manufacturer's estimates <sup>2</sup> (1980 dollars)
1982	110.2	187.2	145.0	111.2
1983	113.9	193.5	157.9	128.4
1984	117.9	200.3	165.2	145.8

<sup>1</sup> Revised EPA estimates are based on current (Fall 1980) econometric forecasts of aggregate fleet growth prepared by Data Resources Incorporated (Reference 4) and EPA market share projections reflecting current and projected market trends (Appendix, Figure A-3).

<sup>2</sup> Supplied to EPA by International Harvester Company-12/18/80.

BILLING CODE 6560-27-M

Figure A-1 Historical Truck Market Share by GVWR  
Obtained from MVMA (Source: Reference 3)

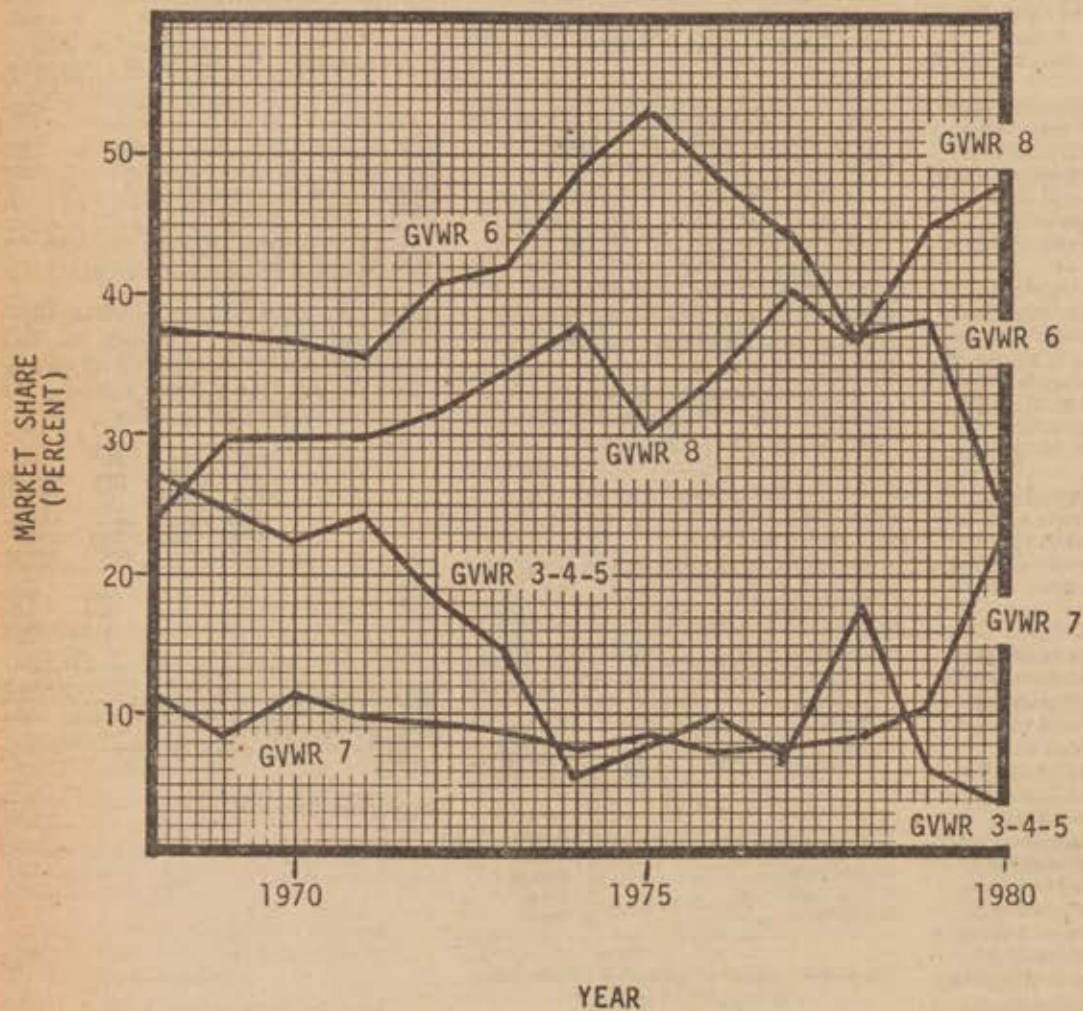
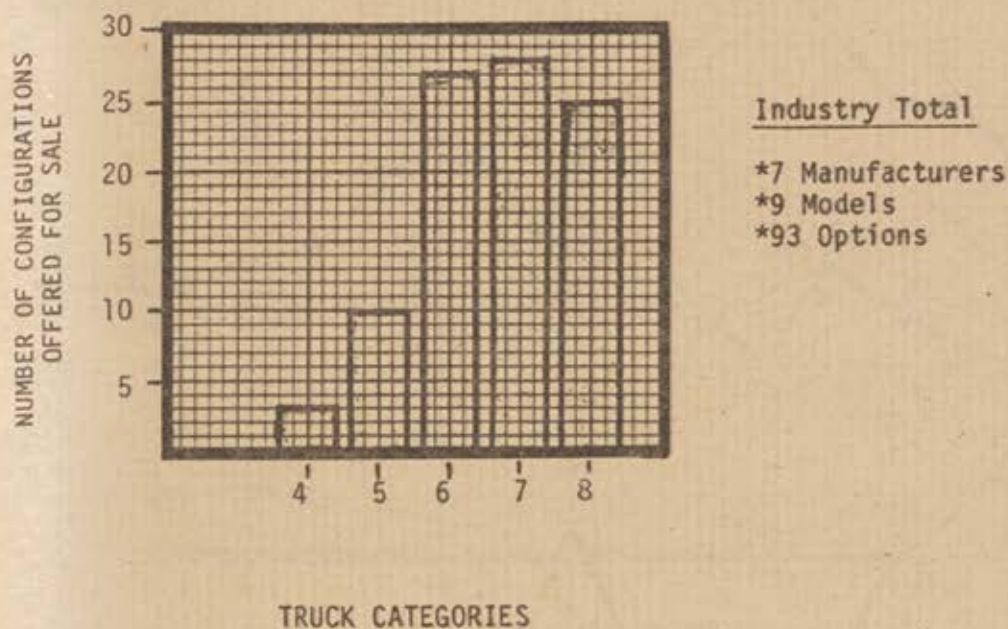
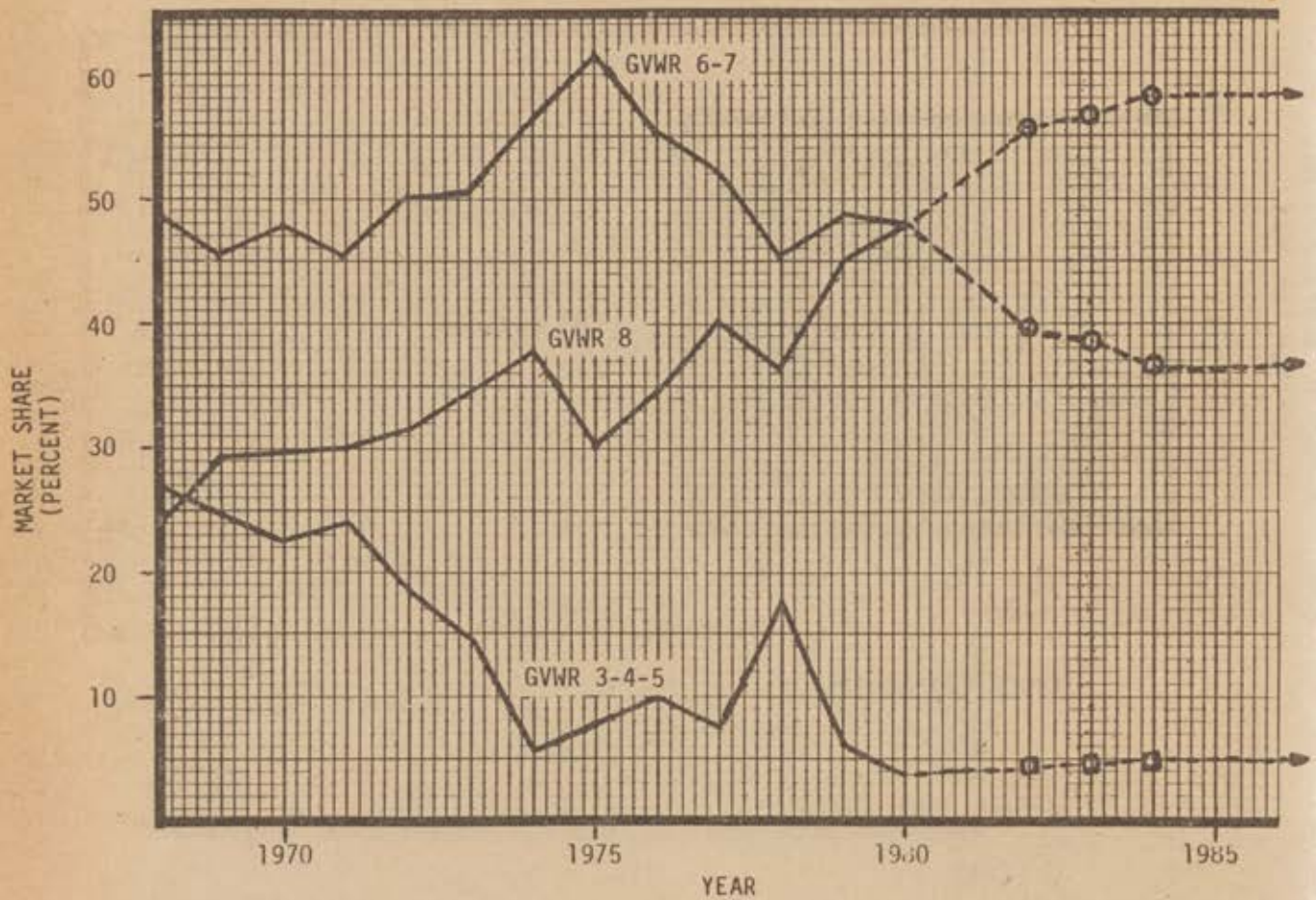


Figure A-2 Distribution of "Medium Truck" Configurations by GVW Rating Option (Source: Commercial Car Journal, 11/19/80)



Note: The load carrying capability of a medium truck dictates its category classification

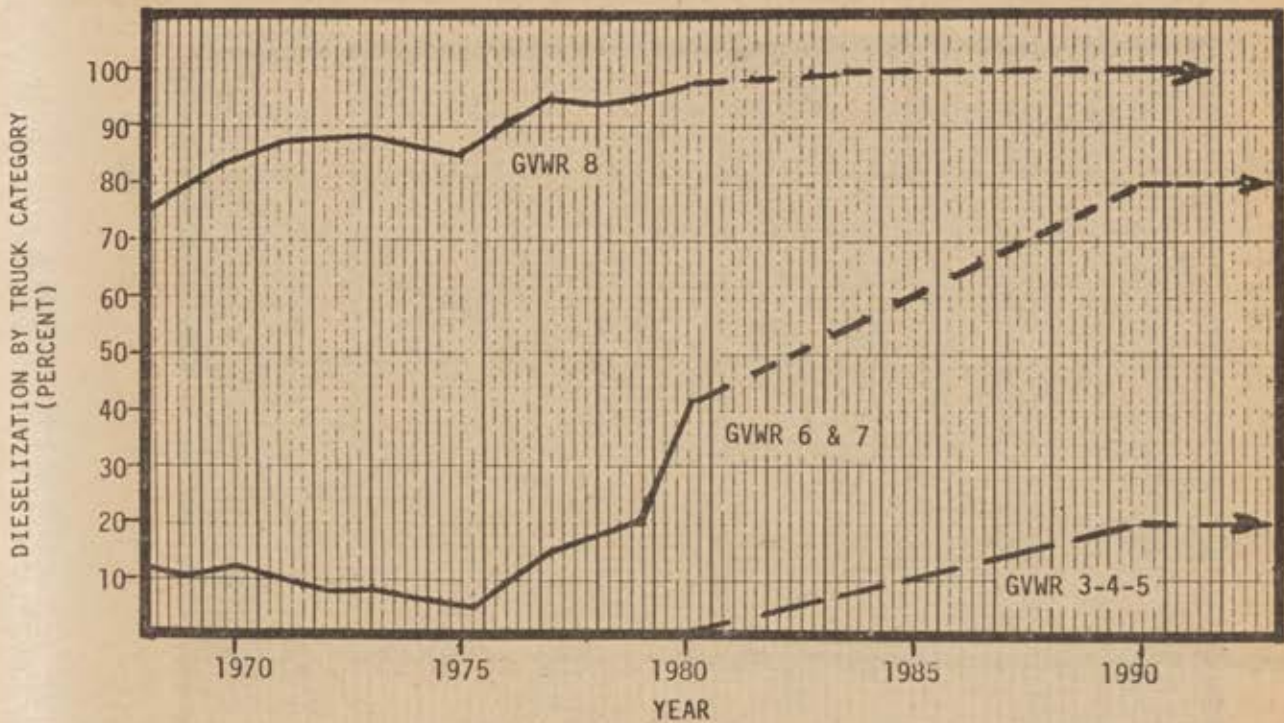
Figure A-3 Realigned Market Shares by Truck Category



Note: Predictions for years beyond 1980 in Categories 6, 7, and 8 are based on data provided to EPA by International Harvester Company. Predictions beyond 1980 for categories 3, 4, and 5 are based on EPA's market share estimate of 5% for these combined categories.



Figure A-4 Dieselization of Trucks by Truck Category



Note: Data prior to, and including 1980, are based on historical information provided by MVMA (Reference 3). Beyond 1980, GVWR 8 and GVWR 3-4-5 represent EPA estimates; GVWR 6 & 7 represent CCJ projections (Reference 6).

Figure A-5 EPA 1975 Truck Production Forecast  
(Source: Reference 1)

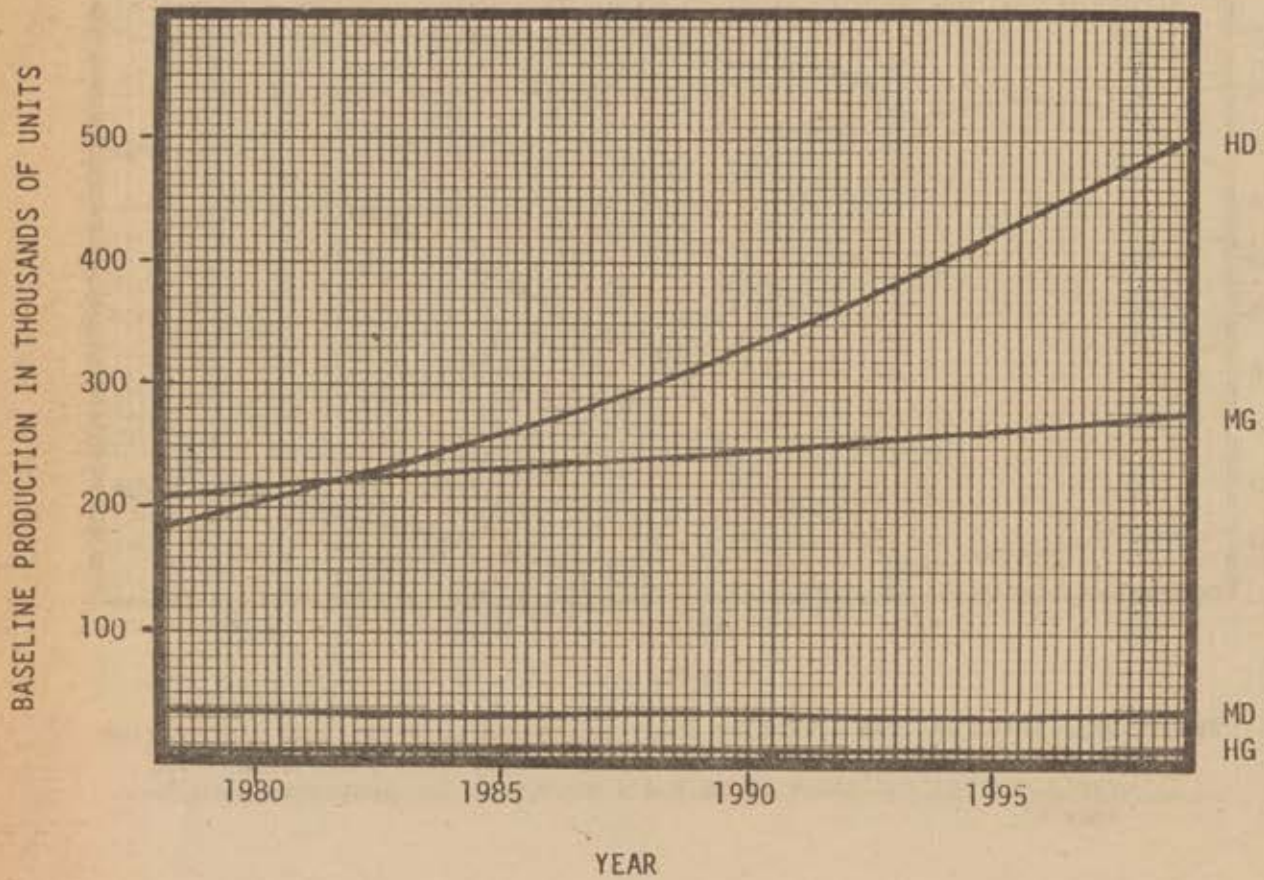


Figure A-6 Truck Production Forecast Utilizing Updated Market Share Projections and 1975 EPA Aggregate Growth Projections

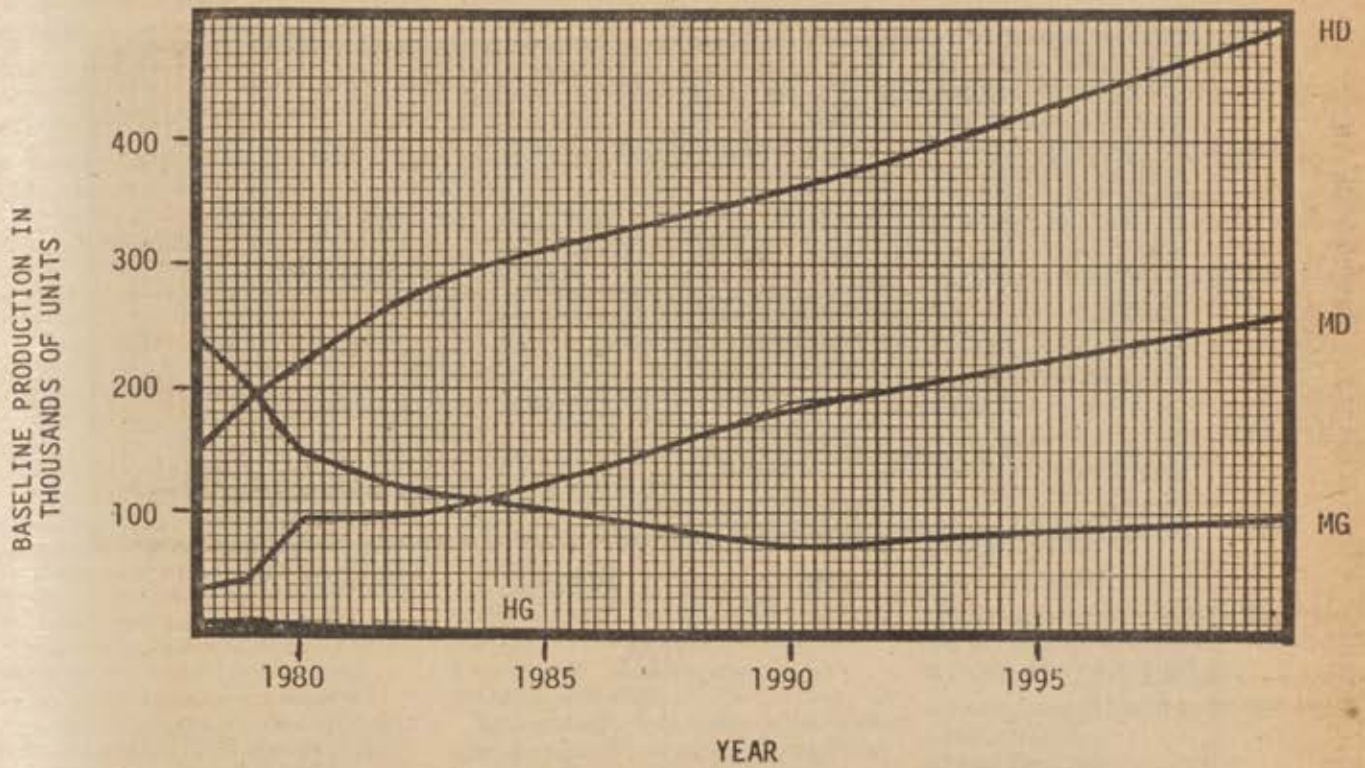
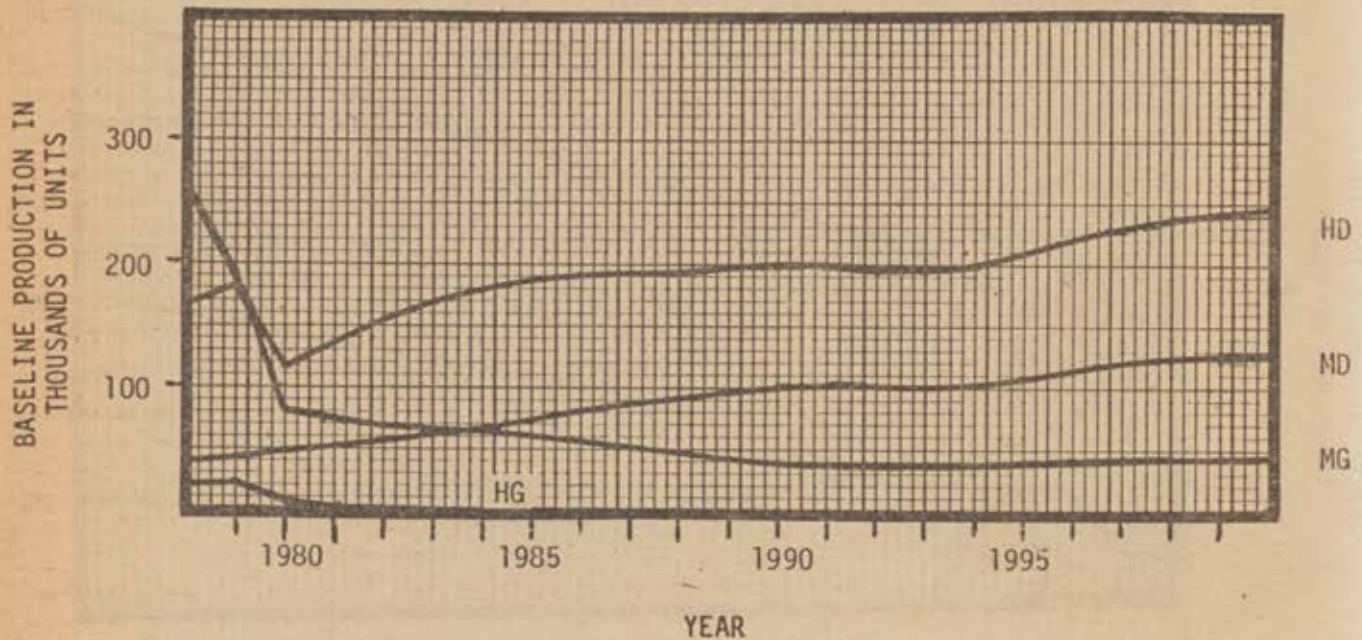


Figure A-7 Truck Production Forecast Utilizing EPA/Chase Econometrics Updated Market Share Projections and DRI Aggregate Growth Projection



[FR Doc. 81-2750 Filed 1-26-81; 8:45 am]  
BILLING CODE 6560-27-C

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-36

(FPMR Amendment F-46)

### ADP Management; Condition Codes

AGENCY: General Services Administration.

ACTION: Final rule.

**SUMMARY:** The General Accounting Office recommended that a single Government-wide condition coding system be developed to report the condition of excess personal property for disposal. GSA adopted this recommendation (except for reutilization of automatic data processing equipment (ADPE) and supplies) by amending Subpart 101-43.48 on April 28, 1980. Paragraphs (e) and (f) of § 101-43.4801 define the condition codes. GSA is now expanding application of the single-position condition coding system to report the condition of excess ADPE and supplies for disposal by referencing § 101-43.4801 in Subpart 101-36.3. This action provides a uniform condition coding system throughout the Federal Government for utilization of personal property and excess ADPE and supplies without repeating the condition codes defined in Subpart 101-43.48. This regulation also updates and corrects GSA contacts and FPMR references contained in Subpart 101-36.47.

**EFFECTIVE DATE:** This regulation was effective October 1, 1980. To accommodate those agencies that cannot effect the transition from a two-position to a one-position coding system expeditiously, GSA has targeted full implementation for January 1, 1981.

**FOR FURTHER INFORMATION CONTACT:** John F. Stewart, Procurement Policy and Regulations Branch, Policy and Analysis Division (202-566-0194).

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

### Subpart 101-36.3—Reutilization of Automatic Data Processing Equipment and Supplies

1. Section 101-36.301-17 is revised to read as follows:

#### § 101-36.301-17 Condition codes.

Single-position alpha-numeric condition codes shall be used to define the condition of all excess ADPE and supplies reported to GSA for reutilization. These codes are defined in § 101-43.4801 (e) and (f). The condition

code reporting procedure is outlined in § 101-36.4702.

#### Subpart 101-36.47—Reports

2. Sections 101-36.4701-1 and 101-36.4701-2 are revised to read as follows:  
**§ 101-36.4701-1 Reports by ADP units.**

Reports of sharing and of services obtained from a commercial source by ADP units shall be submitted on GSA Form 2068A to the appropriate ADP sharing exchange not later than the 15th of January, April, July, and October of each year. (See GSA Bulletin FPMR F-115 for current ADP sharing exchange addresses.)

#### § 101-36.4701-2 Centralized reporting.

Federal agencies may elect to submit quarterly reports on a centralized basis at any organizational level desired. Federal agencies electing this method of reporting shall inform the General Services Administration (CISE), Washington, DC 20405, to this effect and explain the reporting procedures to be followed.

3. Section 101-36.4702 is amended to revise the introductory paragraph and paragraph (b) to read as follows:

#### § 101-36.4702 Reporting excess or exchange/sale ADPE.

Excess ADPE or exchange/sale ADPE shall be reported on an original and four copies of SF 120, Report of Excess Personal Property (illustrated at § 101-36.4901-120), and, when necessary, SF 120A, Continuation Sheet (Report of Excess Personal Property). (Excess ADP supplies and support equipment, as defined in § 101-36.301-1(d), with an OAC of \$1,500 or less shall be reported to the Federal Property Resources Service for regional office screening in accordance with § 101-43.4801.) Any questions should be referred to the General Services Administration (CISE), Washington, DC 20405, for resolution.

(b) The SF 120 shall include the appropriate condition code designation as defined in § 101-43.4801 and shall contain the manufacturer's name, equipment type and model number, and full description of the ADPE to determine whether the ADPE may satisfy another agency's requirement. Since ADPE suppliers have adopted no uniform method of identifying certain ADPE systems, components, features, cables, or other devices, such as terminators and junction boxes used with the equipment, the complete nomenclature for this equipment as used by the supplier shall be identified and reported on the SF 120. Parts or devices shall not be removed after reporting the

ADPE to GSA as excess. If any part or device has been removed from the ADPE, a statement identifying those parts or devices shall be made on the SF 120. In addition, the status of each individual component and feature shall be shown to indicate whether it is leased, purchased, or leased with option to purchase. If the equipment is leased or leased with option to purchase, the fair value shall be shown on the SF 120. The fair value is the difference between the original acquisition cost and accrued purchase option credits. Government owned and leased ADPE shall not be reported on the same SF 120.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: January 16, 1981.

Ray Kline,

Acting Administrator of General Services.

(FR Doc. 81-2042 Filed 1-20-81; 8:45 am)

BILLING CODE 6820-25-M

### 41 CFR Part 105-60

(ADM 7900.3A)

### Public Availability of Agency Records and Informational Materials; Revisions to Public Access Regulations

AGENCY: General Services Administration.

ACTION: Final rule.

**SUMMARY:** This final rule provides procedures for public access to GSA records under the Freedom of Information Act (5 U.S.C. 552). The Administrator of General Services is required by law to issue these regulations.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Rebecca P. Thompson, Attorney-Advisor, Information and Privacy (202-566-0751).

**SUPPLEMENTARY INFORMATION:** On February 26, 1975, the Administrator of General Services published in the *Federal Register* (40 FR 8200) public access regulations implementing the Freedom of Information Act (5 U.S.C. 552, "FOIA"). Those regulations combined instructions to the public on reviewing and obtaining copies of GSA records and provided guidance to GSA officers and employees on processing FOIA requests. On November 3, 1980, GSA published a proposed rule (45 FR 72714) to simplify procedures for the public's review of GSA records by separating the procedures for public access from the procedures for GSA employees to follow. Interested persons were allowed until January 2, 1981, to submit comments on the proposal. No unfavorable comments have been

received, and the proposed rule is hereby adopted without change and is set forth below. GSA's newly revised internal procedures for processing FOIA requests will appear as part of the GSA order system. Procedures for access to records on deposit from other agencies in the Federal Records Centers are found in 41 CFR Part 105-61.

Accordingly, Part 105-60 is revised to read as follows:

**PART 105-60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS**

Sec.  
105-60.000 Scope of part.

**Subpart 105-60.1—General Provisions**

105-60.101 Purpose.  
105-60.102 Application.  
105-60.103 Policy.  
105-60.103-1 Availability of records.  
105-60.103-2 Applying exemptions.  
105-60.104 Records of other agencies.  
105-60.105 Inconsistent directives of GSA superseded.

**Subpart 105-60.2—Publication of General Agency Information and Rules in the Federal Register**

Sec.  
105-60.201 Published information and rules.  
105-60.202 Published materials available for sale to the public.

**Subpart 105-60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions**

105-60.301 General.  
105-60.302 Available materials.  
105-60.303 Rules for public inspection and copying.  
105-60.304 Index.  
105-60.305 Fees.  
105-60.305-1 Scope of section.  
105-60.305-2 Record material available without charge.  
105-60.305-3 Copy of GSA records available at a fee.  
105-60.305-4 Waiver of fee.  
105-60.305-5 Searches.  
105-60.305-6 Prepayment of fees over \$10.  
105-60.305-7 Form of payment.  
105-60.305-8 Fee schedule.  
105-60.305-9 Fees for authenticated and attested copies.

**Subpart 105-60.4—Described Records**

105-60.401 General.  
105-60.402 Procedures for making records available.  
105-60.402-1 Submission of requests for described records.  
105-60.402-2 Response to initial requests.  
105-60.403 Appeal within GSA.  
105-60.404 Extension of time limits.

**Subpart 105-60.5—Exemptions**

105-60.501 Categories of records exempt from disclosure under FOIA.

**Subpart 105-60.6—Subpoenas or Other Legal Demands for Records**

105-60.601 Service of subpoena or other legal demand.  
105-60.601-1 GSA administrative records.

105-60.601-2 Records transferred to the National Archives and Records Service.

Authority: The provisions of this Part 105-60 are issued under section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 552 (Pub. L. 90-23, as amended by Pub. L. 93-502).

**§ 105-60.000 Scope of part.**

This part sets forth policies and procedures concerning the availability to the public of records held by GSA with respect to: (a) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability, (b) agency final opinions and orders, including policy statements and staff manuals, (c) operational and other appropriate agency records, and (d) agency proceedings. This part also covers exemptions from disclosure of these records; procedures for the guidance of the public in inspecting and obtaining copies of GSA records; and the service of a subpoena or other legal demand with respect to records.

**Subpart 105-60.1—General Provisions**

**§ 105-60.101 Purpose.**

This Part 105-60 implements the provisions of the Freedom of Information Act, 5 U.S.C. 552 ("FOIA") (Pub. L. 90-23, which codified Pub. L. 89-487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.); and Pub. L. 93-502, popularly known as the Freedom of Information Act Amendments of 1974.) This part prescribes procedures by which the public may inspect and obtain copies of GSA records under the FOIA.

**§ 105-60.102 Application.**

This Part 105-60 applies to all records and informational materials generated, developed, or held by GSA which come within the scope of 5 U.S.C. 552.

**§ 105-60.103 Policy.**

**§ 105-60.103-1 Availability of records.**

GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will furnish them promptly to any member of the public upon request addressed to the office designated in § 105-60.402-1 at fees specified in § 105-60.305-8. The person making the request need not have a particular interest in the subject matter, nor must that person provide justification for the request. The requirement of the FOIA that records be available to the public refers only to records in being at the date of the request and imposes no obligation on GSA to compile a record in response to a request.

**§ 105-60.103-2 Applying exemptions.**

GSA may deny a request for a GSA

record if the records falls within an exemption to the FOIA as outlined in Subpart 105-60.5. Except when a record is classified or when disclosure would violate any Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. GSA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, GSA will disclose a record although it otherwise is subject to exemption.

**§ 105-60.104 Records of other agencies.**

(a) *Other agencies' records managed and administered by GSA.* The availability of records of other agencies located in the National Archives of the United States and Federal Archives and Records Centers is governed by Part 105-61 (Public Use of Records, Donated Historical Materials, and Facilities in the National Archives and Records Service).

(b) *Current records of other agencies.* If GSA receives a request to make available current records that are the primary responsibility of another agency, GSA will refer the request to the agency concerned for appropriate action. GSA will inform the requester that GSA has forwarded the request to the responsible agency.

**§ 105-60.105 Inconsistent directives of GSA superseded.**

Any policies and procedures in any GSA directive that are inconsistent with the policies and procedures set forth in this Part 105-60 are superseded to the extent of that inconsistency.

**Subpart 105-60.2—Publication of General Agency Information and Rules in the Federal Register**

**§ 105-60.201 Published information and rules.**

In accordance with paragraph (a)(1) of the FOIA (5 U.S.C. 552(a)(1)), GSA publishes in the Federal Register, for the guidance of the public, the following general information concerning GSA:

(a) Description of the organization of the Central Office and regional offices and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statements of the general courses and methods by which GSA functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions

on the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by GSA.

(e) Each amendment, revision, or repeal of the materials described in this § 105-60.201.

§ 105-60.202 **Published materials available for sale to the public.**

Substantive rules of general applicability adopted by GSA as authorized by law which this agency publishes in the *Federal Register* and which GSA makes available for sale to the public are the Federal Procurement Regulations, the General Services Administration Procurement Regulations, the Federal Property Management Regulations, and the General Services Administration Office of Acquisition Policy Regulations. These series of regulations are codified in Title 41 of the Code of Federal Regulations and also are published in looseleaf volume form. The looseleaf version of the Federal Procurement Regulations is available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at prices established by that office. In addition, all of these regulations are available for sale by the Superintendent of Documents in (a) daily *Federal Register* form and (b) Code of Federal Regulations form, at prices established by that office.

**Subpart 105-60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions**

§ 105-60.301 **General.**

GSA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 105-60.302, and an Index of those materials as described in § 105-60.304, at convenient locations and times. Central Office materials are located in Washington, DC; some are also available at GSA regional offices. Each regional office has the materials of its region. All locations provide public reading rooms or selected areas for the inspection and copying of documents. Reasonable copying services are furnished at fees specified in § 105-60.305.

§ 105-60.302 **Available materials.**

GSA materials available under this Subpart 105-60.3 are as follows:

(a) Final opinions, including concurring and dissenting opinions and

orders, made in the adjudication of cases.

(b) Those statements of policy and interpretations which have been adopted by GSA and are not published in the *Federal Register*.

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale. (Any materials published and offered for sale also will be available in each reading room.)

§ 105-60.303 **Rules for public inspection and copying.**

(a) *Locations.* Reading rooms or selected areas containing the materials available for public inspection and copying, described in § 105-60.302, are located in the following places:

**Central Office**

(GSA Headquarters), Washington, DC, Telephone: 202-566-1240

General Services Administration, 18th & F Sts. NW., Library (Room 1033), Washington, DC 20405

**Region 1**

Boston, Massachusetts (Comprising the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont). Telephone: 617-223-2888

Business Service Center, General Services Administration, John W. McCormack Building, Post Office & Courthouse, Boston, MA 02109

**Region 2**

New York, New York (Comprising the States of New Jersey, New York, the Commonwealth of Puerto Rico and the Virgin Islands). Telephone: 212-264-1234

Business Service Center, General Services Administration, 26 Federal Plaza, NY, NY 10007

**National Capital Area**

Washington, DC (Comprising the District of Columbia and the metropolitan area). Telephone: 202-472-1804

Business Service Center, General Services Administration, 7th & D Streets SW., Rm. 1050, Washington, DC 20407

**Region 3**

Philadelphia, Pennsylvania (Comprising the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia). Telephone: 215-597-9613

Business Service Center, General Services Administration, 9th & Market Sts., Rm. 5142, Philadelphia, PA 19107

**Region 4**

Atlanta, Georgia (Comprising the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee). Telephone: 404-221-5103

Business Service Center, General Services Administration, Richard B. Russell Federal Building, U.S. Courthouse, 75 Spring Street SW., Atlanta, GA 30303

**Region 5**

Chicago, Illinois (Comprising the States of Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin).

Telephone: 312-353-5383

Business Service Center, General Services Administration, 230 South Dearborn Street, Chicago, IL 60604

**Region 6**

Kansas City, Missouri (Comprising the States of Iowa, Kansas, Missouri, and Nebraska). Telephone: 816-926-7203

Business Service Center, General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131

**Region 7**

Fort Worth, Texas (Comprising the States of Arkansas, Louisiana, New Mexico, Texas, and Oklahoma).

Telephone: 817-334-3284

Business Service Center, General Services Administration, 819 Taylor Street, Fort Worth, TX 76102

**Region 8**

Denver, Colorado (Comprising the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming). Telephone: 303-324-2216

Business Service Center, General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225

**Region 9**

San Francisco, California (Comprising the States of Hawaii, California, Nevada, and Arizona). Telephone: 415-556-0877

Business Service Center, General Services Administration, 525 Market Street, San Francisco, CA 94105

**Region 10**

Seattle, Washington (Comprising the States of Alaska, Idaho, Oregon, and Washington). Telephone: 206-442-5556

Business Service Center, General Services Administration, 440 Federal Building, 915 Second Avenue, Seattle, WA 98174

(b) *Time.* The reading rooms or selected areas will be open to the public during the hours of business of the GSA office in which they are located.

(c) *Copying.* GSA will furnish reasonable copying services at fees specified in § 105-60.305. The fees will be posted in each reading room or selected area. In suitable circumstances, a member of the public may receive authorization to copy materials

personally under the procedures determined by the authorizing official (the Director of Public Information in the Central Office or the Assistant Regional Administrator for External Affairs in the regional offices).

(d) *Reading room and selected area rules.* (1) Age. GSA will not give permission to inspect materials to a person under 16 years of age unless accompanied by an adult who agrees to remain with the minor while the minor uses the materials.

(2) *Handling of materials.* The unlawful removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. When requested by a reading room or selected area attendant, a person inspecting materials must present for examination any briefcase, handbag, notebook, package, envelope, book, or other article that could contain GSA informational materials.

(3) *Reproduction services.* The GSA Central Office Library or the Regional Business Service Centers will furnish "reasonable reproduction" services for available materials at the fees specified in § 105-60.305.

#### § 105-60.304 Index.

GSA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1987, and described in § 105-60.302. GSA will publish quarterly and make available copies of each index or supplements thereto. The index will be maintained for public inspection in each reading room.

#### § 105-60.305 Fees.

##### § 105-60.305-1 Scope of section.

This section set forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search and reproduction of GSA records.

##### § 105-60.305-2 Record material available without charge.

Each GSA reading room or selected area provides a rack displaying GSA records available to the public in that region. Certain material related to bids (excluding construction plans and specifications) and any material displayed on the rack are available without charge upon request.

##### § 105-60.305-3 Copy of GSA records available at a fee.

GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester. GSA will agree either to (a)

show the originals to the requester, (b) make one copy available at a fee, or (c) a combination of these alternatives. In the case of voluminous materials, GSA will make copies as quickly as possible. GSA may make a reasonable number of additional copies at a fee when commercial reproduction services are not available to the requester.

##### § 105-60.305-4 Waiver of fee.

Any request for waiver or reduction of a fee should be included in the initial letter requesting access to GSA records under § 105-60.402-1. The waiver request should explain how waiver of fees primarily would benefit the public and should comment on the following:

(a) How release of the records in whole or in part primarily will benefit the general public interest rather than a commercial, financial or other private interest, specifically;

(1) Whether the requested information is available to the general public through other sources;

(2) How disclosure of the records will enhance civic activities or the quality of national life (e.g., in the areas of public safety, public health, economic well-being, and integrity and efficiency in government);

(3) How the requester intends to disseminate the records (or the public benefits resulting from the disclosure of the records) to a substantial part of the general public.

(b) How waiver of fees will meet the needs of indigent persons or relieve substantial personal hardship.

(c) How the cooperation of the requester has limited a costly request resulting in a reduction of GSA processing costs.

##### § 105-60.305-5 Searches.

(a) GSA may charge for the time spent in the following activities in determining "search time" subject to applicable fees as provided in § 105-60.305-8:

(1) Time spent in trying to locate GSA records which come within the scope of the request;

(2) Time spent in either transporting a necessary agency searcher to a place of record storage, or in transporting records to the locations of a necessary agency searcher; and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) GSA will not charge for the time spent in the following activities in determining "search time" subject to applicable fees as provided in § 105-60.305-8:

(1) Time spent in examining a requested record to determine whether GSA can or should assert an exemption; or

(2) Time spent in deleting exempt matter being withheld from records otherwise made available; or

(3) Time spent in monitoring a requester's inspection of disclosed agency records; or

(4) Time spent in operating reproduction facilities.

##### § 105-60.305-6 Prepayment of fees over \$10.

GSA will require prepayment of fees for search and reproduction which are likely to exceed \$10. When the anticipated total fee exceeds \$10, the requester will receive notice to prepay, and GSA will remit the excess paid by the requester or will bill the requester an additional amount according to variations between the final fee and the amount prepaid.

##### § 105-60.305-7 Form of payment.

Requesters should pay fees by check or money order made out to the General Services Administration and addressed to the official named by GSA in its correspondence.

##### § 105-60.305-8 Fee schedule.

In computing applicable fees, GSA will consider only the following costs in providing the requested records:

(a) *Reproduction fees.* (1) The fee for reproducing copies of GSA records (by routine electrostatic copying) up to and including 8½ by 14 inches is \$0.10 per page.

(2) The fee for reproducing copies of GSA records over 8½ by 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying or which require reduction, enlargement, or other special technical services is the direct cost of reproducing the records through Government or commercial sources.

(b) *Search fees.* (1) The standard search fee is \$5 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(2) When GSA must use professional staff to search for the requested records because clerical staff would be unable to locate them, the search fee is \$10 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(3) When the search includes nonpersonnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee is the direct cost to GSA.

##### § 105-60.305-9 Fees for authenticated and attested copies.

The fees set forth in § 105-60.305-8 apply to requests for authenticated and attested copies of GSA records.



**Subpart 105-60.4—Described Records****§ 105-60.401 General.**

(a) Except for records made available in accordance with Subparts 105-60.2 and 105-60.3, GSA promptly will make records available to a requester when the request reasonably describes the records unless GSA invokes an exemption in accordance with Subpart 105-60.5. Although the burden of reasonable description of the records rests with the requester, GSA will assist in identification.

(b) Upon receipt of a request that does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 105-60.402-2 will not start until the official identified in § 105-60.402-1 receives a request reasonably describing the records.

**§ 105-60.402 Procedures for making records available.**

This section sets forth initial procedures for making records available when they are requested. These procedures do not apply to records of other agencies that have been transferred to the National Archives and Records Service in accordance with the Federal Records Act of 1950 (44 U.S.C. 2103 and 3103); in those cases, the procedures in Part 105-61 govern.

**§ 105-60.402-1 Submission of requests for described records.**

For records located in the GSA Central Office, the requester should submit a request in writing to the director of Public Information, General Services Administration (XI), Washington, DC 20405. For records located in the GSA regional offices, the requester should submit a request to the Assistant Regional Administrator for External Affairs for the relevant region, at the address listed in § 105-60.303(a). Requests should include the words, "FREEDOM OF INFORMATION REQUEST," prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 105-60.402-2 begins with receipt of a request in the office of the appropriate official identified in this section. A requester who has questions concerning an FOIA request may consult the GSA Director of Public Information, 18th and F Streets NW., Washington, DC 20405 (202) 566-1231.

**§ 105-60.402-2 Response to initial requests.**

GSA will mail a response to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and

legal public holidays) after receipt of a request by the office of the appropriate official specified in § 105-60.402-1. In unusual circumstances, GSA will inform the requester of the agency's need to take an extension of time.

**§ 105-60.403 Appeal within GSA.**

(a) A requester who receives a denial, in whole or in part, of a request may appeal that decision within GSA. The requester shall direct the appeal to the Director of Public Information, General Services Administration (XI), Washington, DC 20405, regardless whether the denial being appealed was made by a Central Office official or by a Regional Administrator.

(b) The Director of Public Information must receive an appeal no later than 30 calendar days after receipt by the requester of the initial denial of access.

(c) The requester must appeal in writing and include a brief statement of the reasons he or she thinks GSA should release the records and enclose copies of the initial request and denial. The appeal letter should include the words, "FREEDOM OF INFORMATION APPEAL," on both the face of the appeal letter and on the envelope. GSA has 20 workdays after the receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit shall not begin until the office of the Director of Public Information receives the appeal.

(d) If the Administrator of General Services made the initial denial, there shall be no right to appeal within GSA.

(e) A requester who has received a denial of an appeal, or who has no right of appeal within GSA, may seek judicial review of GSA's decision in the United States district court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the District of Columbia.

**§ 105-60.404 Extension of time limits.**

In unusual circumstances the Director of Public Information may extend the time limits prescribed in §§ 105-60.402 and 105-60.403. GSA will provide a written notice to the requester of any extension of time limits.

**Subpart 105-60.5—Exemptions****§ 105-60.501 Categories of records exempt from disclosure under the FOIA.**

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Privacy Act, provided that the statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of these records would:

- (i) Interfere with enforcement proceedings;
- (ii) Deprive a person of a right to a fair trial or an impartial adjudication;
- (iii) Constitute an unwarranted invasion of personal privacy;
- (iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) GSA will invoke no exemption under this section if the requested records would be available under the Privacy Act of 1974 and implementing regulations, Part 105-64, or if disclosure

would cause no demonstrable harm to any public or private interest.

#### Subpart 105-60.6—Subpoenas or Other Legal Demands for Records

##### § 105-60.601 Service of subpoena or other legal demand.

##### § 105-60.601-1 GSA administrative records.

(a) A subpoena duces tecum or other legal demand for the production of records held by GSA should be addressed to the General Counsel, General Services Administration (L), Washington, DC 20405, with respect to GSA Central Office records; to the appropriate Regional Counsel, for records in GSA regional offices; or to the Administrator of General Services.

(b) The General Counsel, Deputy General Counsel, Assistant General Counsels, Inspector General, and, with respect to records in a GSA regional office, also the Regional Administrator and Regional Counsel are the only GSA employees authorized to accept service of a subpoena duces tecum or other legal demands on behalf of GSA.

##### § 105.60.601-2 Records Transferred to the National Archives and Records Service.

(a) Access to records transferred to a Federal Archives and Records Center (see § 105-61.001-3) is controlled by the instructions and restrictions imposed on GSA by the Federal agency that transferred the records to the Federal Records Center. GSA will honor a subpoena duces tecum or other legal demand for the production of these records, to the extent required by law, if the transferring agency has imposed no restrictions. In contrast, when the transferring agency has imposed restrictions, GSA will notify the authority issuing the subpoena or other legal demand and will request authority to pursue the matter directly with the transferring agency.

(b) The Administrator of General Services, the Archivist of the United States, the General Counsel, the Deputy General Counsel, the Assistant General Counsels, the Regional Administrators, and the Regional Counsels, as appropriate, and the Director of the Federal Archives and Records Center in which records are stored are the only GSA officials authorized to accept a subpoena or other legal demand for records transferred to a Federal Archives and Records Center.

(c) A subpoena duces tecum or other legal demand for the production of records designated as "archives" or "donated historical materials" administered by the National Archives and Records Service (see §§ 105-61.001-

2 and 105-61.001-4) may be served only on the Administrator of General Services, the Archivist of the United States, the General Counsel, or the appropriate Assistant Archivist, Regional Counsel, Director of a Federal Archives and Records Center, or Director of a Presidential Library.

Dated: January 15, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-2948 Filed 1-26-81; 8:45 am]

BILLING CODE 6820-38-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

#### 42 CFR Part 60

#### 45 CFR Part 126

### Health Education Assistance Loan Program

**AGENCY:** Public Health Service (PHS), (HHS).

**ACTION:** Final regulations.

**SUMMARY:** This rule amends regulations for the Health Education Assistance Loan (HEAL) Program, authorized by the PHS Act, by: (1) removing the prohibition against receipt of a HEAL loan during the same school year in which a student receives loans from other federally provided or assisted loan programs under part B of Title IV of the Higher Education Act of 1965, (2) establishing a more flexible definition of academic year, (3) raising the maximum amount which may be borrowed, (4) changing the maximum interest rate, and (5) redesignating the location of the regulations in the code of Federal Regulations (CFR).

**EFFECTIVE DATE:** These regulations are effective on January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Mrs. Alice Swift, Bureau of Health, Personnel Development and Service, Health Services Administration, 3700 East-West Highway, Center Building, Room G-66, Hyattsville, Maryland 20782 (Telephone 301-436-6788).

**SUPPLEMENTARY INFORMATION:** The U.S. Commissioner of Education, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education and Welfare published in the Federal Register on August 3, 1978 (43 FR 34320) interim-final regulations adding a new part 126 entitled "Health Education Assistance Loan Program" to Title 45 of the CFR. This new part 126 established the HEAL Program

authorized by section 727 of the PHS Act.

Section 727 of the Act (42 U.S.C. 294) authorizes the Secretary to provide a Federal program of student loan insurance for graduate students in health professions schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, public health and pharmacy. The Assistant Secretary for Health, HHS, with the approval of the Secretary of HHS, is amending the interim-final regulations to implement the provisions of Title II of Pub. L. 96-76, Pub. L. 96-538, and to include other necessary technical changes. These changes are issued as final regulations. The Department will later issue additional amendments to these regulations which will address the public comments on the interim-final rule.

This rule also transfers the HEAL Program regulations from Part 126 of Title 45, CFR (Public Welfare) to a new Part 60 in Title 42, CFR (Public Health). Accordingly, 45 CFR Part 126 is now reserved. This redesignation reflects the transfer of the Federal administration of the HEAL Program from the Office of Education to the PHS. This transfer was announced in a notice in the Federal Register of May 21, 1980.

The Department certifies that these regulations will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354, since the regulations are technical in nature in that they implement statutory changes and redesignate existing regulations in the Code of Federal Regulations.

The following is a brief summary of these changes:

#### § 126.5(60.5) Who is an eligible student borrower?

Section 126.5(g) of the interim-final regulations prohibits the receipt of a loan under the guaranteed student loan program for any part of the same academic year during which a HEAL loan is received. The regulations have been amended by deleting this paragraph to reflect the amendment made by Pub. L. 96-538, enacted December 17, 1980.

#### § 126.7(60.7) The loan application process.

Sections 126.7(b) and 126.10, new 60.7(b) and 60.10, have been revised to reflect the standard definition of academic year contained in other student assistance programs authorized under the PHS Act. Under the current definition in the interim-final regulations, an academic year is 12

months in duration. The normal academic term for most health professions schools is 9 months. It is possible, therefore, for a full academic year to be completed and another academic year to begin within 12 months. This amendment will permit the calculation of loan amounts on the basis of approximately a 9-month academic session extending from September to June.

**§ 126.10 (60.10) How much can be borrowed?**

Section 126.10 of the interim-final regulations provides that eligible students enrolled in programs of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, and public health may borrow up to \$10,000 principal for each academic year, up to a total principal amount of \$50,000. A pharmacy student may borrow up to \$7,500 principal for each academic year, up to a total principal amount of \$37,500. Pub. L. 96-76, enacted September 29, 1979, increases the authority of the Secretary to provide loan insurance for students in schools of medicine, osteopathic medicine, and dentistry up to \$15,000 a year and an aggregate sum of \$60,000, if the Secretary determines that the cost of education requires this higher loan limit. The regulations have been amended to reflect this statutory change.

**§ 126.13(60.13) Interest.**

In accordance with Section 731(b) of the Act prior to its amendment by Pub. L. 96-538, § 126.13 of the regulations provides that the interest rate on a HEAL loan may not exceed 12 percent per year on the unpaid principal balance of the loan. Pub. L. 96-538 amended section 731 to provide that the maximum interest rate may not exceed the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter plus 3½ percentage points, rounded to the next higher one-eighth of 1 percent. These regulations revise the interim-final regulations to reflect this change.

When these regulations become effective, they will apply to all HEAL loans, including outstanding loans, except that:

1. The new loan limits will only apply to educational costs beginning with the 1980-81 academic year.
2. School officials and lenders should apply the new definition to the academic year beginning July 1, 1980.
3. New interest rates will not apply to outstanding loans but will apply to new HEAL loans made after January 27, 1981. These amendments are technical in nature in that they implement statutory

changes and redesignate existing regulations in the CFR. The Secretary has determined, according to 5 U.S.C. 553 and Department policy, that it would be unnecessary and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations.

**45 CFR Part 126 [Redesignated as 42 CFR Part 60]**

1. 45 CFR Part 126 is redesignated as 42 CFR Part 60.

2. 42 CFR Part 60 is amended as follows:

Dated: January 9, 1981.

Julius B. Richmond,  
Assistant Secretary for Health.

Approved: January 14, 1981.

Patricia Roberts Harris,  
Secretary.

45 CFR Part 126 is redesignated as 42 CFR Part 60 and amended as follows:

**PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM**

**§ 60.5 Who is an eligible student borrower? [Amended]**

Paragraph 60.5(g) is deleted and reserved.

**§ 60.7 The loan application process. [Amended]**

Paragraph 60.7(b) is revised by deleting "12-month".

Section 60.10 is revised to read as follows:

**§ 60.10 How much can be borrowed?**

(a) *Student borrower.* An eligible student borrower may borrow an amount for an academic year equal to the difference between: (1) the student's cost of education for that period as defined in § 60.5(h); and (2) the amount of other student aid he or she will receive for that period within the following limitations:

(i) A student enrolled in a school of medicine, osteopathic medicine, or dentistry may borrow \$50,000 under this part, or up to \$60,000 if the student's costs, as described in § 60.5(h), justify this amount. This amount received may not exceed \$15,000 per academic year.

(ii) A student enrolled in a school of veterinary medicine, optometry, podiatry, or public health may borrow up to \$50,000 under this part. This amount received may not exceed \$10,000 per academic year.

(iii) A student enrolled in a pharmacy school may borrow up to \$37,500 under this part. This amount received may not exceed \$7,500 per academic year.

(iv) For purposes of this paragraph, an academic year means the traditional approximately 9-month September to June annual session. For the purpose of computing academic year equivalents

for students who, during a 12-month period, attend for a longer period than the traditional academic year, the academic year will be considered to be 9 months in length.

(b) *Nonstudent borrower.* An eligible nonstudent may borrow amounts under this authority with the following restrictions:

(1) In no case may an eligible nonstudent borrower receive a loan that is greater than the sum of the HEAL insurance premium plus the interest that is expected to accrue and must be paid on the borrower's HEAL loans during the period for which the new loan is intended.

(2) An eligible nonstudent in the field of medicine, osteopathic medicine, or dentistry may borrow up to \$50,000 under this part including loans obtained while the borrower was a student, or \$60,000, if the borrower's costs require this increase. The loan amount may not exceed \$15,000 per 12-month period.

(3) An eligible nonstudent in the field of pharmacy may borrow up to \$37,500 under this authority, including loans obtained while the borrower was a student. The loan amount received under this part may not exceed \$7,500 per 12-month period.

(4) An eligible nonstudent in the field of veterinary medicine, optometry, podiatry or public health may borrow under this authority up to \$50,000, including loans obtained while the borrower was a student. The loan amount received under this part may not exceed \$10,000 per 12-month period.

Paragraph (a) of this section is revised to read as follows:

**§ 60.13 Interest.**

(a) *Rate.* At the lender's option, the interest rate on the HEAL loan may be calculated on a fixed rate or on a variable rate basis. However, whichever method is selected must continue over the life of the loan, except where the loan is consolidated with another HEAL loan.

(1) Interest that is calculated on a fixed rate basis is determined for the life of the loan during the calendar quarter in which the loan is executed. It may not exceed the rate determined for that quarter by the Secretary under section 60.13(a)(3) of this section.

(2) Interest that is calculated on a variable rate basis varies every calendar quarter throughout the life of the loan as the market price of U.S. Treasury bills changes. For any quarter it may not exceed the rate determined by the Secretary under section 60.13(a)(3) of this section.

(3) For each calendar quarter the Secretary determines the maximum

annual HEAL interest rate by: (i) determining the average of the bond equivalent rates reported for the 91-day U.S. Treasury bills auctioned for the preceding calendar quarter, (ii) adding 3½ percentage points; and (iii) rounding that figure to the next higher one-eighth of one percent.

(4) The Secretary will announce the rate determined under section 60.13(a)(3) of this section on a quarterly basis through a notice published in the Federal Register.

(Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); Sec. 729 of the Public Health Service Act, 93 Stat. 582 (42 U.S.C. 294c)) (Catalog of Federal Domestic Assistance Number 13.574; Health Education Assistance Loan Program)

[FR Doc. 81-3180 Filed 1-26-81; 8:45 am]  
BILLING CODE 4110-84-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 5854

[M-41628]

#### Montana; Revocation of Public Water Reserve No. 158

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes an Executive Order which withdrew 120 acres as a public water reserve. The surface estate has been patented to the State Fish and Game Commission under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. 869; 869-4. This order will open the lands to nonmetalliferous mineral location under the mining laws.

**EFFECTIVE DATE:** February 24, 1981.

**FOR FURTHER INFORMATION CONTACT:** Edgar D. Stark, Acting Chief, Branch of Lands and Minerals Operations, Montana State Office, 406-657-6291.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976; 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order dated July 24, 1935, which withdrew the following described lands for use as a public water reserve is hereby revoked in its entirety:

Montana Principal Meridian

T. 4 S., R. 17 E.,

Sec. 4, SW¼NE¼, NE¼SW¼, NW¼SE¼.

The area described contains 120.00 acres in Stillwater County, Montana.

2. At 10 a.m., on February 24, 1981, the lands will be open to nonmetalliferous mineral location under the United States mining laws. They have been and continue to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Guy R. Martin,

Assistant Secretary of the Interior.

January 19, 1981.

[FR Doc. 81-2988 Filed 1-26-81; 8:45 am]

BILLING CODE 4310-84-M

#### 43 CFR Public Land Order 5855

[ORE 016183-C]

#### Oregon; Partial Revocation of Public Land Order No. 3869

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes a public land order in part as to 97.58 acres of lands withdrawn as recreation sites for use by the Bureau of Land Management. This action will restore the lands to operation of the mining laws. The land in T. 27 S., R. 10 W., will be open to disposition under the public land laws generally.

**EFFECTIVE DATE:** February 24, 1981.

**FOR FURTHER INFORMATION CONTACT:** Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3869 of November 12, 1965, which withdrew certain lands for use by the Bureau of Land Management as recreation sites is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 27 S., R. 10 W.,

Sec. 4, S½SW¼SW¼.

T. 27 S., R. 11 W.,

Sec. 14, Lots 5 and 6.

The areas described aggregate 97.58 acres in Coos County.

2. At 10 a.m., on February 24, 1981, the lands will be open to location under the

United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

3. At 10 a.m., on February 24, 1981, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land in T. 27 S., R. 10 W., will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

4. The land in T. 27 S., R. 11 W., remains segregated from operation of the public land laws generally by Timber Preservation Area withdrawal of November 8, 1946.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 19, 1981.

[FR Doc. 81-2991 Filed 1-26-81; 8:45 am]

BILLING CODE 4310-84-M

## ACTION

#### 45 CFR Part 1226

#### Prohibitions on Electoral and Lobbying Activities

**AGENCY:** Action.

**ACTION:** Final regulation.

**SUMMARY:** These are the final regulations implementing restrictions on certain volunteer activity related to the use of appropriated funds in connection with electoral and lobbying activities. Certain revisions have been made in response to comments and suggestions from volunteers, program sponsors, and other members of the public.

**DATE:** This regulation shall take effect on March 13, 1981.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Kelley, General Counsel, ACTION, 806 Connecticut Avenue NW., Washington, D.C. 20525 (202) 254-3116.

**SUPPLEMENTARY INFORMATION:** Section 403 of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113, as amended) prohibits the involvement of volunteer programs or the use of funds in election activities, voter registration activities and in providing transportation to the polls. Under the 1979 amendments to the Domestic Volunteer Service Act (Public Law 96-143, December 13, 1979), subsection 403(b)(2) was added which also prohibits the involvement of such programs in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative

petition. The Director of ACTION is required, under subsection 403(c), to adopt rules enforcing the restrictions contained in this section, and such rules must be in accord with the specific provision as well as the broad legislative intent. In addition, Section 415(b) of the Act makes the Hatch Act, Subchapter III of Chapter 73, Title 5, United States Code, applicable to certain volunteers serving under the Domestic Volunteer Service Act. A proposed regulation implementing these provisions was published on December 8, 1980 in the Federal Register for comment.

The Agency has considered the public comments received and has determined to adopt the proposed regulations with some modifications. Discussed below are the provisions of the final regulation and the major public comments the Agency received in response to its proposed regulation. While this regulation has been developed with consideration of comments from the public, as a matter involving volunteers, it is exempt from the requirements of Executive Order 12044, Improving Government Regulations.

### I. Description of the Regulation

This regulation prescribes certain areas of activity prohibited under the Domestic Volunteer Service Act of 1973, as amended. Also included are provisions under the Hatch Act which are applicable to full time and certain part time volunteers enrolled in programs authorized under Title I of the Domestic Volunteer Service Act.

The approach of this regulation is twofold: (1) Restrictions on the assignment of ACTION volunteers to or the receipt of funds by certain organizations because of the nature of the organization or its activities; (2) restrictions on volunteer assignments and activity. The organizational restrictions are based on the premise that the assignment of volunteers or the receipt of ACTION funds by certain organizations (regardless of the proposed assignment or activity of the volunteer) is precluded because of the organization's stated purpose or the nature of its activities.

In reference to the restrictions on volunteer assignments and activities, there are four basic areas of prohibited activities: (1) Electoral; (2) voters registration; (3) voter transportation to the polls; and (4) efforts to influence legislation. The prohibitions are directed to the use of ACTION funds. Accordingly, this regulation is applicable to volunteer and other activities supported by such funds.

The Domestic Volunteer Service Act provides two exceptions to the prohibition on efforts to influence legislation: (1) At the request of a legislative body, committee or member thereof, and (2) regarding an authorization or appropriation measure directly affecting the operation of the project or program. The regulation prescribes the conditions under which activities pursuant to these exceptions may be undertaken. The regulation also prescribes the applicability of the restrictions to sponsor organization employees and the obligations of sponsors to ensure observance of the regulation.

### II. Discussion of Modifications

#### A. Nature of Comments Received

The Agency received numerous comments by volunteers, sponsors, and other members of the public on the proposed regulations, particularly from volunteers and program sponsors in the Older American Volunteer Programs. The vast majority of the comments pertained to the prohibitions on efforts to influence the passage or defeat of legislation, and the exceptions thereto. The following is the Agency response to the substantive comments, and the resulting modifications.

Section 1226.9, Exceptions. Several suggested changes have been adopted regarding the two exceptions to the prohibitions on efforts to influence legislation. Subparagraph (a)(2) is revised to delete the phrase "with specificity" in regard to the written request from a legislature, or a committee or member thereof, for a volunteer's assistance. The phrase "with specificity," which created some confusion, is redundant since provision of the subparagraph otherwise requires that the request state "the type of representation or assistance required and the issue to be addressed."

In subparagraph (b)(1) of § 1226.9, the requirement that the sponsor organization receive "approval from the State Director prior to the volunteer engaging in such activity" has been deleted. This provision generated the most comment of any provision in the proposed regulation. Such comments uniformly stated that the requirement of prior approval was cumbersome and would place an unnecessary burden on volunteers and sponsors. After review and consideration, the Agency has decided that a notification provision would suffice. Accordingly, § 1226.9(b)(1) has been revised to read: "The sponsor organization provides notification to the State Director on a quarterly basis of all activity occurring

pursuant to this exception." This exception allows volunteers to testify or make representations to a legislative body regarding an authorization or appropriation directly affecting the operation of the program. The legislative intent behind this exception, in part, was to allow volunteers, and program sponsors, to be able to approach and maintain contact with local legislative bodies concerning appropriations required for their programs. It was determined that while it is necessary for ACTION personnel to be aware of and monitor activities undertaken pursuant to this exception, it was not necessary to impose a requirement of prior approval of the ACTION State Director as a condition to such activities.

Several persons expressed concern about the relationship between the exceptions in § 1226.9 and the last sentence in § 1226.9(c). Since activity permitted under § 1226.9(b) may legitimately require ongoing contact with a legislative body, as for example in seeking a local appropriation for a program, the last sentence of § 1226.9(c), which states:

(n)othing herein shall authorize any ongoing or continuing contact with a legislature or its members, regarding proposed or pending legislation, has been deleted. However, it is stressed that the requirement in § 1226.9(c) that any activity by volunteers under either exception (a) or (b) must be incidental to their regular work assignment.

A relatively large number of comments revealed substantial confusion concerning the application of the Hatch Act to part time volunteers. Section 1226.11(a)(1) is revised to substitute the phrase "Title I, Part C of the Act" for "Section 122(c) of the Act." This revision will clarify that the Hatch Act does not apply to volunteers enrolled in the Older American Volunteer Programs, regardless of the number of hours of weekly service. Also, the new language is added to subparagraph (c) of § 1226.11 to provide further clarification on this point.

Several comments suggested the deletion of § 1226.8(d), concerning restrictions on efforts to influence legislation. The prohibition on lobbying arises from the Domestic Volunteer Service Act of 1973, as amended, with which the Agency must comply in the operation and administration of its volunteer programs. The provisions set forth in § 1226.8(d) describe activities and conduct considered to be within the scope of the statutory prohibition. After review and reconsideration, the Agency has concluded that such provisions must be retained pursuant to the statute.

Other comments pertained to the scope of coverage of the regulation

under circumstances where volunteers are "reasonably perceived by others" to be performing as volunteers, as provided in § 1226.7(b) and § 1226.11 (b)(2) and (c). Because the applicability of these provisions is often determined by the facts of a particular situation, the Agency determined it would be more appropriate to address these concerns through interpretative guidance than through revision to the regulations.

Accordingly, Part 1226 is added to 45 CFR and is published in final form to read as follows.

## PART 1226—PROHIBITIONS ON ELECTORAL AND LOBBYING ACTIVITIES

### Subpart A—General Provisions

- Sec.  
1226.1 Purpose.  
1226.2 Scope.  
1226.3 Definitions.

### Subpart B—Sponsoring Organization

- 1226.4 General.  
1226.5 Electoral, voter registration, and other activities.

### Subpart C—Volunteer Activities

- 1226.6 General.  
1226.7 Scope.  
1226.8 Prohibited activities.  
1226.9 Exceptions.  
1226.10 Hatch Act restrictions.  
1226.11 Part time volunteers.

### Subpart D—Sponsor Employee Activities

- 1226.12 Sponsor employees.  
1226.13 Obligation of sponsors.

Authority: Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412.

### Subpart A—General Provisions

#### § 1226.1 Purpose.

This part implements provisions of the Domestic Volunteer Service Act, 1973, 87 Stat. 394, Pub. L. 93-113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or the involvement of agency programs and volunteers in electoral and lobbying activities. These regulations are designed to define and clarify the nature and scope of prohibited activities to ensure that programs under the Act and volunteer activities are conducted within the statutory bounds established by the Act. The penalties for violation of the regulations are also prescribed. The statutory source of the prohibitions upon electoral and lobbying activities is section 403 (a) and (b) of the Act. Rules applying to the Hatch Act (Title III of Chapter 73, Title 5, United States Code) to full time and certain part time volunteers, as required by Section 415(b) of the Act, are also set forth herein.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

#### § 1226.2 Scope.

This part applies, except where otherwise noted, to all full time and part time volunteers serving in a program authorized by the Act, including VISTA, Service Learning and the Older American Volunteer Programs. It also applies to employees of sponsoring organizations, whose salaries, or other compensation, are paid, in whole or in part, with agency funds.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

#### § 1226.3 Definitions.

(a) The "Act" means the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93-113 (42 U.S.C. 4951 *et seq.*).

(b) "Assistance" means funds, volunteers or volunteer training, which is paid for from funds appropriated for the purpose of supporting activities under the Act, and includes locally provided funds required by law, regulation or policy as a local contribution to activities authorized by the Act.

(c) "Full time" when used in the context of volunteer service, means service of not less than 35 hours per week.

(d) "Part time" when used in the context of volunteer service, means service that is less than full time.

(e) "Recipient" or "sponsor organization" means any organization that receives assistance under the Act.

(f) "Volunteer" means an individual enrolled for service in a program or project that is authorized by or which receives assistance under the Act.

(g) "Legislative body" includes the United States Congress, State and Territorial Legislatures and locally elected or appointed bodies with the authority to enact laws.

(h) "Public office" includes any Federal, State, local elective, or party office.

(i) "Party office" means an elective position in a national, state or local organization or committees or convention of such organization, which has, as a principal purpose, support or opposition to candidates for public office.

(j) "Legislation" means bills, resolutions, amendments, nominations and other matters pending or proposed in a legislative body and includes any other matter which may be the subject of action by the legislative body.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

## Subpart B—Sponsoring Organization

### § 1226.4 General.

Under section 403 of the Act, volunteer programs may not be conducted in a manner which supports or results in the identification of such programs with prohibited activities. This section prescribes the nature and extent of involvement in such activity by an organization which would preclude the assignment of volunteers to the organization.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

### § 1226.5 Electoral, voter registration, and other activities.

Volunteers or other assistance, in any program under the Act shall not be assigned or provided to an organization if a principal purpose or activity of the organization includes any of the following activities:

- (a) *Electoral Activities*—Any activity designed to influence the outcome of elections to any public office, such as
- (1) Actively campaigning for or against or supporting candidates for public office;
  - (2) Raising, soliciting or collecting funds for candidates for public office;
  - (3) Preparing, distributing or providing funds for campaign literature for candidates, including leaflets pamphlets, and material designed for the print or electronic media;
- (b) *Voter Registration Activities*—Any voter registration activity, such as
- (1) Providing transportation of individuals to voter registration sites;
  - (2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;
  - (3) Disseminating official voter registration material.

(c) *Transportation to the Polls*—Providing voters or prospective voters with transportation to the polls or raising, soliciting or collecting funds for such activity.

(d) Any program sponsor which, subsequent to the receipt of any federal assistance under the Act, makes as one of its principal purposes or activities any of the activities described in § 1226.5 hereof shall be subject to the suspension or termination of such assistance, as provided in 45 CFR Part 1206.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

### Subpart C—Volunteer Activities

#### § 1226.6 General.

(a) All volunteers, full and part time, are subject to the prohibitions on expenditure of federal funds for partisan

and nonpartisan electoral activities, voter registration activities and transportation of voters to the polls, and efforts to influence the passage or defeat of legislation, as contained in Section 403 of the Act.

(b) Full time volunteers, and certain part time volunteers as specified herein, are also subject to the restrictions in Subchapter III, Chapter 73 of Title 5, United States Code, commonly referred to as the Hatch Act, as provided in Section 415(b) of the Act.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

#### § 1226.7 Scope.

The provisions in this subpart are applicable to full time volunteers as defined in § 1226.3(c), and to such part time volunteers as may be otherwise specified herein. Full time volunteers are deemed to be acting in their capacity as volunteers:

(a) When they are actually engaged in their volunteer assignments. VISTA volunteers and other full time volunteers who are required to serve without regard to regular working hours are presumed to be actually engaged in their volunteer assignments at all times, except during periods of authorized leave; or

(b) Whenever they represent themselves, or may reasonably be perceived by others, to be performing as a volunteer.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

#### § 1226.8 Prohibited activities.

(a) Electoral Activity—Volunteers shall not engage in any activity which may, directly or indirectly, affect or influence the outcome of any election to public office. Volunteers are prohibited from engaging in activities such as:

(1) Any activity in support of, or in opposition to a candidate for election to public office in a partisan or nonpartisan election;

(2) Participating in the circulation of petitions, or the gathering of signatures on nominating petitions or similar documents for candidates for public office.

(3) Raising, soliciting, or collecting funds for a candidate for public office;

(4) Preparing, distributing or providing funds for campaign material for candidates, including leaflets, pamphlets, brochures and material designed for the print or electronic media;

(5) Organizing political meetings or forums;

(6) Canvassing voters on behalf of a candidate for public office;

(7) Raising, soliciting or collecting funds for groups that engage in any of the activities described in paragraph (a) (1) through (6) of this section.

(b) Voter Registration—Volunteers shall not engage in any voter registration activity, including:

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) The dissemination of official voter registration materials; or

(4) Raising, soliciting or collecting funds to support activities described in paragraph (b) (1) through (3) of this section.

(c) Transportation to the Polls—Volunteers shall not engage in any activity to provide voters or prospective voters with transportation to the polls, nor shall they collect, raise, or solicit funds to support such activity, including securing vehicles for such activity.

(d) Efforts to Influence Legislation—Except as provided in § 1226.9, volunteers shall not engage in any activity for the purpose of influencing the passage or defeat of legislation or any measures on the ballot at a general or special election. For example, volunteers shall not:

(1) Testify or appear before legislative bodies in regard to proposed or pending legislation;

(2) Make telephone calls, write letters, or otherwise contact legislators or legislative staff, concerning proposed or pending legislation for the purpose of influencing the passage or defeat of such legislation;

(3) Draft legislation;

(4) Prepare legislative testimony;

(5) Prepare letters to be mailed by third parties to members of legislative bodies concerning proposed or pending legislation;

(6) Prepare or distribute any form of material, including pamphlets, newspaper columns, and material designed for either the print or electronic media, which urges recipients to contact their legislator or otherwise seek passage or defeat of legislation;

(7) Raise, collect or solicit funds to support efforts to affect the passage or defeat of legislation;

(8) Engage in any of the activities set forth in paragraph (d) (1) through (7) of this section for the purpose of influencing executive action in approving or vetoing legislation.

(9) Circulate petitions, gather signatures on petitions, or urge or organize others to do so, which seek to have measures placed on the ballot at a general or special election.

(10) Engage in any of the activities enumerated in paragraph (d) (1) through (9) of this section in regard to the passage or defeat of any measure on the ballot in a general or special election.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

#### § 1226.9 Exceptions.

(a) A volunteer may draft, review, testify or make representations to a legislative body regarding a legislative measure upon request of the legislative body, a committee, or a member thereof, provided that:

(1) The request to draft, review, testify or make representations is in writing, addressed to the volunteer or the organization to which the volunteer is assigned or placed, and signed by a member or members of the legislative body.

(2) The request states the type of representation or assistance requested and the issue to be addressed.

(3) The volunteer or the program sponsor provides a copy of such request to the State Director.

(b) The volunteer may draft, review, testify, or make a written representation to a legislative body regarding an authorization or appropriation measure directly affecting the operation of the project or program to which he or she is assigned: *Provided:*

(1) The sponsor organization provides notification to the State Director on a quarterly basis of all activity occurring pursuant to this exception.

(2) The legislative measure relates to the funding of the project or program or affects the existence or basic structure of the project or program.

(c) Notwithstanding the foregoing exceptions, any activity by a volunteer pursuant to paragraph (b) (1) or (2) of this section shall be incidental to his or her regular work assignment.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

#### § 1226.10 Hatch Act restrictions.

(a) In addition to the prohibitions described above, full time volunteers are subject to the Hatch Act, Subchapter III, of Chapter 73, Title 5, United States Code. Full time volunteers shall not, directly or indirectly, actively participate in political management or in political campaigns. All volunteers retain the right to vote as they choose and to express their personal opinions on political issues or candidates. Examples of prohibited activities, include, but are not limited to,

(1) Candidacy for or service as a delegate or alternate to any political convention or service as an officer or employee thereof.

(2) Acting as an officer of a primary meeting or caucus, addressing, making motions, preparing or presenting resolutions, representing others, or otherwise taking part in such meetings or caucuses.

(3) Organizing or conducting a political meeting or rally on any political matter.

(4) Holding office as a precinct or ward leader or representative, or service on any committee of a political party. It is not necessary that the service of the volunteer itself be political in nature to fall within the prohibition.

(5) Organizing a political club, being an officer of such a club, being a member of any of its committees, or representing the members of a political club in meetings or conventions.

(6) Soliciting, collecting, receiving, disbursing or otherwise handling contributions made for political purposes.

(7) Selling or soliciting pledges for dinner tickets or other activities of political organizations or candidates, or for their benefit.

(8) Distributing campaign literature, badges, buttons, bumperstickers or posters.

(9) Publishing or being editorially connected with a newspaper or other publication generally known as partisan from a political standpoint.

(10) Writing for publication or publishing any letter or article, signed or unsigned, soliciting votes in favor of or in opposition to any political party, candidate or faction.

(11) Soliciting votes, helping get out the vote, acting as a checker, watcher or challenger for any party or faction, transporting voters to or from the polls, or transporting candidates on canvassing or speaking tours.

(12) Participation in or organizing a political parade.

(13) Initiating nominating petitions or acting as a canvasser or witness on such petitions.

(14) Being a candidate for nomination or election to a National, State, or local office.

(b) Hatch Act restrictions apply to full time volunteers at all times during their service, including off-duty hours, leave, holidays and vacations.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

#### § 1226.11 Part time volunteers.

(a) The provisions in this section are applicable to part time volunteers, as defined in § 1226.3(d). There are two categories of part time volunteers:

(1) Those enrolled for periods of service of at least twenty (20) hours per week for not less than twenty-six (26)

consecutive weeks, as authorized under Title I, Part C of the Act, and

(2) All other part time volunteers, including Senior Companions, Foster Grandparents and Retired Senior Volunteers.

(b) All part time volunteers are subject to the restrictions described in § 1226.8 (a), (b), (c) and (d) and the exceptions in § 1226.9:

(1) When they are engaged in their volunteer assignments, in training activities, or other related activities supported by ACTION funds, or

(2) Whenever they represent themselves as ACTION volunteers, or may reasonably be perceived by others to be performing as volunteers.

(c) The restrictions described in § 1226.10, pertaining to the Hatch Act, are applicable to volunteers enrolled for periods of service of at least 20 hours per week for not less than 26 consecutive weeks, as authorized under Title I, Part C of the Act:

(1) at all times in any day on which they serve as volunteers, or when engaged in activities related to their volunteer assignments, such as training; or

(2) whenever they represent themselves as volunteers or may reasonably be perceived by others to be performing as volunteers.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

#### Subpart D—Sponsor Employee Activities

##### § 1226.12 Sponsor employees.

Sponsor employees whose salaries or other compensation are paid, in whole or in part, with agency funds are subject to the restrictions described in § 1226.8 (a), (b), (c) and (d) and the exceptions in § 1226.9:

(a) Whenever they are engaged in an activity which is supported by ACTION funds; or

(b) Whenever they identify themselves as acting in their capacity as an official of a project which receives ACTION funds, or could reasonably be perceived by others as acting in such capacity.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

##### § 1226.13 Obligations of sponsors.

(a) It shall be the obligation of program sponsors to ensure that they:

(1) Fully understand the restrictions on volunteer activity set forth herein;

(2) Provide training to volunteers on the restrictions and ensure that all other training materials used in training volunteers are fully consistent with these restrictions;

(3) Monitor on a continuing basis the activity of volunteers for compliance with this provision;

(4) Report all violations, or questionable situations, immediately to the State Director.

(b) Failure of a sponsor to meet the requirements set forth in paragraph (a) of this section, or a violation of the rules contained herein by either the sponsor, the sponsor's employees subject to § 1226.12 or the volunteers assigned to the sponsor, at any time during the course of the grant may be deemed to be a material failure to comply with the terms and conditions of the grant as that term is used in 45 CFR 1206.1 regarding suspension and termination of assistance or a violation of the Project Memorandum of Agreement, as applicable. The sponsor shall be subject to the procedures and penalties contained in 45 CFR 1206.1.

(c) Violation by a volunteer of any of the rules and regulations set forth herein may be cause for suspension or termination as set forth in 45 CFR 1213.5-5(2) or other disciplinary action.

(Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412)

Signed at Washington, D.C., this 19th day of 1981.

Sam Brown,

Director of ACTION.

[FR Doc. 81-2706 Filed 1-26-81; 8:45 am]

BILLING CODE 6050-01-M

#### INTERSTATE COMMERCE COMMISSION

##### 49 CFR Parts 1002, 1003, 1011, and 1100

[Ex Parte No. 55 (Sub-No. 43)]

#### Rules Governing Applications for Operating Authority

AGENCY: Interstate Commerce Commission.

ACTION: Notification of availability of Revised Form OP-1.

SUMMARY: On December 24, 1980, the Commission issued Ex Parte No. 55 (Sub-No. 43) (45 FR 86771, 12-31-80), which outlined final rules governing applications for operating authority. This notice clarifies when and where the revised OP-1 application forms, used to apply for operating authority and described in that document, will be available and provides suggestions for the public to follow during the interim period.



**FOR FURTHER INFORMATION CONTACT:** Ombudsman's Office (202) 275-7440, Kathleen King: (202) 275-0956, Peter Metrinko: (202) 275-7805.

**SUPPLEMENTAL INFORMATION:** The revised OP-1 application form which appears as Appendix B of the final rules in Ex Parte No. 55 (Sub-No. 43), *Rules Governing Applications For Operating Authority*, 45 FR 86771, December 31, 1980, will not be available until shortly before February 9, 1981. At that time, applications can be obtained from the Commission's Regional offices or from the Secretary's Office at 202-275-7307 or 800-424-5230. Until February 9, 1981, applications can be filed on OP-1 forms issued July 3, 1980.

Persons who are preparing applications which will be filed on or after February 9, 1981, can reproduce their own facsimiles of the Certification of Shipper or Witness support, which appears in the appendix to our final rules, issued December 24, 1980, and published at 45 FR 86795. Such facsimiles will be accepted with a revised Op-1 application form filed on or after February 9, 1981. However, such facsimiles must contain exact information set forth in the appendix to our decision in Ex Parte No. 55 (Sub-No. 43). The exact language of the shipper's or witness' oath must be used since that language substitutes for notarization.

After February 9, 1981, all revised OP-1 applications must include at least one revised Certification of Shipper or Witness Support. If a revised OP-1 application, which is received after February 9, 1981, includes only Certifications in the July 1980 format, it may be rejected.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-3064 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

#### 49 CFR Part 1014

[Ex Parte No. 366]

#### Legal Assistance Referral Service

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Removal of final rules and discontinuance of proceeding.

**SUMMARY:** In March, 1980, the Commission promulgated rules governing Commission participation in the Legal Assistance Referral Service, a one-year trial program of the CLCR. Since that time, the Commission held an informal conference on reopening and reconsideration of the final rules, and has decided to remove the rules and discontinue the proceeding. The

Commission has determined to encourage its bar to establish a referral assistance program independent of Commission control and participation. The Commission would cooperate with its bar in referring persons who seek assistance beyond that offered by the Commission.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Director Gary J. Edles (202) 275-7513.

**SUPPLEMENTARY INFORMATION:** The Commission established rules in this proceeding at 45 FR 20104, March 27, 1980, and corrected at 45 FR 22945, April 4, 1980. A supplemental notice supplying the names of Commission personnel to contact for information was published at 45 FR 28147, April 28, 1980. The rules govern Commission participation in the Legal Assistance Referral Service, a one-year trial program of the CLCR.

At 45 FR 78140, November 25, 1980, the Commission announced an informal conference on reopening and reconsideration of these final rules. The result of the reconsideration has been that the Commission will remove those final rules, now codified as 49 CFR Part 1014.

This proceeding involves an ongoing attempt by the Commission and the Motor Carrier Lawyers Association and the Association of ICC Practitioners to establish a legal referral system which would permit small businesses to obtain representation in Commission proceedings at no fee or reduced fees. At the Commission's direction, the Director, Office of Proceedings, met with representatives of practitioner groups on December 17, 1980, to resolve issues which currently impede establishment of such a program.

The Director has reported to us that a plan has evolved in which the Bar would establish and maintain a legal referral system without direct Commission involvement but with which the Commission would cooperate. The Bar has indicated an interest in considering this course of action. It would make such a program available to all persons eligible to practice before the Commission on a non-discriminatory basis. The Commission would not take part in the formation of the program or in approving its standards. The Commission would plan to cooperate with the program, however, and refer persons to a contact person for the referral program when an individual requested assistance beyond that which the Commission could provide.

The Commission will also entertain individual petitions for waiver of filing fees, and, in those few cases assigned for oral hearing, free copies of a hearing

transcript. The Commission does not intend to rule on these issues on a general basis.

As a result of our decision, we will discontinue this proceeding.

It is ordered that this proceeding be discontinued.

#### PART 1014—[REMOVED]

Accordingly, Title 49 CFR is amended by the removal of Part 1014. (49 U.S.C. Section 10321 and 5 U.S.C. Section 553).

Dated: January 12, 1981.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Vice-Chairman Gresham concurring in part and dissenting in part with a separate expression.

Agatha L. Mergenovich,  
Secretary.

Vice-Chairman Gresham, concurring in part and dissenting in part:

I join the majority in encouraging the bar to establish a referral assistance program independent of Commission control, pledging our cooperation in referring potential users to the bar's program, and discontinuing the rulemaking proceeding.<sup>1</sup> The waiver of filing fees and the provision of free transcripts have been rejected twice previously by unanimous vote of the Commission, and I would affirm those decisions.<sup>2</sup>

[FR Doc. 81-2701 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 26

#### Public Entry and Use

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Special Regulations.

**SUMMARY:** The Director has determined that the opening to public access, use

<sup>1</sup>The proposed rules, 49 CFR 1013, have been stayed by Chairman Gaskins' order served April 28, 1980. The Commission's Code of Ethics for Practitioners, 49 CFR 1100, Appendix A, Preamble and Canon 14, generally discusses the bar's responsibility to provide free or reduced rate service in certain circumstances.

<sup>2</sup>See our decisions served March 27, 1980, and October 20, 1980, and separate expressions. With respect to filing fees, see also *Regulations Governing Fees for Services*, 339 I.C.C. 555 (1971), codified at 49 C.F.R. 1002.2 and former Chairman O'Neal's statement before Congressman Parren J. Mitchell on Minority Owned Concerns in the Trucking Industry, delivered on December 4, 1975, and reproduced in 125 M.C.C. at 334-37. The proposal to provide free transcripts cannot be harmonized with Rule 88(c) of our General Rules of Practice, or with 49 C.F.R. 1002.1(h)(i). In addition, it may breach our contract with a private firm for stenographic reporting, transcription, and micrographic service.

and recreation of certain National Wildlife Refuges in Oklahoma and Texas is compatible with the objectives for which these areas were established, and will provide additional recreational opportunity to the public through a nonconsumptive use. This document establishes special regulations effective for the upcoming public entry and use season.

**DATE:** January 1, 1981 through December 31, 1981.

**FOR FURTHER INFORMATION CONTACT:**

The Refuge Manager at the address and/or telephone number listed below in the body of these Special Regulations.

**General**

Public access, use, and recreation is permitted on the National Wildlife Refuges indicated below in accordance with 50 CFR 26 and the following Special Regulations. Portions of refuges which are open to public access, use and recreation are designated by signs and/or delineated on maps available from the address indicated below.

No vehicle travel is permitted except on designated, maintained roads and trails. Special conditions applying to individual refuges are listed on leaflets available at refuge headquarters and from the office of the Area Manager, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G-121, Austin, Texas 78701.

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that such recreational use will not interfere with the primary purpose for which the areas were established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Public entry shall be in accordance with all applicable Federal and State

laws and regulations subject to the following conditions:

**§ 26.34 Special regulations; public access, use and recreation; for individual wildlife refuge areas.**

**Oklahoma**

Salt Plains National Wildlife Refuge, Route 1, Box 76, Jet, Oklahoma 73749; Telephone 405/626-4794.

Special conditions: (1) The public is permitted to enter upon the Great Salt Plains from the west along designated routes of travel to collect gypsum (selenite) crystals from April 1 through October 15, 1981, and only on Saturdays, Sundays, and holidays. (2) For the purpose of collecting selenite crystals, vehicles will be allowed only along such travel lands and parking areas as are posted for such activity. (3) Each individual may collect for his/her personal use up to a maximum of 10 pounds plus one selenite crystal or selenite crystal cluster per day. (4) Digging for selenite crystals will be confined to areas posted for such activity.

Sequoyah National Wildlife Refuge, P.O. Box 695, Vian, Oklahoma, 74962; Telephone 918/773-5251. Public Entry and Use.

Special conditions: (1) An area of approximately 2,200 acres, south of Vian Creek and east of the refuge tour road shall be closed, as posted, to all public access during the periods January 1 through March 15, 1981, inclusive and October 1 through December 31, 1981, inclusive. This land is set aside to provide an area of minimum disturbance for waterfowl and other wildlife during the winter months. (2) Some refuge roads may be closed to vehicle entry from January 1 through March 15, 1981, and from October 1 through December 31, 1981, as posted, to prevent disturbance of wintering and migrating waterfowl. (3) Sightseeing, nature observation, photography and hiking are permitted. (4) Picnicking is permitted only at the Vian Creek Recreation Areas. Picnic fires may be built at the recreation area only in fire grills provided or in camp stoves or charcoal grills. (5) Overnight camping is not permitted except for youth conservation groups supervised by adults. Permits must be obtained in advance from the Refuge Manager. All other recreational uses are restricted to the period 5 a.m. to 9 p.m. daily. (6) Firearms are prohibited except during authorized hunting seasons when only shotguns are permitted. Firearms being transported in a motor vehicle must be unloaded and dismantled or cased. Possession of any firearm on the refuge at night or in

refuge areas closed to hunting is prohibited. (7) Boating is permitted in accordance with Federal and State regulations. (8) Waterskiing is prohibited in all refuge waters. (9) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured to restrict the movement of the pet. Dogs may be used for hunting in accordance with refuge hunting regulations. (10) Pecan picking is limited to one gallon per person per day.

Tishomingo National Wildlife Refuge, P.O. Box 248, Tishomingo, Oklahoma 73460; Telephone 405/371-2402. Public Entry and Use.

Special Conditions: (1) Portions of the Tishomingo National Wildlife Refuge are open to: wildlife observation, photography, sightseeing, hiking, fishing and boating, picnicking and camping incidental to wildlife oriented activities as posted and/or indicated on the refuge leaflet and map. (2) The Refuge is open for public use from sunrise to sunset. (3) Camping is permitted by permit only and permits must be obtained in advance from the Refuge Manager. Individuals and/or camping facilities are limited to 3 consecutive camping days in the area near headquarters, to 9 consecutive camping days elsewhere, and to a total of 18 camping days during the calendar year. (4) During the periods of January 1, 1981, through February 28, 1981, and October 1, 1981, through December 31, 1981, the area known as the Tishomingo Wildlife Management Unit is closed to all public use activities except those specific hunting activities as may be designated. (5) Boating on Refuge water other than Lake Texoma and the Washita River is limited to no-wake speeds. (6) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured to restrict the movement of the pet. Pets must be prevented from harassing or disturbing wildlife or the visiting public. (7) The Refuge will be closed to all general recreational uses during the special, controlled deer hunts in the fall as posted.

Washita National Wildlife Refuge, Route 2, Box 100, Butler, Oklahoma 73625; Telephone 405/473-2205. Public Entry and Use.

Special conditions: (1) Wildlife/wildland observation and photography are permitted from the observation platform located in Owl Cove Recreation Area and from vehicles using established routes of travel. Visitors may walk into other areas of the refuge during the public use season, from April 1 through October 14, 1981. (2) Parking is permitted only in locations designated by signs in hunter access and recreation areas. (3) Boating is permitted from

April 1 through October 14, 1981. (4) Swimming, waterskiing and overnight camping are prohibited. (5) Overnight stays for organized youth and education groups, with adult supervision, involved in wildlife/wildland-associated activities are permitted. (6) Camp stoves, charcoal burners and portable heaters may be used in recreational areas. Open fires are prohibited. (7) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured to restrict the movement of the pet.

Wichita Mountains Wildlife Refuge, P.O. Box 448, Cache, Oklahoma 73527; Telephone 405/429-3222. Public Entry and Use.

Special Conditions: (1) Sightseeing, nature observation, and photography are permitted only during daylight hours. (2) Hiking is permitted during daylight hours only. (3) Camping is permitted only in those recreation areas that are designated for that activity. (4) Any activity that emits sound beyond the immediate campsite between the hours of 10:00 p.m. and 8:00 a.m. is prohibited. (5) No person other than campers shall enter or remain in a camping area between the hours of 10:00 p.m. and 8:00 a.m. (6) No person shall use electrical speakers at a volume which emits sound beyond the individual camp or picnic site without the permission of the refuge manager. (7) Exceeding posted capacities is prohibited. A written permit is required for stays exceeding 7 days. (8) Backcountry camping is permitted in the Charons Gardens Wilderness Area by permit only. Length of stay is limited to 3 days. Inquire at Refuge office for further information. Special conditions may be set by Refuge Manager which may include areas for camping, equipment used and prohibition of open fires. (9) Fires are prohibited, except in those recreation areas where camping or picnicking is permitted. They must be built in grates and grills provided for that purpose. Dead fallen timber may be used. Fires must not be left unattended and must be completely extinguished before leaving the area. During periods of very high fire danger, open fires are prohibited. (10) Picnicking is allowed only in recreation areas that are designated for that activity. (11) Gasoline, electric, oar, or handpowered boating is permitted only on Elmer Thomas Lake; handpowered boats only on Jed Johnson, Rush, Quanah Parker and French Lakes. Boating is prohibited in marked scuba diving and swimming areas. State and Federal boating regulations apply. Fort Sill regulations apply on the military portion of Elmer

Thomas Lake. Water skiing is prohibited. All floating devices are prohibited, except those permitted in boating, swimming, scuba diving, and sport fishing regulations. (12) Swimming, wading, and snorkeling are prohibited, except at the designated swimming beach on Elmer Thomas Lake and only when refuge lifeguards are on duty. Food, beverages, and pets are prohibited on the beach. Beach users must comply with the directions of authorized lifeguards. (13) Scuba diving is permitted in the refuge portion of Elmer Thomas Lake, but is prohibited in all other refuge waters. Diving areas must be marked with appropriate warning flags when outside marked swimming areas. Diving is permitted during daylight hours only. Inflatable vests must be worn during diving. (14) Pets must be kept on a leash, not to exceed 10 feet in length, one end of which must be secured to restrict the movement of the pet. Pets are prohibited at the swimming beach. (15) Motorized vehicles are permitted only on developed roads. Vehicle travel on roads closed by sign or barrier is prohibited. All vehicles must be operated safely and in accordance with posted speed limits and other regulatory signs. Stopping on roadways is prohibited. Parking or leaving unattended any vehicle is permitted only in areas designated for that purpose by sign or on refuge maps available to the public and only for the purpose of authorized activities. Vehicles found parked in any closed areas, or any area not designated as a parking area or in any area after the hours of authorized activities, may be removed from the refuge. Any charges or expenses incurred by such removal, including storage fees, shall be borne by the owner of the vehicle. (16) The possession or use of any alcoholic beverage, including beer containing 3.2% (or less) alcoholic content by weight is prohibited.

#### Texas

Anahuac National Wildlife Refuge, P.O. Box 278, Anahuac, Texas 77514; Telephone 713/267-3337. Public Entry and Use.

Special conditions: (1) Overnight camping is permitted only adjacent to the shoreline of East Bay. Camping is limited to 3 days and 3 nights. (2) Campfires are permitted only adjacent to the shoreline of East Bay. (3) Boats may be launched from the refuge into East Bay.

Aransas National Wildlife Refuge, P.O. Box 100, Austwell, Texas 77950; Telephone 512/286-3559. Public Entry and Use.

Special conditions: (1) Camping is permitted only for organized youth groups that have obtained a special permit. (2) Touring, sightseeing, hiking, nature observation, photography, and sound recording of wildlife are permitted along designated routes of travel except where restricted by appropriate signs. (3) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which is secured to restrict the movement of the pet. (4) The refuge is open for public use from sunrise to sunset. (5) Visitors must register upon arrival. (6) Special conditions for the Matagorda Island Unit of the Aransas National Wildlife Refuge are (a) sightseeing, hiking, nature observation, beachcombing, camping, photography and sound recording of wildlife are permitted in areas so designated; (b) visitors have access to surf fishing and swimming; (c) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured, so as to restrict the movements of the pet; and (d) visitors must register upon arrival.

Buffalo Lake National Wildlife Refuge, P.O. Box 228, Umbarger, Texas 79091; Telephone 806/946-3341. Public Entry and Use.

Special conditions: (1) Touring, sightseeing, hiking, nature observation, photography and sound recording of wildlife are permitted along designated routes of travel except where restricted by appropriate signs. (2) Camping and picnicking is permitted in designated areas. (3) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured so as to restrict the movement of the pet.

Hagerman National Wildlife Refuge, Route 3, Box 123, Sherman, Texas 75090; Telephone 214/786-2826. Public Entry and Use.

Special conditions: (1) Touring, sightseeing, nature study, photography and sound recording of wildlife are permitted along designated routes of travel except where restricted by appropriate signs. (2) Picnicking is permitted and fires may be built in access area fireplaces only and must be extinguished before leaving the area. (3) Pecan picking is permitted in areas not closed to access and is limited to one gallon per person per day. (4) Overnight camping is prohibited. (5) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured so as to restrict the movements of the pet. (6) Driving off designated routes of travel is limited to daylight hours only, during closed season (October 1, to March 31, 1981).

(7) Boat launching is permitted only at designated areas. (8) Cased and unloaded weapons may be transported through the refuge.

Laguna Atascosa National Wildlife Refuge, P.O. Box 450, Rio Hondo, Texas 78583; Telephone 512/748-2426. Public Entry and Use.

Special conditions: (1) Touring, sightseeing, hiking, nature observation, photography and sound recording of wildlife are permitted along designated routes of travel, except where restricted by appropriate signs. (2) Camping is permitted in the North Point and West Side Recreation areas only. A 3-day maximum stay is allowed. (3) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured so as to restrict the movements of the pet. (4) Swimming within the refuge is prohibited.

McFaddin Marsh National Wildlife Refuge, P.O. Box 278, Anahuac, Texas 77514; Telephone 713/267-3337. Public Entry and Use.

Special conditions: (1) The refuge is open for public use from sunrise to sunset, except the Gulf Intracoastal Waterway and the beach adjacent to the Gulf of Mexico are open at all times and except as posted as open or closed by the refuge manager. (2) The Clam Lake oil field facilities are closed to public use at all times. (3) Overnight camping is permitted only adjacent to the Gulf of Mexico beach. Camping is limited to three days and three nights.

Muleshoe National Wildlife Refuge, P.O. Box 549, Muleshoe, Texas 79347; Telephone 806/948-3341. Public Entry and Use.

Special conditions: (1) Access for wildlife observation, nature study and photography is permitted by motor vehicle, foot, or horseback along designated routes of travel except where restricted by appropriate signs. (2) Groups of 10 or more people must register in advance to use the refuge. (3) Camping is permitted in designated sites only. (4) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured so as to restrict the movements of the pet.

Santa Ana National Wildlife Refuge, Route 1, Box 202A, Alamo, Texas 78516; Telephone 512/787-3079. Public Entry and Use.

Special conditions: (1) The refuge is open to visitation daily from sunrise to sunset. (2) Vehicular access is restricted to the scenic drive during the hours of 8 a.m. to 6 p.m. (3) Motorcycles are prohibited on the refuge except that portion of the scenic drive from the north entrance to the headquarters parking lot. (4) Camping is permitted

only by groups participating in environmental education or educational field trip activities on a reservation basis. Applications for reservations should be sent to the above address. (5) Pets must be confined or kept on a leash, not to exceed 10 feet in length, one end of which must be secured so as to restrict the movements of the pet.

Sea Rim National Wildlife Refuge, P.O. Box 278, Anahuac, Texas 77514; Telephone 713/267-3337. Public Entry and Use.

Special conditions: (1) The refuge is open to public access at all times except portions of the refuge may be closed periodically because of public or wildlife hazards. (2) Overnight camping is limited to three days and three nights.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26. The public is invited to offer suggestions and comments at any time.

Note.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

W. Ellis Klett,

Area Manager.

January 16, 1981.

[FR Doc. 81-2947 Filed 1-26-81; 8:45 am]

BILLING CODE 4310-55-M

## Proposed Rules

Federal Register

Vol. 46, No. 17

Tuesday, January 27, 1981

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

### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Part 293

#### Personnel Records

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Office of Personnel Management is proposing to establish an Employee Performance Folder (EPF) as a companion folder to, but separate from, the Official Personnel Folder (OPF). This folder will be part of an overall Government-wide performance appraisal system, encompassing performance related documents maintained by supervisors/managers, Senior Executive Service (SES) Performance Review Boards, and servicing personnel offices.

**DATE:** Comments must be received on or before March 30, 1981.

**ADDRESS:** Send or deliver written comments to: Deputy Assistant Director for Work Force Information (ACE), Agency Relations Group, Office of Personnel Management (Room 6429), 1900 E Street, N.W., Washington, D.C. 20415. Comments received will be available for public review, at the above address, between 9:00 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** William H. Lynch, Records Management Branch, Work Force Information Division, (202) 254-9790/9793.

**SUPPLEMENTARY INFORMATION:** Pursuant to 5 U.S.C. 4305, the Office of Personnel Management has issued regulations (5 CFR 430) concerning agency establishment of performance appraisal plans. Under these performance plans, as intended by the Civil Service Reform Act (CSRA), performance appraisal will be a more useful management tool, will become more meaningful to both employees and supervisors/managers when used as a basis for rewarding good performance and in taking

remedial action for substandard or unsuccessful performance, and will contribute significantly to improved morale and efficiency. Thus, an employee's performance becomes the measure of how successful his/her career in the Federal service is; consequently, the documentation of performance now takes on added significance.

#### What Is Being Proposed

Therefore, the Office is proposing in these regulations to establish for each employee a separate Employee Performance Folder (EPF). At the agency's discretion, these regulations also permit use of a separate envelope that is retained in the Official Personnel Folder (OPF) in which performance-related documents are retained. (Throughout these regulations, where the term EPF is used it refers to both the folder and the envelope.) Additionally, the EPF is only part of an overall performance-related document system that also includes performance work folders maintained by supervisors and managers. The Office has long permitted agencies (under instructions contained in Federal Personnel Manual Supplement 293-31, Subchapter 8) to have work folders maintained at the work site by supervisors/managers. However, the Office has not prescribed what documents/records are authorized to be retained in such folders and does not intend to do so under these regulations. Such folders are presently used by the supervisor/manager primarily for the purpose of documenting performance, discussions on performance, and to retain other data that can be considered performance-related. To the extent that a work folder contains only such performance-related documents it will be covered by these regulations. It is possible, of course, for agencies to prescribe that no work folders are to be maintained by a supervisor/manager and that all performance-related documents will be maintained in the EPF.

The Office intends to publish a separate Privacy Act notice for a new Government-wide system of records to cover the EPF and the performance work folder at the job site. In the interim, records created under these regulations are considered part of the Office's system of records identified as OPM/GOV-1, "General Personnel Records"

(44 FR 61702). Under that notice all documents in the EPF are covered and all documents in the work folder that are performance-related (including information about the individual's Federal and non-Federal service, general identification data, and information on training) are covered. Should agencies permit retention of other records, not performance related, in the performance work folder, then the agency and not the Office would be responsible for issuing regulations and a Privacy Act system notice concerning such documents as well as for all Privacy Act issues raised concerning such records. The agency must decide when and which documents maintained by supervisors/managers, are to be placed in the EPF rather than retained in work folders. Such decisions shall be within certain parameters developed jointly by the Office and agencies and issued in a new subchapter to Federal Personnel Manual Supplement 293-31 to be identified as "Employee Performance Files."

#### Reasons Behind These Proposals.

Prior to the Civil Service Reform Act of 1978, the appraising of an employee's performance was, in most cases, reduced to a yearly awarding of an adjectival rating of Outstanding, Satisfactory, or Unsatisfactory. The documents in support of such appraisals were often: (1) non-existent; (2) unknown to the agency or employee; (3) considered personal notes of the supervisor/manager not available to the employee; (4) not always retained after the appraisal was issued and, if retained, retained for different periods of time; or (5) retained at various locations within the agency. Since performance now takes on a more significant role vis-a-vis an employee's career (including salary rate for employees under a Merit Pay system) and mission accomplishment, it is appropriate to have specific rules and instructions dealing with records and documents needed to support the appraisal and any recommendation to reward good performance or to take remedial action based on poor performance.

In the Office's current instructions (Federal Personnel Manual Supplement 293-31, "Basic Personnel Records and Files System") there is no mention of documents used to support an appraisal

given. In recognition of the key role that supervisors/managers must play in successfully implementing agency performance appraisal plans, those plans, which must be reviewed by the Office, should contain detailed procedures which supervisors/managers are to follow in appraising performance, including the maintenance of sufficient records to support the appraisal given and any recommendation based on it. The Office encourages this approach because having this open and ongoing communication between the supervisor/manager and the employee properly recorded throughout the appraisal period will help to ensure successful implementation of performance plans. Further, the Office recognizes that only individual agency management can develop meaningful descriptions of what supporting documents are necessary and appropriate in any given situation. Although these proposed rules provide only general guidelines on what supporting documents or records are to be considered as part of the overall employee performance system, they do require agencies to issue specific internal guidance that will describe agency-mandated supporting documents in detail.

With the passage of the Privacy Act of 1974, it became necessary for all agencies to maintain only relevant and necessary records concerning its employees and for employees to know of the existence of such records and be able to review them. With the passage of the Civil Service Reform Act it became necessary for all affected agencies to develop and implement performance appraisal plans. It is quite clear that under the numerous plans being developed (in many cases separate plans for SES employees, merit pay employees, and all other employees) by each agency and, in many cases, by sub-organizations of the departments and major agencies, that recording and documenting performance and performance appraisal will be almost as varied as there are agencies and missions within agencies. The Office believes that this variety of plans and implementing instructions could result in an unacceptable increase in the potential to: (1) retain unnecessary records; (2) not identify all records to interested parties; (3) use the records inappropriately; and (4) fail to give full Privacy Act rights to the data subject. Thus, more detailed records management policies for performance-related documents are necessary to ensure: (1) that sufficient documentation exists to enable supervisors/managers to effectively operate; (2) that only

relevant and necessary records are retained (and only for as long as they remain relevant and necessary); and (3) that Privacy Act rights to know of and have access to such records are protected. The Office believes the proposed performance records system will accomplish these ends.

Thus, OPM decided that an EPF would provide a system, apart from the OPF, that brings together performance related data into one location as some agencies prefer and as most agencies wanted for Senior Executive Service appointees.

Further, the establishment of a Government-wide Privacy Act system of records for all performance related records (as described in agency performance plans and implementing instructions) wherever they are located (EPF or work folder), ensures that employees know what records are retained regarding their performance, that their Privacy Act rights will be protected, and that uses of the data (both inside and outside the agency) will be more limited than if all records were in the OPF. Though the proposed rules provide for alternate retention of performance related records in a separate envelope in the OPF as requested by several agencies, when the OPF is needed and such use does not require access to performance data, the envelope can easily and, indeed, must be removed to protect the employee's privacy.

Under the system of appraising employee performance in effect prior to the Civil Service Reform Act, Office procedures required that Outstanding and Unsatisfactory appraisals be filed as permanent records in the Official Personnel Folder (OPF), while a Satisfactory appraisal was to be considered a temporary record which could be filed in the OPF, but had to be removed when transferring the OPF out of the employing agency. Since an Outstanding appraisal could be used for extra credit in a RIF situation only while it was the most recent appraisal of record, and since an Unsatisfactory appraisal could serve as a basis for remedial action only until superseded, justification of the permanent retention of these documents became difficult, if not impossible, in light of the Privacy Act mandate to maintain only *relevant* and *necessary* records.

The Office also needed to reassess the retention schedules for performance appraisals, keeping in mind the intentions of the Civil Service Reform Act as expressed in 5 U.S.C. 4303(d) regarding the removal of appraisals of unacceptable performance from the record in certain circumstances.

However, the Office recognizes management's need to retain individual performance appraisals for some period of time to support actions such as merit pay increases and as required by 5 U.S.C. 4314(b)(3) where certain performance appraisals must be retained for five years on Senior Executive Service appointees. In recognition of these requirements and to minimize burdens which would result from many different retention schedules, the Office is proposing a five year retention schedule for all performance appraisals (except as required by 5 U.S.C. 4303(d)).

#### Agency Flexibility Ensured

Flexibility is provided by allowing agencies to issue whatever implementing instructions the agency determines are necessary for its purposes regarding performance appraisal supporting documents within certain broad parameters. Further, by recognizing and providing for a performance work folder at the job site, supervisors/managers have the flexibility they need to document and evaluate performance. Yet, in keeping with current Federal policies concerning records (e.g., (1) as intended in the Privacy Act's mandate to keep *only relevant and necessary records*, (2) the management goal to *eliminate retention of unnecessary records*, and (3) in several negotiated agreements which state that such records *serve no useful purpose* after the period wherein a grievance may be filed has passed), the Office deems it appropriate to prescribe a maximum retention period of one year for such supporting documents filed either in work folders or the EPF itself. *The Office specifically invites agencies, labor organizations, and other interested parties to provide comments concerning the proposed retention schedules for performance appraisals and supporting documents.*

#### Necessity for Multiple Files Eliminated

It is the Office's intention that records pertaining to such actions or recommendations that relate to performance (e.g., performance awards, cash awards, merit pay increases, denial of within grade increases, training, and failure to complete probationary periods), are considered part of this system and should be retained in the EPF rather than in another separate folder. Documentation of actions taken under 5 CFR Part 752 (Adverse Actions) are not considered part of this system. In some instances records in this system will also become part of another record system, e.g., grievance files, Part 752 adverse action files, a discrimination

complaint file, or a file resulting from an appeal to the Merit Systems Protection Board. Such copies are covered by the system of records covering the other file(s) and are subject to all requirements of the Privacy Act contained in the notice for those systems of records.

When an appraisal is given and subsequently challenged, e.g., as provided for in the performance appraisal plan, that appraisal shall be noted as having been challenged. Most agency performance appraisal plans reviewed by the Office this far provide for a procedure in the plan itself or in the implementing instructions whereby employees may challenge any appraisal or decision on that appraisal. To preclude inappropriate use of the Privacy Act as a vehicle to substantively challenge an agency appraisal on its merits, the Office recommends that all agencies describe, in the performance plan or implementing instructions, the procedures available for challenging an appraisal.

#### In Summary

These proposed rules were developed to provide the minimum requirements to help ensure successful implementation of performance appraisal plans through identification of: (1) performance related records; (2) the locations of such records and their retention schedule; (3) what uses will be made of such records (both by the agency and by others outside the agency); and (4) what protections exist that ensure employee rights to have access to the records, to correct records, and to know that their privacy will be protected. Further, under these rules agencies have the flexibility needed to develop records management procedures to fit the employment situation and to prescribe, with certain exceptions, whether records are to be maintained by the immediate supervisor/manager only, in the servicing personnel office only, or both locations and with regard to how long supporting documents (e.g., quality and quantity reports) should be retained.

The Director, Office of Personnel Management, has determined that these regulations are significant within the meaning of Executive Order 12044, Improving Government Regulations.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR Part 293 is amended by the addition of a new Subpart D, Employee Performance Records.

## PART 293—PERSONNEL RECORDS

### Subpart D—Employee Performance Records

#### Sec.

- 293.401 Applicability of regulations.
- 293.402 Establishment of separate performance file.
- 293.403 Contents of performance files.
- 293.404 Retention of records.
- 293.405 Disposition of records.

Authority: 5 U.S.C. 552a and Section 4305 and 4315 of 5 U.S.C.; E.O. 12107 (December 28, 1978); 5 U.S.C. 1103, 1104, and 1302; 3 CFR 1954-1958 Compilation; 5 CFR 7.2; E.O. 9830, 3 CFR 1943-1948 Compilation.

### Subpart D—Employee Performance Records

#### § 293.401 Applicability of regulations.

This subpart applies to Executive agencies as defined in sections 105, 3132(a)(1) and 4301(1) of title 5, U.S. Code, including Military Departments as defined in section 102 of title 5, U.S. Code and independent establishments as defined in section 104 of title 5, U.S. Code. Within those agencies, the requirements of this subpart rules and regulations, including positions as defined in 5 U.S.C. 3132(a)(2).

#### § 293.402 Establishment of separate employee performance folder.

(a) Performance appraisals and related documents may be retained in the Official Personnel Folder (OPF) only when the agency prescribes the use of a separate envelope, temporarily located in the OPF and removed whenever the OPF (except as required in § 293.404(b) of this part) is transferred to another agency or to records storage. No duplicate copy of any performance appraisal shall be retained on the left or right side of the OPF.

(b)(1)(i) For each employee occupying a position described in § 293.401 of this Part, the employing agency shall provide for either a separate folder that is (except as provided for in paragraph (b)(2) of this section) located in the same office with the Official Personnel Folder, or an envelope kept in the Official Personnel Folder itself, in which shall be kept the copy of record of employee performance appraisals and any supporting documents the agency appraisal plan or internal regulations implementing the appraisal plan designates.

(ii) The agency plan or implementing instructions may also, at the discretion of the agency, permit or require immediate supervisors or managers (individually or grouped together in a servicing administrative office) to retain

copies of such performance documents or to retain originals of those documents used to support the appraisal issued, but which are not forwarded with the appraisal itself, in a performance work folder at the job site.

(iii) When supervisors retain these documents, they are part of the Privacy Act system of records the Office has established and it is the agency's responsibility to ensure that such documents are retained in accordance with the Office's Privacy Act regulations in Part 297 of this chapter and the retention schedule for performance documents stipulated in § 293.404 of this subpart. The agency performance appraisal plan or implementing instructions shall explicitly include this agency responsibility.

(2) Section 4314(c)(1) of title 5, U.S. Code, requires agencies to establish one or more performance review boards who shall make recommendations regarding performance of senior executives. To facilitate the role of these boards, an agency choosing to use an Employee Performance Folder, rather than an envelope in the Official Personnel Folder (OPF), may elect to have the board or other designated office servicing the board maintain the folder. (c)(1) Supervisors and managers shall provide their employees access to their performance documents maintained as specified by agency performance appraisal plans or implementing instructions. Such a request for access shall be processed in accordance with established agency procedures (e.g., upon receipt of a written request) for processing such requests, consistent with Office of Personnel Management regulations regarding access to records contained in Part 297 of this chapter. Such access shall be provided to the employee or to the employee's designated representative, and such records may also be disclosed to other agency officials who have a need for the documents in the performance of their duties.

(2) All other requests for performance documents made to supervisors or managers (e.g., Freedom of Information Act requests or requests made under the "routine use" provisions of the Privacy Act) shall be processed in accordance with agency procedures.

(3) Privacy Act requests for amendment of performance related records maintained either by supervisors and managers in a work folder or in the EPF shall be processed in accordance with agency procedures consistent with Office of Personnel Management regulations regarding amendment of records contained in Part 297 of this chapter.

(d) Agencies may maintain performance appraisals in an automated system, provided the agency performance plan or implementing instructions contain necessary procedures to ensure that the same requirements as in paragraph (c) of this section, relating to manual records in the possession of supervisors/managers, are met.

**§ 293.403 Contents of employee performance folders.**

(a) Consistent with § 293.403(b), a decision on what constitutes a performance document within the meaning of this subpart rests with the agency. Agency appraisal plans and implementing instructions, both for incumbents of the Senior Executive Service and other positions, shall provide specific written guidance in the description of what constitutes the agency's official performance forms and documents.

(b) Agency implementing instructions describing records directly related to performance shall indicate whether they are retained by the supervisor/manager only, in the Employee Performance Folder or in an envelope in the OPF only, or in both locations and how and when they are to be destroyed. Such instructions shall also describe what records are considered to be performance-related (as specifically as is feasible) and shall include such records as:

(1) Any form or other document which records the performance appraisal, including appraisals leading to merit pay determinations.

(2) Any form or other document used by supervisors/managers to recommend a personnel action affecting an employee (including a request for personnel action document only when the action is not effected), when the basis for the action (e.g., removal, reassignment, demotion, promotion, or merit pay or other performance award) is performance-related.

(3) Recommendations for training that are performance related. (Documentation of completed training is to be filed in the OPF.)

(4) Any form or other document furnished in support of recommended actions such as those listed in paragraph (b)(2) of this section and the final decision on the matter (e.g., a recommendation for merit pay or the agency decision to grant only one-half comparability).

(5) Any form or other document which the supervisor/manager is required by the agency to keep during an appraisal

period, although such documents need not be forwarded to the Employee Performance Folder along with the actual appraisal (e.g., quality control records, production records, or similar records used to track employee performance during the appraisal period, but which are not needed after the appraisal is given and, therefore, need not be filed in the Employee Performance Folder).

(6) Any form or other document regarding Performance Review Board decisions, including supporting documentation and any transcript of hearings or testimony from witnesses.

(7) Any form or other document regarding decisions or recommendations of agency Executive Resources Boards related to performance appraisal or actions resulting from performance appraisals.

(8) Appraisals of potential (e.g., in connection with an agency's merit promotion procedures) if agency performance plans or implementing instructions specifically require or permit the supervisor/manager to retain a copy.

(9) Individual development plans.

(10) General information about the employee, i.e., identification data, information concerning Federal and non-Federal employment experience, and information about any training programs the employee participated in.

**§ 293.404 Retention schedule.**

(a) No performance appraisal is a permanent record and, except for appointees to the Senior Executive Service, performance records for other employees (including incumbents of executive positions not covered by the Senior Executive Service) are to be retained as follows:

(1) Final summary performance appraisal forms or documents, except as noted in paragraph (a)(5) of this section, are retained for five years from the date of the appraisal while the records in support of the appraisal (except as provided for in paragraph (c) of this section), either forwarded with the appraisal or retained by a supervisor/manager, will generally be destroyed no later than one year after issuance of the appraisal and may be destroyed sooner if the agency specifies.

(2) When an employee (including an incumbent of an executive position not covered by the Senior Executive Service) leaves his/her employing agency (or is appointed to a Senior Executive Service position in the same agency), all performance documents pertaining to such employees shall be

destroyed no later than one year after the separation or appointment. When an employee is reassigned within the employing agency, the Employee Performance folder (or envelope) may be transferred to the gaining office.

(3) Where an agency performance appraisal plan provides for an appraisal of unacceptable performance in which a recommendation to remove or demote is not made (a recommendation for other action, e.g., reassignment or training, may accompany such appraisal), the appraisal is to be retained for five years. Records in support of the appraisal, either forwarded with the appraisal form or retained by supervisors/managers, shall be destroyed no later than one year after issuance of the appraisal and may be destroyed sooner if the agency specifies.

(4) Appraisals of unacceptable performance where a demotion has occurred shall be retained for five years after the action. Supporting documents shall be retained for not more than one year.

(5) Appraisals of unacceptable performance, where a notice of proposed demotion or removal is issued but not effected, and documents related thereto, pursuant to U.S.C. 4303(d), must be destroyed after the employee completes one year of acceptable performance from the date of the advanced written notice of the proposed removal or reduction in grade notice. Under conditions specified by an agency earlier destruction date is permitted.

(b) Performance records for Senior Executive Service Employees, including those serving a Presidential appointment under 5 U.S.C. 3392(c), are to be retained as follows:

(1) Pursuant to 5 U.S.C. 4314(b) (3) and (4), Senior Executive Service (SES) appointees shall have their performance-related records maintained for five consecutive years. Where a break of more than 30 days in SES service occurs and the individual subsequently returns to a position in the Service, the records must be maintained for five consecutive years beginning with the effective date of the new appointment, including individuals receiving appointments pursuant to 5 U.S.C. 3593(b). Performance-related records concerning the previous SES service shall be destroyed no sooner than 31 days nor later than one year after the original separation.

(2) When an appointee of the Senior Executive Service moves to another position in the Service, either with the same or a different agency, all performance documents five years old



or less shall be forwarded in the Employee Performance Folder along with the individual's Official Personnel Folder.

(3) When an employee in the Senior Executive Service accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance folder shall be retained as long as the employee remains employed under that Presidential appointment. When the appointment ends, and the individual does not return to the Senior Executive Service (includes cases where the individual leaves Federal service and cases where the individual receives an appointment to a non-SES position in the same or another agency), all performance records shall be destroyed no later than one year after the separation.

(c) Where any performance appraisal document is needed in connection with an ongoing administrative, negotiated, quasi-judicial, or judicial proceeding, it may be retained for as long as necessary beyond the retention schedules identified in paragraphs (a) and (b) of this section.

(d) Screening and purging of folders/envelopes and supervisors/managers' work folders for the purpose of compliance with these retention schedules shall be through any agency process insuring consistency with the requirements (e.g., when a new appraisal is placed in the folder/envelope or when the supervisor/manager conducts a review of performance with the employee during the appraisal period).

(e) Retention of automated performance appraisal records beyond the scheduled destruction period described in this section is permitted only for use in any management statistical analysis or review program (e.g., a review of the agency's performance appraisal plan) and only if the agency performance plan or implementing instructions contain language and procedures precluding use of individually identifiable data by agency officials in reaching a decision affecting an employee where the manual copy of the appraisal has been or should have been destroyed.

#### § 293.405 Disposition of records.

(a) Because performance appraisal records filed in the performance folder/envelope are not considered permanent in nature, such records shall not, except when maintained in a separate envelope in the OPF of an active employee or as provided for the § 293.404(b) of this part, be placed in the Official Personnel Folder (OPF) or otherwise sent to another agency or to the National

Personnel Records Center for filing in an OPF. Envelopes stored in an employee's OPF shall be removed before forwarding the OPF to a new agency or to the National Personnel Records Center for storage.

(b) Consistent with transfer instructions pertaining to SES positions contained in § 293.404(b) of this part, performance folder/envelopes shall be forwarded to gaining agencies at the same time as the OPF (5 CFR § 293.207).

(c) Consistent with retention schedules promulgated in § 293.404 of this subpart, destruction of performance appraisal records shall be in accordance with agency procedures (e.g., by shredding, burning, or offering them to the employee).

(d) If a former employee returns to an agency, a new performance folder will be created unless the prior folder for this employee is still available. The original folder may be re-activated provided that, consistent with destruction requirements promulgated in § 293.404 of this subpart, the contents are properly disposed of. However, an agency may retain some of the earlier documents consistent with the time schedules in § 293.404.

(e) When an employee is reassigned within the same agency, consistent with provisions in § 293.404(a)(2) of this subpart, the EPF and the performance work folder may remain active.

(f)(i) It is the responsibility of the agency Personnel Director to maintain Employee Performance Folders and work folders in accordance with this subpart and subparts A and B of this Part, with Part 297 of this title, and with Office of Personnel Management guidance.

(ii) This responsibility may be delegated only to servicing personnel offices (or SES Performance Review Boards or a designated office servicing the Board) within the agency where Official Personnel Folders and Employee Performance Folders are physically maintained. Agency performance appraisal systems or implementing guidelines shall provide instructions for compliance with Office rules and procedures as well as descriptions of performance appraisal documents and where they are retained, and shall ensure that copies of appraisal records retained by supervisors or managers as well as any retained in automated personnel records, are retained in accordance with the provisions of § 293.402 of this subpart.

[FR Doc. 81-2996 Filed 1-26-81; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1065

[Docket No. AO-86-A39-RO1]

### Milk in the Nebraska-Western Iowa Marketing Area Decision on Proposed Amendments to Marketing Agreement and to Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision changes certain provisions of the present order based on industry proposal considered at a public hearing held October 24-27, 1978 and October 23-25, 1979. Location adjustments for pricing producer milk are modified and pool plant qualification standards for supply plants are revised. Another change provides a late-payment charge of 1 percent per month on any overdue obligation by a handler of the market administrator. The changes are necessary to reflect current marketing conditions and to insure orderly marketing in the area. Cooperative associations will be polled to determine whether producers favor the issuance of the proposed amended order.

**FOR FURTHER INFORMATION CONTACT:** Maurice M. Martin, Marketing Specialist, Dairy Division, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7183.

**SUPPLEMENTARY INFORMATION:** This final decision has been reviewed under the USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant." This decision constitutes the Department's Final Impact Statement for this proceeding.

Prior documents in this proceeding: Notice of Hearing: Issued September 29, 1978; published October 4, 1978 (43 FR 45881).

Extension of time for filing briefs: Issued January 15, 1979; published January 19, 1979 (44 FR 3989).

Recommended decision: Issued July 24, 1979; published July 30, 1979 (44 FR 44523).

Extension of time for filing exceptions: Issued August 29, 1979; published September 5, 1979 (44 FR 51813).

Notice of reopening of hearing: Issued October 1, 1979; published October 4, 1979 (44 FR 57103).

Revised recommended decision: Issued July 24, 1980; published July 31, 1980 (45 FR 50773).

Extension of time for filing exceptions: Issued August 13, 1980; published August 19, 1980 (45 FR 55213).

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Nebraska-Western Iowa marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Omaha, Nebraska, on October 24-27, 1978, and October 23-25, 1979, pursuant to notice thereof issued September 29, 1978 (43 FR 45881) and October 1, 1979 (44 FR 57103).

On the basis of the evidence received at the October 24-27, 1978, hearing, the Deputy Administrator, Marketing Program Operations, issued a recommended decision (44 FR 44523) which contained a detailed discussion of the findings and conclusions on the issues under consideration. Interested parties were invited to submit written exceptions, and a number of exceptions were received.

Several parties in their exceptions claimed that some of the recommendations contained in the recommended decision concerning Class I price zones and location adjustments went beyond the scope of the proposals specifically set forth in the hearing notice. These parties indicated that had they known that certain order changes tentatively adopted in the recommended decision were under consideration, they would have submitted specific testimony regarding the possible changes. Accordingly, the parties asked that they be given an opportunity to present additional evidence on the proposed order changes at a reopened hearing.

Based on these requests, it was concluded that in the public interest the hearing should be reopened for the purpose of receiving additional evidence concerning the economic and marketing conditions related to any of the proposals set forth in the original notice of hearing (43 FR 45881) and to any of the recommendations of the Department set forth in the recommended decision (44 FR 44523) of this proceeding. The reopened hearing was held October 23-25, 1979, in Omaha, Nebraska.

Upon the basis of the evidence presented at both the initial and reopened hearings and the record thereof, the Deputy Administrator, Marketing Program Operations, on July 24, 1980, filed with the Hearing Clerk, United States Department of Agriculture, his revised recommended decision containing notice of the

opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the revised recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under issue number 1, "Pooling standards for supply plants":
    - (a) Paragraph 42 is revised.
    - (b) Three new paragraphs are added after paragraph 44.
    - (c) One new paragraph is added after paragraph 52.
    - (d) One new paragraph is added after paragraph 54.
    - (e) One new paragraph is added after paragraph 65.
    - (f) Four new paragraphs are added after paragraph 67.
    - (g) One new paragraph is added after paragraph 70.
  2. Under issue number 3(b) "Additional testimony adduced at the October 23-25, 1979, hearing", a paragraph is added after paragraph nine.
  3. Under issue number 3(c) "Findings and conclusions based on the two hearing sessions":
    - (a) Two new paragraphs are added after paragraph 15.
    - (b) Paragraph 18 is revised.
    - (c) One new paragraph is added after paragraph 26.
    - (d) One new paragraph is added after paragraph 37.
    - (e) Paragraphs 41 and 42 are revised.
  4. Under issue number 3(d) "Application of Location Adjustment Credits", a paragraph is added after paragraph 10.
- The material issues on the record relate to:
- (1) Pooling standards for supply plants.
  - (2) Diversion of producer milk.
  - (3) Class I price zones and location adjustments.
  - (4) Payments to producers and cooperative associations.
  - (5) Charges on overdue accounts.
  - (6) Market administrator's reports and announcement concerning classification.

#### Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearings and the record thereof:

1. *Pooling standards for supply plants.* Several modifications should be made in the pooling standards for supply plants.

First, the period during which a supply plant must ship milk to a pool distributing plant to be eligible for automatic pooling status in a later period should be changed from September

through December to September through March. Correspondingly, the months of automatic pooling should be changed from January through August to April through August.

Second, producer milk that is delivered by the operator of a supply plant directly from producers' farms to pool distributing plants should count as qualifying shipments from the supply plant for purposes of determining the supply plant's pooling status. However, the quantity of direct deliveries that may count as qualifying shipments should be limited to 50 percent of the total shipments required for pooling.

Third, the Director of the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, should be given authority to increase or decrease supply plant shipping requirements by up to 20 percentage points if additional shipments are needed or to prevent uneconomic shipments to distributing plants.

Presently, a supply plant must transfer 40 percent of its receipts of milk to pool distributing plants during the month to qualify as a pool plant. However, if the supply plant qualifies as a pool plant during each of the months of September through December, it automatically qualifies as a pool plant during the following months of January through August.

The order also provides that a supply plant operated by a cooperative association may qualify as a pool plant on the basis of the cooperative's total milk movements to distributing plants either by transfer or directly from member producers' farms. Under this provision, a plant operated by a cooperative qualifies as a pool plant if at least 51 percent of the cooperative's milk pooled each month is delivered to pool distributing plants of other handlers. For the purpose of this discussion, such a plant shall be referred to as a "cooperative balancing plant."

Several proposals dealing with supply plant performance standards were considered at the hearing. Mid-America Dairymen, Inc. (Mid-Am), proposed that shipping requirements be increased to 50 percent of Grade A receipts during each of the months of September through December and 30 percent during each of the months of January through August. It also proposed that the market Administrator be given the authority to increase or decrease these shipping requirements by up to 20 percentage points if he finds such revision is necessary to obtain needed milk shipments or to prevent uneconomic shipments.

A proposal by Wells Dairy, Inc., would increase the supply plant shipping requirements to 60 percent each month, except that if a supply plant qualified as a pool plant during each of the months of August through December, it would have to ship only 40 percent of its receipts during the following months of January through July.

A proposal by Roberts Dairy Company would have increased shipping requirements for supply plants to 50 percent each month of the year. At the hearing, however, proponent withdrew its proposal and said it would instead support either Mid-Am's proposal or the proposal of Wells Dairy. The proposal of Roberts Dairy was not supported by any other interested party.

Fairmont Foods Company also proposed that supply plants be required to ship every month of the year. Fairmont proposed that shipping requirements be equal to about 90 percent of the projected Class I utilization for the month and that such shipping requirement be announced on the 5th day of the month. In further elaboration of its proposal, a spokesman for Fairmont indicated that supply plant operators should be allowed to include deliveries directly from producers' farms to pool distributing plants as part of their qualifying shipments.

Associated Milk Producers, Inc., also proposed a modification of the present supply plant pooling standards. AMPI proposed that the present 40 percent shipping requirement be maintained but that a cooperative association that operates a supply plant be allowed to include as qualifying shipments from the plant milk that is delivered directly from producers' farms to pool distributing plants.

A proposal by Kraft, Inc., provides for options under which a supply plant could qualify for pool plant status. The first option would modify the present supply plant provision by allowing supply plant operators to include, as qualifying shipments, milk delivered directly from producers' farms to pool distributing plants.

The second option proposed by Kraft would provide for what may be called a "reserve supply plant" provision. Under this provision, which would be restricted to supply plants in the marketing area or within 100 miles of the nearest edge of the marketing area, a handler would notify the market administrator of his estimated receipts for the month, and the market administrator would call on the handler to ship milk when and where it was needed that month. The market administrator would have to give the handler 24 hours' notice for such

shipments and could not require the handler to ship more than 90 percent of the milk received by the handler on any given day. For the entire month, a handler could not be required to ship a percentage of its supply that is higher than the Class I utilization for the same month of the preceding year.

Basically, two views emerged at the hearing regarding pooling standards for supply plants. One view held that higher supply plant shipping standards are needed to offset a shortage of milk at distributing plants caused by Mid-Am's decision to hold back pooled milk for its manufacturing operations. This view formed the basis for the several proposals that would require significantly higher shipping requirements for supply plants.

A second view presented at the hearing was that there is no shortage of milk for the fluid market; that any so-called shortage was a contrived shortage; that higher shipments were not needed; and that more milk could be made available to pool distributing plants if the order would permit supply plant operators to ship milk to distributing plants directly from producers' farms.

A representative for Mid-Am, which is the market's major supplier of raw milk, testified that his organization has been shipping an ever-increasing percentage of its milk to pool distributing plants, thereby resulting in a decreasing volume of milk available for processing at its manufacturing plants. He claimed that at the same time other suppliers (i.e., supply plant operators) have been holding back milk for manufacturing purposes. This, he said, has resulted in an increasing difference in manufacturing plant efficiencies between those organizations shipping a large percentage of their milk to pool distributing plants and those shipping lower percentages. The end result, according to this witness, has been that Mid-Am has been at a competitive disadvantage in terms of pay prices to producers as its manufacturing plants have become less and less efficient because of the reduced volume of milk being processed.

The witness indicated further that Mid-Am concluded that it could no longer continue to supply the fluid needs of the market at levels which were considerably above those required by the order.<sup>1</sup> Mid-Am then advised handlers of its decision to reduce fluid

sales in order to improve the efficiency of its manufacturing plants.

After trying to secure alternative supplies of milk, these handlers asked Mid-Am to develop an import program to secure the necessary supplies of milk. According to the witness, Mid-Am then arranged to import milk from plants in the Upper Midwest and Chicago Regional order markets. Mid-Am charged handlers an additional 12 cents per hundredweight on all milk (pooled milk as well as imported milk) purchased from Mid-Am to cover the cost of obtaining the imported milk.

Mid-Am's witness pointed out that in September 1978, when Mid-Am imported 4.5 million pounds of milk from plants regulated under other orders, the Class I utilization in the Nebraska-Western Iowa market was only 51 percent. This witness stressed that the need to import this milk would not have been necessary if the order had required realistic shipments from supply plants. He said that presently a supply plant could qualify for pooling by shipping only 13 percent of its annual receipts to pool distributing plants.<sup>2</sup> While noting that this figure is below the percent shipped by all supply plants during the period from 1977 through September 1978, he emphasized it is well below the 78 percent shipped by Mid-Am during this period.

The witness summarized Mid-Am's position by stating that Mid-Am did not intend to ship milk at the levels it had in the past to the detriment of the economic position of its members when other suppliers on the market are not shipping comparable amounts. He therefore maintained that the order should be amended to force other parties in the market to ship more milk in order to fill this void.

Several distributing plant operators or their representatives testified about the "shortage" of milk in the market. While disturbed about the higher price charged by Mid-Am, almost all witnesses acknowledged an understanding of Mid-Am's position—in particular, the need to stay competitive in terms of producer pay prices with other cooperatives and proprietary handlers who were competing for producers. On questioning, these witnesses conceded that there was not an actual shortage of milk in the market, but that instead a profitable manufacturing milk market was making it very difficult to attract supplies of milk for their total plant

<sup>1</sup> During the first 9 months of 1978, Mid-Am shipped from 68 to 89 percent of its milk supply on this market to pool distributing plants. The order requires at least 51 percent each month under the pooling provisions being used by Mid-Am.

<sup>2</sup> This apparently is derived by multiplying the 40 percent supply plant shipping requirement by the 4 qualifying months of September-December and then dividing the product by 12.

needs at a price which the distributing plant operators considered reasonable.

The distributing plant operators claimed that the order was failing in its alleged objective of making adequate supplies of milk available to distributing plants for their total Class I and Class II needs at competitive prices. In support of this claim, they emphasized that the 12-cent per hundredweight additional import charge for all milk purchased from Mid-Am distorted their milk costs and impeded their ability to compete with handlers in surrounding nearby Federal order markets. It was their belief that they should not have to pay "exorbitant" over-order prices to obtain adequate supplies while at the same time many of the pool supply plants are engaged principally in cheese production.<sup>3</sup> It was their contention that the order should "force" milk out of these supply plants by requiring them to ship a higher percentage of their milk supply to distributing plants.

A representative of Fairmont Foods testified that his company had no objection to allowing all Grade A producers in the area to share in the marketwide pool. However, he said, such producers and the plants to which they ship should have an obligation to contribute their fair share toward supplying the Class I and Class II needs of the market. In this connection, he indicated that, as the number of supply organizations and supply plants with extensive manufacturing capabilities increases, shipping requirements must be higher to assure that all such operations are furnishing their fair share of milk for the Class I and Class II needs of the market.

AMPI opposed the proposals to increase the supply plant shipping percentages. The spokesman for the cooperative indicated that higher shipping requirements would not make more milk available to distributing plants, as proponents claimed, but could in fact cause milk supplies to be removed from the market. The witness stressed that higher shipping requirements could result in increased costs of AMPI in qualifying its pool supply plant with such higher costs being borne by producers and consumers. He maintained that the order's present 40 percent shipping requirement is proper and provides the necessary transition in supply plant pooling standards between the lower Class I utilization markets to the north and the higher utilization markets to the south of the Nebraska-Western Iowa

market. The cooperative's spokesman stated further that he believed that the supply problem of distributing plants was not related to the order's pool plant shipping requirements but was due, instead, to a business decision of Mid-Am to retain pooled milk in its plant for manufacturing.

Kraft, which operates a pool supply plant in the market, also opposed the proposals to increase the supply plant shipping requirements on the basis that a need for an increase in shipping requirements is not supported by market requirements. The spokesman for the handler stated that pooling standards must reflect the Class I needs of the market. He stated that its proposal to pool a supply plant as a reserve supply plant provided the most practical and efficient method of meeting the objectives of the order's supply plant provisions by providing for supply plant shipments to the market when such shipments are needed and by avoiding the costly inefficiencies inherent in requiring shipments in excess of the market's needs.

He also testified that Kraft is willing to ship its pro rata share of milk supplies to distributing plants, but that Kraft has not been able to consistently do so for several reasons. He said that distributing plant operators do not want to replace direct-ship milk with supply plant milk; that distributors do not receive milk 7 days a week; and that bad weather has often made it difficult to ship the milk, especially since the milk first has to be received at its supply plant and then transhipped to a distributing plant. He indicated that allowing shipments directly from producers' farms to pool distributing plants to count as qualifying shipments for supply plants would make it easier for Kraft to associate more of its milk supply with pool distributing plants.

Five other proprietary supply (cheese) plant operators also testified with respect to changing the pooling standards for supply plants. While opposed to any increase in the shipping requirements, these handlers testified in support of allowing deliveries directly from producers' farms to count as qualifying shipments for their supply plants. They stated that this change would allow them to deliver milk more efficiently. They cited several examples where their farm pickup trucks go right by a distributing plant on the way to their supply plants. The milk then has to be unloaded at their plants and then reloaded and shipped back to the distributing plant.

One supply plant operator described how he would be able to make more milk available to distributing plants if

the milk could move directly from producers' farms. He said that the cost of having to haul milk first to his plant and then to a distributing plant often makes it uneconomical to make such sales. In addition, he said at times it has been impossible to find over-the-road tankers to haul milk from his plant to a distributing plant.

It is obvious from the testimony presented that there are rather sharp differences of opinion regarding what proportion of a supply plant's receipts should be shipped to a pool distributing plant to qualify the supply plant as a pool plant. Essentially, however, the minimum shipping requirements of the order should assure that those supply plants that are sharing in the Class I proceeds of the fluid market will make needed milk supplies available to distributing plants for fluid use. It is within this context that supply plant shipping requirements must be considered.

The adoption of substantially higher shipping requirements on a year-round basis, as provided under several proposals, should be based on an indication that distributing plants are experiencing difficulty in obtaining an adequate supply of milk for Class I use. Data introduced into the record show that deliveries of milk to pool distributing plants by all suppliers have consistently been in excess of the fluid needs of such plants. For example, during the 26-month period of August 1977-September 1979, the ratio of total receipts at distributing plants from producers and pool supply plants to total Class I producer milk averaged 124, ranging from a low of 115 in December 1978 to a high of 129 in October 1977, July 1978, and July 1979. In fact, this ratio was 122 in September 1978, the first month in which Mid-Am held back local supplies for its manufacturing operations. These data indicate that distributing plants are obtaining from all suppliers regularly associated with the market an adequate supply to meet their fluid needs.

The record does not support proponents' claim that an increase in shipping requirements would make available to distributing plants significant quantities of additional milk supplies. Exhibits of the market administrator introduced into the record show that the same 8 supply plants that were pooled continuously during the 31-month period of January 1977-July 1979 have been shipping milk each month at levels substantially above the order's present minimum shipping requirements. In this regard, Table 1 shows the percentage of the producer milk at each

<sup>3</sup>Most of the supply plants referred to throughout this decision are manufacturing plants specializing in cheese production.

of these plants that was shipped to distributing plants during the following periods: September–December 1977 and 1978; January–March 1978 and 1979; and April–August 1978 and 1979.

Table 1.—Percentage of Producer Milk Received at 8 Pool Supply Plants That Was Transferred to Pool Distributing Plants in the Nebraska-Western Iowa Market During Selected Time Periods<sup>1</sup>

Plant	Sept.-Dec.		Jan.-Mar.		Apr.-Aug.	
	1977	1978	1978	1979	1978	1979
A	79	78	79	81	77	72
B	66	54	64	63	50	52
C	69	56	57	55	44	43
D	43	42	12	25	11	8
E	54	58	34	50	35	48
F	44	43	33	38	25	28
G	81	73	7	65	6	60
H	52	53	48	50	43	66

<sup>1</sup>For each time period, the percentage for each plant is the simple average of the plant's monthly percentages for that period.

<sup>2</sup>Average for April–July only.

From this table, it can be seen that Mid-Am's proposed shipping requirements of 50 percent during the months of September–December and 30 percent during January–August would not have had much practical effect in making more milk available to distributing plants because most of the supply plants on the market already were shipping well above those levels. Likewise, Fairmont's proposal for higher shipping requirements would have had little effect in this regard during the seasonal low-production months when the greatest need for supply plant milk occurs. Those plants that were below these levels are fairly small plants so that any additional milk made available by an increase in shipments from these plants would have been relatively insignificant. While we recognize that the proposal by Wells Dairy would have required a somewhat higher level of shipments, we do not agree that such an increase can be justified.

As indicated, the record established that suppliers have consistently delivered more than the Class I needs of pool distributing plants. A substantial quantity of this extra milk is used in Class II products. In 1979, for example, 10.8 percent of the producer milk in this market was used for Class II use.<sup>4</sup> Presumably, such use occurred largely at pool distributing plants in conjunction with the fluid operations of those plants. It is not the intent of the order to require supply plants to ship milk to distributing plants for Class II use. The order provisions are not structured to

encourage such movements since this normally is an uneconomic marketing arrangement for producers.

There is no demonstration on the record that a shipping percentage higher than the present 40 percent is necessary to assure that supply plants will make adequate quantities of milk available to distributing plants for fluid use. Instead, it is apparent that distributing plants are able to acquire from supply plants whatever milk supplies are needed and when needed for fluid uses. In this connection, it is significant to note that several supply plant operators stated on the record that between the time Mid-Am announced its decision to reduce local supplies to distributing plants and the initial October 1978 hearing none of the distributing plant operators had contacted them for supplemental milk supplies.

Although the supply plant shipping requirements should not be increased above the present 40 percent level, several changes should be made in the pooling standards to encourage greater efficiency in supply plant operations and to assure that distributing plants can continue to obtain adequate supplies for fluid uses from supply plants.

As indicated previously, several of the proposals under consideration would provide for year-round shipping requirements for supply plants. Proponents argued that such requirements should be adopted because distributing plants need milk every month of the year and not just during the months when milk production drops off. They also expressed the view that all supply plants in the market should share on a pro rata basis in supplying the needs of the market each month of the year.

The risk in requiring year-round shipments is that at times supply plants may be forced to make uneconomic shipments merely to qualify for pooling.

During the months of heavier milk production, practically all of the fluid needs of the market can be met by direct shipments from producers' farms. For this reason, it is preferable in this market to allow market forces to dictate how much milk is needed from supply plants during the months of highest milk production.

One proposal under consideration, Kraft's, would provide complete flexibility in this regard by requiring no regular shipments from supply plants. Instead, the market administrator would call on supply plants to ship whenever he deemed such shipments were necessary. The problem with this approach is that the market administrator could become overly involved with directing month-to-month and even day-to-day shipments. In addition, he would be in the controversial position of having to determine when additional shipments from supply plants are actually warranted.

There is no doubt that in this market regular shipments are needed from supply plants, as is evident by the fact that most supply plants are now shipping well above the minimum levels required by the order. In view of this, it is desirable to maintain at least a minimum level of shipments during those months when the market is most in need of such shipments.

Table 2 indicates that the average Class I utilization of this market during the past 6 years is highest during the months of September through March. Data in this table indicate that during the months of January, February, and March, months when no shipments are now required, the average Class I utilization has been about the same as the utilization during the months of September through December, when shipments must now be made.

Table 2.—Class I Utilization in the Nebraska-Western Iowa Market, 1974–79<sup>1</sup>

	1974	1975	1976	1977	1978	1979	Average
January	61	55	57	50	56	52	55
February	59	54	53	49	57	53	54
March	55	55	53	54	50	56	54
April	53	54	50	48	50	49	51
May	47	48	44	44	48	46	46
June	42	44	42	44	44	42	43
July	44	46	43	44	44	41	44
August	47	50	44	49	47	46	47
September	53	59	50	56	51	46	53
October	58	61	53	57	50	51	55
November	58	57	55	60	49	53	55
December	53	56	51	58	50	49	53
Average	52	53	49	50	50	49	

<sup>1</sup> Official notice is taken of the 1975 and 1976 annual summaries of "Federal Milk Order Market Statistics" published by the Agricultural Marketing Service, USDA.

<sup>4</sup> Official notice is taken of "Market Administrator's Report," issued monthly by the Nebraska-Western Iowa Market Administrator, for October, November, and December 1979.

These data lead to the conclusion that the order should be amended to include January, February, and March, along with September, October, November, and December, as the months during which minimum shipments are required from supply plants. A supply plant that meets the shipping requirement during these months would not have to meet the shipping requirement during the succeeding months of April through August. This is not to say that no shipments are needed from supply plants during these months; but at the risk of requiring unnecessary shipments, it is preferable to let market forces determine who ships to whom during those months when production is the highest relative to the Class I needs of the market.

In their exceptions to the initial recommended decision, both AMPI and Kraft opposed the above change of adding January, February, and March as qualifying months in which supply plants would have to make shipments to distributing plants. Also, at the reopened hearing, Kraft reiterated its position regarding this matter. Additionally, in their exceptions to the revised recommended decision, both AMPI and Kraft reiterated their opposition to such change.

The basis of AMPI's and Kraft's opposition to changing the qualifying months for supply plants was essentially that it would force supply plants to make uneconomic shipments in order to maintain pool status or it could cause some plants to lose their pool status during the automatic pooling months. They claimed that marketing conditions as portrayed on the record did not support changing the qualifying months. Additionally, AMPI argued that it would be inconsistent to expand the qualifying period for supply plants in light of the current market situation where the number of qualifying outlets (distributing plants) has declined. The cooperative pointed out that since the close of the initial hearing, three distributing plants had closed.

The record does not support opponents' claim that the adopted change in the qualifying period would result in significant pooling problems for supply plant operators. As indicated, in recent years the market's Class I utilization during the months of January-March has been at about the same level as during the months (September, October, November, and December) when shipments are now required to be made by supply plants. Moreover, during the January-March 1979 period, 6 of the 8 supply plants' actual shipments

to distributing plants exceeded the order's minimum 40 percent shipment requirement by at least 10 percentage points. Under these circumstances, the limited increase in shipping standards adopted herein should not have any major impact on the pooling situation for supply plant operators. Accordingly, the arguments advanced by opponents on this issue provide no compelling basis to modify the change in shipping requirements for supply plants as adopted herein.

AMPI took exception to the preceding findings and conclusions of the revised recommended decision which supported extending the qualifying period for supply plants to include January, February and March. Exceptor argued the record evidence did not support such findings and conclusions on this issue. AMPI's exception raises no new points not already considered in determining the appropriate qualifying period for supply plants. Accordingly, the exception is denied.

The final point raised in Kraft's exceptions opposing the adopted change in the qualifying period for supply plants was that such change does not reflect current marketing conditions, but rather is based on circumstances that existed several years ago. In this connection, Kraft pointed out that the Department should have taken official notice of the decline in the market's Class I utilization for the first three months of 1980 before deciding to change the qualifying period.

The changed marketing conditions upon which Kraft's exception is based occurred after the close of the reopened hearing and, therefore, are not part of the record evidence upon which this decision must be based. Thus, such information cannot be used in this proceeding. It is noted in this regard that the exceptions do not provide a compelling basis for deferring any decision on this issue because of some critical need for considering the early 1980 utilization data.

The order also should be amended to provide for a temporary upward or downward adjustment of the shipping percentages for supply plants if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or to prevent uneconomic shipments of milk to such plants. The adjustment should be limited to 20 percentage points.

Under such an arrangement, the Director would investigate the need for revision, either at the Director's own initiative or at the request of interested persons. If the investigation showed that

a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping requirements is being considered and inviting views of interested persons with respect to the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision was warranted.

The evidence developed regarding the supply plant pooling issue suggests the possibility that an emergency situation affecting the market's supply-demand situation could develop for a short time which warrants an immediate adjustment (up or down) in the shipping percentages. Presently, any needed change in the shipping requirement for supply plants can be accomplished only through a time-consuming amendment proceeding or by suspension. Such changes that could be accomplished through suspension, however, are limited because of procedural requirements to relaxing rather than increasing shipping requirements. Inclusion of a provision to adjust temporarily supply plant shipping percentages will enhance the ability of the order to deal with short-run emergency situations on a timely basis.

AMPI opposed the adoption of this type of provision. The spokesman for the cooperative contended that there has been very limited experience in other markets in using the "call" pooling feature and that its impact basically remains untested. He also stressed that the procedures that would have to be followed in implementing the temporary adjustment would be lengthy. He concluded that any need to adjust shipping standards to cope with emergency situations could be accomplished equally well through an emergency amendment proceeding.

A similar provision to the one proposed herein has been in the Chicago Regional order since 1969. From all indications, this provision has operated satisfactorily in that market. It is possible, as contended by certain parties that this provision may not be as useful in this market as it has been in the Chicago market because of the different supply arrangements in the two markets. Nevertheless, the fact that it may be less useful to this market is no basis for denying its use entirely.

Through this type of provision, the pooling standards can be changed on very short notice. By contrast, the amendment procedure has become, if anything, more lengthy as various new hearing procedure requirements have been implemented. For this reason, we believe that inclusion of the proposed temporary revision of the supply plant

shipping percentage would be of benefit to the market in an emergency situation and, therefore, should be adopted.

In their exceptions to the initial recommended decision and in testimony presented at the reopened hearing, several pool supply plant operators disagreed with the above findings and conclusions supporting the adoption of a flexible pooling provision. They claimed that the record was devoid of any evidence which supports the need for this type of provision. In this connection, they argued that past experience in the market does not indicate there would be occasions when a temporary aberration in the supply-demand situation of distributing plants would warrant adjusting shipping requirements of supply plants by the type of pooling provision adopted herein.

This claim overlooks an essential part of the entire pooling issue that was considered in this proceeding: namely, whether or not supply plant shipping requirements should be increased. From a procedural standpoint, a review of this facet of the pooling issue presumably could have been accommodated under the temporary adjustment procedure. If it had been determined that marketing conditions warranted a change in the shipping requirement, it could have been implemented in a timely manner under the adopted procedure.

Several of the supply plant operators also expressed concern that the proposed provision would not apply to the proponents's (Mid-Am) three balancing plants but rather only to those plants that qualify as pool supply plants pursuant to § 1065.7(b) on the basis of shipments from the plant. In this regard, it is their belief that Mid-Am, which is the major supplier of milk for pool distributing plants in this market, could trigger a temporary upward adjustment in the shipping requirements of a supply plant simply by withholding milk supplies from distributing plants for manufacturing purposes. They concluded that it would be unfair to apply the flexible pooling provisions only to "7(b)" pool supply plants.

In their exceptions to the revised recommended decision, the six proprietary handler group\* maintained that the flexible pooling provisions should apply to all suppliers of milk to the market rather than limiting its application to only 7(b) pool supply plants. The position of the exceptors is not supportable and there is no basis for

reaching a different conclusion on this issue.

Each pooling problem that would be considered under this provision would be carefully reviewed, and the decision reached would take into account the marketing interests of each entity involved. All parties in the market would have an opportunity to express their views on any proposed change before any adjustment in the pooling standards would be made. A temporary change in such standards would be made only if an investigation indicates that an appropriate basis exists warranting such action.

We cannot agree with AMPI's claim in its exceptions that the proposed flexible pooling provision would interfere with the normal supply arrangements that suppliers and buyers enter into for milk on a long-term basis (usually on a 12-month basis). AMPI fails to demonstrate persuasively how the temporary adjustment procedure would interfere with planning and negotiations by buyers concerning long-term commitments for milk supplies.

AMPI took exception to all of the above findings and conclusions of the revised recommended decision on the proposed flexible pooling provision. Such exceptions reiterate views previously stated by the cooperative in opposing adoption of the flexible pooling provision. These views were fully considered in reaching a decision on this issue.

To the extent possible, the order should encourage milk to move to distributing plants in the most efficient way possible. One means of providing greater efficiency in milk handling practices in this market is to allow handlers to count as a qualifying shipment from their supply plants milk that they deliver directly from producers' farms to distributing plants. The attached proposed order provides for this by allowing a supply plant to qualify as a pool plant at least partially on the basis of direct deliveries from producers' farms as well as by transfers from the plant.

Current order provisions provide that only transfers to pool distributing plants count towards meeting the supply plant shipping requirement. Testimony indicates that because of this requirement milk pooled through supply plants is being received at such plants, reloaded into tank trucks, and then delivered to pool distributing plants when some of the milk could be delivered more efficiently directly to distributing plants initially. Also, a further deterrent under the current order provisions to moving the milk directly from farms to distributing plants is the

requirement that the distributing plant operator be the accountable handler for the milk rather than the supply plant operator. In this case, the producers would receive payment through the distributing plant rather than the supply plant. Allowing direct deliveries to count as qualifying shipments would remove the need to supply milk through a supply plant for purposes of pooling the supply plant or maintaining the producers on the supply plant operator's payroll.

The amount of direct-ship milk that can be used to qualify a supply plant as a pool plant should be limited to 50 percent of the plant's total required shipments for pooling. Also, a supply plant operator's deliveries of producer milk directly to distributing plants from producers' farms should be limited to those producers who are located within 150 miles of the supply plant (as based on the post office address of the producer). Although these limitations were not proposed at the hearing, the current milk handling arrangements in this market indicate a need for such limitations.

A supply plant customarily demonstrates its association with the fluid market by shipping milk to distributing plants for fluid use. Normally, the supply plant obtains such milk from producers who are located within a reasonable hauling distance from the supply plant. As indicated at the hearing, some of the producers associated with a supply plant are located between the supply plant and the distributing plant to which the supply plant is shipping milk. Presumably, other producers delivering milk to the supply plant are located more distant from the distributing plant than the supply plant. While the procurement patterns may vary somewhat among the supply plants in the market, it is reasonable to presume that the limited change in the pooling standards would adequately accommodate most supply plants that desire to move part of their milk supply directly from farms to distributing plants.

Permitting a supply plant to qualify for pooling solely on the basis of direct deliveries not only would go beyond what is needed in the market but also could result in the development of milk handling arrangements not typical of supply plant operations that could be disruptive to the fluid market. If a pool supply plant did not have to ship milk received at the plant, a manufacturing plant located quite some distance from the market could attach itself to the market merely through the delivery of

\* Includes the following handlers: Orchard Dairy Products, Neu Cheese Company, Oxford Cheese Corporation, Revenna Cheese Company, Dodge Dairy Products, and Gillette Dairy Products.

milk to pool distributing plants from producers located near the market center who had no real association with the manufacturing plant. This could result in the attachment of new milk supplies to the market solely for manufacturing with little intent on the part of the plant operator of making such milk available for fluid use. Also, without some limitation regarding the producers whose milk may be diverted, a supply plant operator could seek out producers anywhere in the milkshed without regard to whether they are located within a reasonable hauling distance of the supply plant. This could be disruptive to the normal procurement arrangements of other handlers. The order changes adopted herein are intended to accommodate the supply plant operations as they now exist in the Nebraska-Western Iowa market. They should not encourage new milk handling arrangements that could result in disorderly conditions for the market.

Additionally, limiting the amount of direct deliveries that can count as a qualifying shipment for a supply plant provides a distinction from an operational standpoint between a pool supply plant and a cooperative balancing plant. The order now provides that milk delivered directly from farms to distributing plants can count as a qualifying shipment, without limitation, in the case of a balancing plant operated by a cooperative association (§ 1065.7(c)). Under this type of pooling arrangement, the cooperative must deliver 51 percent of its member producer milk to distributing plants each month of the year to qualify such plant. Also, no automatic pooling status is provided during the heavy production months, as is the case for pool supply plants.

Under this pooling arrangement, a situation could arise where a supply plant operator, although having met the overall shipping requirement, failed for some reason to transfer a sufficient quantity of milk from the supply plant itself to meet this facet of the shipping standard. In administering the order in this case, a portion of the supply plant operator's diversions to distributing plants should not be considered as part of the supply plant's total receipts if this would result in the plant meeting the shipping standard. The milk disassociated from the supply plant would be whatever amount is necessary to make the remaining diversions to distributing plants equal (or be less than) the quantity of transfers to such plants. The disassociated milk should then be treated as produced milk of the distributing plant operator, who would

be required to account to the pool for such milk and pay the producers involved. Under this situation, it would be necessary for the supply plant operator to designate the dairy farmers who are to be disassociated from the supply plant. If he fails to do so, then the plant should not qualify as a pool plant.

The disassociation of some of a supply plant's diverted milk would result in the pooling of the supply plant only in those cases where a large proportion of the plant's total supply had been moved to distributing plants. As one reduces the total deliveries, a point would be reached where mathematically the pooling standard could not be met. In this case, the supply plant would be a nonpool plant and all of the milk claimed by the plant operator as having been diverted to a distributing plant would be treated as producer milk of the distributing plant operator.

At the reopened hearing, representatives of AMPI and several proprietary supply plants opposed the above recommendation to limit the amount of direct deliveries that can be used as a qualifying shipment for a supply plant. Essentially, they contended that such limitation is artificial and arbitrary and impedes the ability of a supply plant operator to maximize the economics and efficiencies that are inherent in supplying distributing plants on a direct-ship basis. It was their position that a supply plant should be allowed to meet its qualifying shipments to distributing plants either by transfers from the supply plant or, without limitation, by direct deliveries from producers' farms, as the order now provides in the case of a cooperative balancing plant.

It is obvious from the position taken by these supply organizations that they want to qualify their supply plants on essentially the same basis as a balancing plant but at a substantially lower performance level than now applies to a balancing plant. If such a pooling arrangement were permitted for a supply plant, there would be no practical basis for retaining the present pooling requirements that now apply to a cooperative balancing plant. As the spokesmen for AMPI and the several proprietary supply plants point out, it may well be there is no basis for having a pooling distinction between the two types of plants. Instead, perhaps it would be more appropriate that the order should provide only for "balancing plants" that could qualify on the basis of either direct deliveries from producer farms or by transfers from supply plants or both. To achieve this desired result in

a way that would be equitable to all entities on the market, a new performance standard would have to be developed. However, the record in the present proceeding does not provide an adequate basis to make such a determination which would be equitable to all parties concerned. Accordingly, for all of the reasons previously stated, limiting the amount of direct deliveries that may be used as qualifying shipments for a supply plant is concluded to be appropriate.

In their exceptions to the revised recommended decision, both AMPI and the group of six proprietary handlers reiterated their opposition to limiting the amount of direct deliveries that can be used in qualifying a supply plant. Exceptors argued that such limitation is unwarranted and not supported by the record evidence. For all of the reasons hereinbefore stated, such limit is concluded to be appropriate.

In their exceptions to the recommended decision, AMPI and Kraft objected to the proposed requirement that only milk moved directly from producers' farms that are located within 150 miles of the supply plant may count as a qualifying shipment for such plant. Exceptors claimed that the record provides no basis to support such limit. Also, AMPI argued that the proposed limitation "would nullify the usefulness of the recommended provision allowing direct deliveries to count as qualifying shipments." Finally, AMPI contended that such limit ignores the manner in which milk is assembled and moved from farms to distributing plants in the Nebraska-Western Iowa market.

Contrary to exceptors' assertions, we believe there was an adequate basis established on the record for the "150-mile limitation." Although witnesses did not testify specifically on this facet of the pooling issue, consideration must be given to the total record as it reflects the marketing conditions in this market. On the basis of the evidence developed in this proceeding, and for the reasons already cited, limiting direct deliveries that may count as qualifying shipments to those from producers' farms located within 150 miles from the supply plant is reasonable under the present marketing situation.

Further, we have no reason to believe that the "150-mile limitation" will negate the economics of allowing direct deliveries to count in qualifying a supply plant as AMPI contends. While AMPI may have member milk that is located in excess of 150 miles from its Freeman, South Dakota, and Sibley, Iowa, pool supply plants which could be efficiently delivered to distributing plants, there is no indication from the record that any of



this milk is now physically associated with either supply plant. Neither was there any indication that any of the milk now physically associated with either of AMPI's two supply plants was obtained from members' farms located in excess of 150 miles of either plant. Apparently, the cooperative's concern in this regard is based on a misunderstanding that it could qualify its two supply plants with milk it delivers to other pool plants as a § 1065.9(c) handler, which is not the case. Only milk that is reported as being associated with a supply plant during the month may be diverted directly to pool distributing plants and count as a qualifying shipment for such supply plant.

In their exceptions to the revised recommended decision, AMPI, Kraft, Land O'Lakes, Inc., and the group of six proprietary handlers excepted to the "150 mile limitation" requirement. Most of the exceptions on this issue reiterated points that were previously raised in exceptions to the initial recommended decision and which were considered in the revised recommended decision. Except as previously discussed elsewhere, the exceptions raise no new points not already considered in determining the appropriateness of the "150-mile limitation" requirement. Accordingly, the exceptions provide no basis for eliminating the requirement.

Additionally, in its exceptions to the revised recommended decision, Land O'Lakes urged that in lieu of the "150-mile limitation" requirement the order require that at least one day's production of a producer be physically received at the diverting pool plant during each month in order for the milk of such producer to be eligible for diversion to another pool plant as producer milk. The cooperative contended that such a producer delivery requirement would be a more appropriate method of accomplishing the objectives sought with the "150-mile limitation" requirement.

Such a delivery requirement would not encourage efficiencies in the handling of producer milk that is diverted between pool plants. Moreover, and as discussed elsewhere in this decision, it would be inconsistent with the objectives sought in permitting diversions between pool plants. Accordingly, the recommendation should not be adopted.

In its exception to the revised recommended decision, Kraft excepted to the proposed application of the 150-mile limitation requirement to all producer milk diverted from a pool plant for the account of the handler operating such plant to another pool plant. In Kraft's view, such application could

create unnecessary handling inefficiencies. In order to avoid this, Kraft recommended that the "150-mile limitation" apply only to the milk of producers that directly contributes to a supply plant meeting the qualifying shipping requirement for pool plant status under the order. This recommendation should not be adopted since it would not effectuate the purpose of the "150-mile limitation" requirement.

At the reopened hearing, Kraft proposed that the definition of a "supply plant" be revised. The handler sought the change to eliminate the basis for the administrative requirement that a supply plant, in order to maintain continuous pool status during the automatic pooling months, must transfer to a distributing plant at least one load of milk per month.

This proposal should not be adopted. The spokesman for the handler did not present any specific testimony on this matter other than stating that such requirement is not necessary to establish that a supply plant is properly associated with the Order 65 pool. There was no other testimony regarding this issue. Moreover, the record provides no evidence of pooling problems encountered by any of the supply plant operators, including Kraft, with the requirement.

AMPI proposed at the initial hearing that the cooperative balancing plant pooling provision (§ 1065.7(c)) be eliminated in view of the fact that there would be little practical difference in terms of the pooling standards between a supply plant and a cooperative balancing plant if the unlimited direct delivery feature for supply plants were adopted. Counsel for Mid-Am objected to the proposal on the basis that it was not part of AMPI's original proposal as published in the hearing notice and thus was outside the proper scope of the hearing. The Administrative Law Judge presiding at the hearing did not rule on the objection but instead concluded that whether or not AMPI's proposed modification is "legally sustainable" was a matter for consideration by the Secretary. In view of the order changes adopted herein relative to pooling standards for supply plants, the legal issue raised in the objection is moot. Accordingly, there is no need to pursue the legal issue raised by the objection.

In its exception to the revised recommended decision, Kraft suggested a modification in the proposed order language as contained in § 1065.7(b)(2). This provision determines the volume of fluid milk products that count as qualifying shipments for a supply plant in the case of milk movements between such supply plant and a pool distributing

plant. Kraft points out that as written in the revised recommended decision the provision does not carry out the intent of the "net shipment" requirement as it applies to qualifying shipments for a supply plant. Kraft's suggestion has merit and the language in § 1065.7(b)(2) of the attached order has been modified to reflect Kraft's suggestion.

2. *Diversion of producer milk.* (a) *Diversions to nonpool plants.* Rules concerning the diversion of producer milk from pool plants to nonpool plants should be modified. During the months of September through March, a cooperative association should be allowed to divert to nonpool plants (except producer-handler plants) a quantity of milk not in excess of 40 percent of the quantity of producer milk that the association causes to be delivered to or diverted from pool plants during the month. During the months of April-August, the cooperative should be allowed to divert 50 percent of such receipts. The operator of a pool plant (other than a cooperative association) should be allowed to divert to nonpool plants (except producer-handlers' plants) any milk that is not under the control of a cooperative association that is likewise diverting milk to nonpool plants during the month. The quantity of milk that the operator of a proprietary plant may divert should not exceed 40 percent during the months of September-March and 50 percent during the months of April-August of the milk received at or diverted from such pool plant that is eligible to be diverted by the plant operator.

The order also should provide that at least one day's production of a producer must be physically received at a pool plant during each month in order for the milk of such producer to be eligible for diversion to a nonpool plant as producer milk.

Presently, diversions to nonpool plants are limited to 30 percent of producer milk received at pool plants during the months of January, February, March, September, October, and November, and 40 percent of such receipts during other months of the year. To be eligible for diversion, the order now requires that at least 2 days' production of a producer be received at a pool plant during each month.

AMPI proposed that diversion eligibility for a producer be reduced to 1 day's production received at a pool plant and that diversion limits be increased to 40 percent during each of the months of September-December and 50 percent during each of the months of January-August. A spokesman for AMPI testified that the present diversion limits cause unnecessary, uneconomic, and

costly milk movements, including unnecessary pumping and handling of the milk. The unnecessary hauling wastes thousands of gallons of fuel every month, he said, while the extra pumping damages the quality of the milk.

The witness indicated that AMPI regularly hauls producer milk from farms in Minnesota and South Dakota to its supply plant at Sibley, Iowa, solely for the purpose of meeting the present diversion limitations. He estimated that this unnecessary hauling of milk costs AMPI approximately \$10,000 per month. Also, he said, because of the difficulty in estimating beforehand the exact quantity of milk that may be diverted, AMPI has over-diverted several times in the last couple of years, causing milk regularly associated with the pool to be excluded.

A spokesman for Mid-Am testified in opposition to AMPI's proposal. This witness argued that the present diversion limits are adequate because data introduced into the record showed that the amount of milk being diverted by all handlers in the market was well within the existing limits. He stated that liberalization of the diversion provisions would make less milk available to the fluid market at a time when market conditions call for greater shipments.

Although most handlers are able to operate within the diversion limits presently in the order, it is apparent from the testimony already described that at least one—AMPI—is not able to do so. It should be noted in this connection that Mid-Am qualifies its large manufacturing plant at Norfolk as a pool plant. In addition, 4 of the 6 proprietary supply plants on the market also have manufacturing facilities. Accordingly, milk not needed by these handlers for fluid use is manufactured right at these pool plants instead of having to be diverted to nonpool plants. At the time of the October 1978 hearing, however, AMPI had only one plant pooled under the order, which is the supply plant at Sibley. The plant has no manufacturing facilities. Thus, reserve supplies associated with this plant are diverted by AMPI to nonpool plants for manufacturing. This is why AMPI has had difficulty staying within the diversion limits while other handlers in the market have not.

The present diversion limits are unduly tight and discriminate between handlers that operate pool manufacturing plants and those that do not. For example, during the month of October, a handler operating a pool supply plant which also manufactures cheese could ship 40 percent of its milk to a pool distributing plant to qualify for

pooling and manufacture the remaining 60 percent of its milk into cheese. A cooperative that operates a pool supply plant without manufacturing facilities could also manufacture 60 percent of the milk pooled through that plant by sending it to one of its nonpool manufacturing plants. However, in this example, only 30 percent of the total receipts could be diverted directly to the manufacturing plant; the remaining 30 percent would have to be received first at the supply plant and then transferred to the manufacturing plant, possibly resulting in unnecessary hauling and handling of the milk. In the case of a cooperative that does not operate a pool supply plant but which does have a nonpool manufacturing plant, 70 percent of the cooperative's milk would have to be shipped to pool plants; the cooperative could divert the remaining 30 percent to its nonpool manufacturing plant. AMPI falls within these latter 2 categories, pooling part of its milk through its Sibley and Freeman supply plants and pooling the remainder as a handler on bulk tank milk.

Theoretically, the diversion allowance for plant operators should be equal to the reciprocal of the shipping requirements for a supply plant or a cooperative balancing plant. In this way, milk that is not needed at pool distributing plants can be diverted to manufacturing plants.

At the reopened hearing, an AMPI spokesman, citing this statement, testified that the diversion limits should be increased to 60 percent during the months of September through December and to 80 percent during the months of January through August. These percentages, he said, would be the reciprocal of the present 40 percent shipping requirement during September through December and their (AMPI's) proposed 20 percent shipping requirement during January through August.

This proposal should not be adopted because it does not accurately reflect the situation in this market. Over 50 percent of the milk on this market is pooled through cooperative balancing plants. The cooperative operating these plants must ship at least 51 percent of its milk every month to pool distributing plants. Information on the record indicates that the level of performance by the cooperative is actually well above this minimum of 51 percent. Similarly, many of the proprietary supply plants on the market are shipping from 55 to 60 percent of their receipts to pool distributing plants during the present qualifying months of September through December.

In view of this record of actual market performance and need, the diversion allowances, as initially adopted, are appropriate for this market. If there is any discrepancy between the proposed diversion limits and the supply plant shipping requirements, it probably indicates that the latter are somewhat low in relation to the actual needs of the market. In any event, we can find no basis for increasing the diversion allowances higher than the levels initially adopted.

Recognizing the need for coordination between supply plant shipping requirements and diversion limitations, AMPI proposed that the present months of more limited diversions be changed from September–November and January–March to September–December to coincide with the shipping requirement months for supply plants would be extended to September–March. For this reason, January–March should remain as months in which lower diversion limits apply and, as suggested by AMPI, December also should be included with these months.

The change in diversion limits would have no effect on the amount of milk that a supply plant operator—either a proprietary handler or a cooperative association—would have to make available to distributing plants. The amount of milk that a supply plant operator must make available to pool distributing plants is governed by supply plant shipping requirements. The change in diversion limits, however, will allow more milk that is not needed at a pool supply plant to be diverted to a nonpool manufacturing plant instead of first having to be received at the pool supply plant and then transferred to the nonpool plant. In this way, the change in diversion limits will permit greater efficiency in handling the market's reserve milk supplies.

It is not necessary to require 2 day's production of a producer to be received at a pool plant in order for milk of the producer to be eligible for diversion to a nonpool plant. One day's production received at a pool plant is sufficient to demonstrate that a producer has some association with the fluid market.

An AMPI spokesman testified that the present 2-day requirement has occasionally caused problems when one day's production of a large producer has been picked up in the same bulk tank truck that was also picking up 2 day's production of smaller producers. The spokesman indicated that the cooperative, having assumed that all producers whose milk was on the truck had met the 2-day production requirement, would not discover the error until after the end of the month.

when it was too late to correct the problem. Requiring that only one day's production be received at a pool plant during the month should eliminate this problem.

The initial recommended decision provided that milk of a dairy farmer shall not be eligible to be diverted as producer milk unless during the month at least 1 day's production of milk of such dairy farmer is physically received at the pool plant from which it is diverted. Kraft, Inc., at the reopened hearing, recommended that this producer delivery requirement should not apply to the milk of a dairy farmer that is diverted to another pool plant because there is no question about the eligibility of such milk for pooling.

This suggested modification should be adopted. The modification will prevent unnecessary hauling and pumping of milk in the case of a producer whose farm is situated such that his milk could be diverted to another pool plant throughout the month. It is sufficient that a producer's milk be received at any pool plant during the month to establish the producer's identity with the fluid market. Accordingly, no purpose would be served in requiring such producer's milk to be received at least once during the month at the pool plant from which diverted.

As proposed by Mid-Am, the order should allow the Director of the Dairy Division to increase or decrease the diversion limits by up to 20 percentage points. However, the provision should depart slightly from Mid-Am's proposal by allowing the Director to revise diversion limits independently of any change in the supply plant shipping requirements. This will provide greater flexibility in accommodating situations in which an adjustment may be needed in shipping requirements but not necessarily in diversion limits or vice-versa.

Temporary adjustment of diversion limits may be needed for the same reasons as a temporary increase or decrease in supply plant shipping requirements, i.e., the market may need more milk for fluid use or there may be an excessive amount of milk being delivered for fluid use. A decrease or increase in diversion limits will help to accommodate these situations, particularly with regard to milk being pooled by a cooperative acting as a handler on bulk tank milk.

A cooperative acting as a handler on bulk tank milk, unlike a supply plant, does not have any particular standard to meet as far as delivering a certain percent of its milk to pool distributing plants. However, the amount of milk such a cooperative may divert is directly

dependent upon the pounds of milk the cooperative delivers to pool plants.

In view of this, to require a cooperative bulk tank handler to deliver more milk to pool distributing plants it is necessary to reduce the amount of milk the cooperative may divert to nonpool plants. On the other hand, if the market is oversupplied with milk for fluid use, it would be necessary to increase diversion limits so the cooperative could divert more of its milk to nonpool plants for manufacturing use.

In computing diversion limits, the base on which the diversion percentage is computed should be equal to the amount of producer milk delivered to pool plants plus the amount diverted to nonpool plants. Presently, diversion limits are based only on the amount of producer milk delivered to pool plants.

This change will provide for the computation of diversion limits on the same basis as shipping requirements for supply plants. This will insure greater uniformity in market performance between supply plant operators and cooperative bulk tank handlers.

When a handler diverts milk in excess of the limits prescribed in the order, the quantity that is over-diverted cannot qualify as producer milk and be priced under the order. Presently, the diverting handler is required to designate the dairy farmers whose milk is over-diverted. If the handler fails to do so, the order disqualifies all milk diverted by the handler during the month.

This procedure should be modified slightly. In the case of over-diverted milk, the diverting handler should continue to have the prerogative of designating the dairy farmers whose milk is over-diverted. If the handler fails to designate the over-diverted milk, the market administrator would disqualify all of the milk diverted by the handler on the last day of the month, then all the milk diverted on the second-to-last day, and so on in daily allotments until all of the over-diverted milk is accounted for. For example, if a handler over-diverted 10,000 pounds of milk for the month, but diverted 45,000 pounds on the last day of the month, the entire 45,000 pounds would be disqualified.

This procedure, which was proposed by Kraft, Inc., and supported by AMPI, will provide a less severe penalty for a handler who inadvertently over-diverts. In the event a handler does not identify which producers' milk is over-diverted, the new procedure will allow the market administrator to make this determination in a fair and orderly manner.

(b) *Diversions between pool plants.* Kraft, Inc., proposed that the order be amended to provide for diversions

between pool plants. This proposal was a corollary change to its proposal to allow supply plants to qualify for pool status on the basis of deliveries by the supply plant operator to distributing plants directly from producers' farms.

The order should be amended to provide for diversions between pool plants. This will provide the technical means under the order for milk to be delivered by supply plant operators directly from producers' farms to pool distributing plants and still count as shipments from the supply plant. Also, it will allow the operator of any pool plant to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without this provision, a handler wishing to retain his regular producers on his payroll for the entire month would have to physically receive the milk of such producers into his plant (so that it will be considered "producer milk" there), then pump it back into the truck, and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor-handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between pool plants will promote the efficient handling of milk.

In the case of diversions between pool plants, the question arises as to whether such diversions should be considered as a receipt at the divertor plant, the diveree plant, or both for the purpose of determining whether such plants have met the pooling requirements of the order. As adopted herein, such diversions would be treated in the same manner as transfers between pool plants.

The order now includes milk that is transferred from one distributing plant to another in the receipts of the transferor plant. The transfer is excluded from the receipts of the transferee plant. Diversions between pool distributing plants should be treated in the same way.

Milk that is transferred from a pool supply plant to a pool distributing plant is presently included in the receipts of both the supply plant and the distributing plant. Accordingly, diversions from a pool supply plant to a pool distributing plant should be considered in the receipts of both plants.

Fluid milk products that are transferred from a pool distributing plant to a pool supply plant are included

in the receipts of the distributing plant but excluded from the receipts of the supply plant. Diversions from a pool distributing plant to a pool supply plant should also be treated this way.

For accounting purposes, milk diverted between pool plants will continue to be the "producer milk" of the diverting handler.

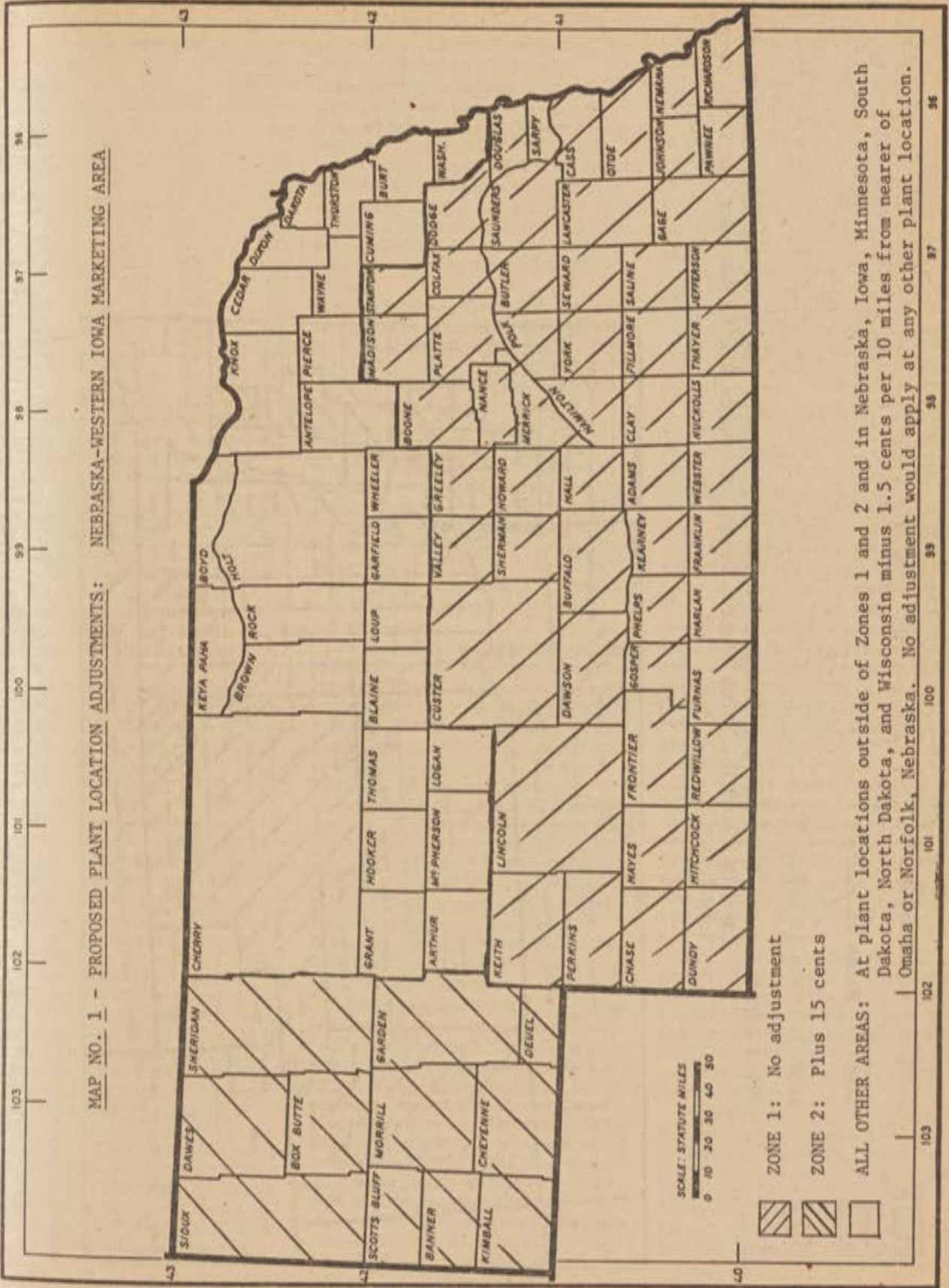
3. *Class I price zones and location adjustments.* The Class I pricing structure under the order should be revised to provide for two pricing zones in place of the three zones now in the order and to modify the application of location adjustments. Map No. 1 illustrates the revised pricing zones. As shown, Zone 1 should have a Class I differential of \$1.60, and Zone 2 should have a Class I differential of \$1.75.

Location adjustments outside of these two zones should apply only at plants in Nebraska, South Dakota (east of State Highway Number 73 only), North Dakota, Minnesota, Wisconsin, and Iowa. In these areas, a minus location adjustment should apply. The location adjustment should be computed at the rate of 1.5 cents per hundredweight per 10 miles and should be based on the distance from Omaha or Norfolk, Nebraska, whichever is closer. A comparison of location adjustments at selected plant locations outside of Zones 1 and 2 is shown on Table 3.

Currently, the marketing area is divided into three price zones. These zones are shown on Map No. 2. The Class I price at plants located in Zone 1 is \$1.60 over the basic formula price. The Zone 2 Class I price is 10 cents below the Zone 1 price, while the Zone 3 Class I price is 15 cents higher than the Zone 1 price. Uniform prices in each of these zones bear the same relationship, i.e., the Zone 2 price is 10 cents below the Zone 1 price, and the Zone 3 price is 15 cents above the Zone 1 price.

NEBRASKA

MAP NO. 1 - PROPOSED PLANT LOCATION ADJUSTMENTS: NEBRASKA-WESTERN IOWA MARKETING AREA



ZONE 1: No adjustment  
 ZONE 2: Plus 15 cents  
 ALL OTHER AREAS: At plant locations outside of Zones 1 and 2 and in Nebraska, Iowa, Minnesota, South Dakota, North Dakota, and Wisconsin minus 1.5 cents per 10 miles from nearer of Omaha or Norfolk, Nebraska. No adjustment would apply at any other plant location.



Table 3.—Present and proposed plant location adjustments at selected plant locations  
(Cents per hundredweight)

Location	Present location adjustment	Proposed location adjustment
O'Neil, Nebr.	None	-17.2
Orchard, Nebr.	None	-1.3
Hartington, Nebr.	None	-7.5
LeMars, Iowa	-10.0	-16.5
Stibly, Iowa	-10.0	-24.0
Atwood, Kans.	+12.0	None
Clarkfield, Minn.	-22.0	-39.0
Freeman, S. Dak.	None	-15.0
Kimbalton, Iowa	-10.0	-10.5
Lake Benton, Minn.	-15.0	-31.5
Lake Preston, S. Dak.	-12.0	-28.5
Laurel, Nebr.	None	-6.0
Lytton, Iowa	-10.0	-19.5
New Ulm, Minn.	-23.5	-40.5
Plainview, Nebr.	None	-6.0
Sarborn, Iowa	-10.0	-22.5
West Point, Nebr.	None	-7.5
Whitmore, Iowa	-16.0	-30.0

The order also provides that at a plant located outside of the marketing area and within 100 miles of the nearest specified basing point, the applicable Class I and uniform prices at such plant are the prices applicable in the nearest pricing zone. At plants located outside of the marketing area and more than 100 miles from the nearest specified basing point, the Class I and uniform prices are reduced at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located more than 100 miles from the nearest basing point.

a. *Initial proposals and testimony.* (Based on the hearing held in Omaha on October 24-27, 1978.) Proposals to revise the pricing structure were made by two proprietary handlers and two cooperative associations.

Roberts Dairy, which at the time of the hearing<sup>6</sup> operated distributing plants at Omaha and Grand Island, Nebraska, submitted a proposal that would have combined Zones 1 and 2 into a single zone for pricing purposes. At the hearing, however, it abandoned this proposal. The proposal was not supported by any other party.

Wells Dairy, Inc., of LeMars, Iowa, (presently located in Zone 2), submitted a proposal that would reduce the Class I differential in Zone 2 from \$1.50 to \$1.40. A representative of Wells Dairy testified that the present \$1.50 Class I differential puts it at a disadvantage relative to its competitors under the Eastern South Dakota, Upper Midwest, and Iowa Federal orders. (The Class I differential under the Eastern South Dakota order is \$1.40; the Class I differential applicable to competing handlers under the Upper Midwest order would be either \$1.06 or \$1.12, depending upon their location;

and the Class I differential to competing handlers under the Iowa order is \$1.40 or slightly less, again depending upon the respective plant's location.)

The Wells Dairy representative testified that the other markets in which it claims to be at a price disadvantage represent about 65 percent of its total sales territory. He stated that the current order price plus the over-order charges imposed by cooperative associations supplying his plant result in Wells Dairy having a 33-cent price disadvantage relative to its competitors under other orders.

Mid-Am proposed that Zones 1 and 3 be revised so as to shift 20 Zone 3 counties in central Nebraska into Zone 1. A Mid-Am spokesman testified that conditions have changed significantly since these pricing zones were established 1967. He said that Zone 3 was primarily established to attract an adequate supply of milk for plants located in central and western Nebraska. Also, he noted that attention was given to alignment of prices with the Eastern Colorado order based on the historical premise that as milk moved westward the prices should increase at a rate that approximated the cost of transporting milk.

The spokesman testified that supplies in Zone 3 are now more than adequate. He said that only 46 percent of the milk received at Zone 3 plants during the first 9 months of 1978 was actually used in Class I and that this did not include milk of Mid-Am that was pooled on the Eastern Colorado order but which formerly had been associated with Zone 3 plants. He noted that inclusion of the latter milk supplies in the Order 65 pool would have dropped the Zone 3 Class I utilization to about one-third of the Grade A supplies potentially available. From these figures, he concluded a higher price is no longer needed in this area to obtain an adequate supply of milk for distributing plants in that zone.

A second argument made by Mid-Am was that the plus 15-cent differential, which is applicable to the uniform price paid to producers as well as to the Class I price, is, in effect, subsidizing producers in Zone 3 at the expense of producers in Zone 1. This is because the pounds of Class I milk on which handlers pay the 15-cent higher Class I price is only about half of the producer milk in Zone 3 on which producers receive the 15-cent higher uniform price. Mid-Am estimated that this subsidization reduced the Zone 1 uniform price by one cent per hundredweight during 1977.

A spokesman for Fairmont Foods<sup>6</sup> testified that his company supported a reduction of the Class I price at North Platte, Nebraska (now included in Zone 3). This witness indicated that the majority of the milk produced in the Zone 3 counties proposed to be included in Zone 1 now moves into Zone 1. He said that Fairmont now distributes over half of the milk from its North Platte plant in Zone 1 in competition with Zone 1 handlers. In 1976, he noted, most of the distribution from this plant was west and north of North Platte, mainly in the northwest corner of Colorado, the eastern edge of Wyoming, and the northwest part of Nebraska. The witness also testified that a reduction in price at North Platte would not jeopardize the milk supply for Fairmont's plant.

A spokesman for Roberts Dairy, which operates pool distributing plants at Grand Island and Omaha and a nonpool plant at Lincoln, Nebraska, also testified in support of Mid-Am's proposal to transfer 20 Zone 3 counties into Zone 1. The witness stated that this change would put his entire operation in a better competitive position relative to competing handlers. He testified that while some distribution from the Grand Island Zone 3 plant goes to areas in Zone 3, such as McCook, North Platte, and Ogallala, Nebraska, and also into northwest Kansas, most of the distribution from this plant is in competition with Zone 1 handlers, particularly in the Norfolk and Columbus-Seward areas.

The witness contended that the proposed lower price at Grant Island would have no impact on the supply of milk at that plant. It was his belief that, even at the reduced price, the Order 65 distributing plant at Grant Island would remain the best market for supply plants and cooperatives operating in this part of the marketing area.

A spokesman for AMPI testified in support of the proposed transfer of Zone 3 counties also. While noting that AMPI had no producers or outlets in Zone 3, he said that his organization supported the proposal because it did not feel the rest of the market should be subsidizing Zone 3 producers.

Opposition to restructuring the pricing in Zone 3 came from several supply plant operators, namely, Dodge Dairy Products, Inc., Dodge, Nebraska (Zone 1); Ravenna Cheese Co., Ravenna, Nebraska (Zone 3); Oxford Cheese, Co., Oxford, Nebraska (Zone 3); Neu Cheese Co., Hartington, Nebraska (Zone 1); and

<sup>6</sup>Roberts Dairy was acquired by Mid-America Dairymen, Inc., on January 14, 1980.

<sup>6</sup>Fairmont discontinued operations in the market as of June 30, 1979.

Orchard Dairy Products, Inc., Orchard, Nebraska (Zone 1).

These handlers took the position that redefining Zone 3 as proposed would substantially reduce the price to dairy farmers delivering milk to Zone 3 plants. These contended that such a reduction would jeopardize the milk supplies of distributing plants located in Grand Island and North Platte (and, presumably, the Zone 3 plants of Oxford Cheese and Ravenna Cheese) because producers delivering to those plants would find a more attractive outlet in the Eastern Colorado market.

Three individual producers who ship milk to Zone 3 plants also testified against any reduction in price at such plants. They testified that if this price were reduced, they would probably look for higher-priced markets in Kansas or Colorado.

A final pricing proposal was made by Land O'Lakes, Inc. (LOL). This cooperative, which has no producers on the Nebraska-Western Iowa market, proposed a change in the application of location adjustments to plants located outside of the marketing area. Presently, such location adjustments are not applied within 100 miles of a basing point. Only beyond 100 miles do they begin at the rate of 1.5 cents per 10 miles from the nearest basing point. Under LOL's proposal, location adjustments would apply within this 100 mile area. The effect of the proposal, therefore, would be to reduce Class I and uniform prices at plant locations outside the marketing area.

A spokesman for LOL testified that the purpose of its proposal is to resolve a price misalignment problem between the Nebraska-Western Iowa and Eastern South Dakota orders in the general procurement area of eastern South Dakota. He claimed that this misalignment had caused it to lose producers on the Eastern South Dakota market because such producers were able to obtain greater returns by having their milk pooled under the Nebraska-Western Iowa order.

Mid-Am supported the LOL proposal to remove the 100-mile buffer zone applicable to location adjustments. The cooperative's spokesman indicated that the pricing structure of the order should encourage milk to move to the primary market. He noted, however, that under the present order provisions there is little incentive for milk to move from southern South Dakota, where Mid-Am competes with AMPI and LOL for milk supplies, to Omaha.

Several examples were cited in support of this argument. The Mid-Am witness testified that a nonpool plant at Freeman, South Dakota, which is

roughly 200 miles from Omaha, now carries the Zone 1 price. Producer milk under Order 65 is diverted to this plant. Another nonpool plant is located at Lake Preston, South Dakota, which is about 260 miles from Omaha. This plant also receives diverted milk pooled under Order 65. The price at this plant is only 12 cents below the Zone 1 price.

Also cited by the spokesman for Mid-Am was the Order 65 price for diverted milk at nonpool plants at Clarkfield, Minnesota, and Lake Benton, Minnesota. Although the Lake Benton plant is roughly 265 miles from Omaha, the price at Lake Benton is only 16 cents less than at Omaha. The price at Clarkfield, which is about 275 miles from Omaha, is 22 cents below the Omaha price.

Mid-Am contends that the present order provisions encourage milk to be kept at these distant plants for manufacturing purposes rather than to be moved to the population centers to meet the fluid needs of the market.

AMPI testified in opposition to the proposal of Well's Dairy to reduce the price in Zone 2 and to LOL's proposal to modify location adjustments. An AMPI spokesman testified that there was no basis to reduce the Zone 2 price. He noted that the proposal had been considered at an earlier hearing and turned down. It was his position that there had been no changes in the market since that prior decision which would warrant adoption of the proposal at this time.

With respect to the LOL proposal, this witness testified that he did not believe there was a misalignment of prices in eastern South Dakota between the Nebraska-Western Iowa order and the Eastern South Dakota order. He contended that there has been little or no shift of producers from Order 76 to Order 65; that any attempt to align the uniform prices of the respective orders would be futile; and that adoption of the proposal would misalign prices in eastern South Dakota, southwestern Minnesota, and along the eastern edge of the Order 65 marketing area.

b. *Additional testimony adduced at the October 23-25, 1979 hearing.* At the reopened hearing, an AMPI spokesman testified further in opposition to the proposals to reduce the Zone 2 price and to increase location adjustments at plants located outside the marketing area. The witness testified that the market was presently being adequately supplied with milk; that there was enough milk produced close to the major population centers of the market so that AMPI's more distant milk in South Dakota and Minnesota was only needed occasionally as a supplemental source

of supply; and that, therefore, the premise contained in the initial recommended decision—that greater location adjustments were needed to attract distant milk to the market—was wrong since the distant milk is rarely needed in the market center. He went on to state that "the milk in Minnesota and South Dakota is not totally unneeded in the market. But it is obviously *less economic* to the market. It's *less desirable* to the market than the close-in milk from an economic standpoint \* \* \* [emphasis added]."

Several supply plant operators also testified in opposition to the pricing structure adopted in the initial recommended decision.

Kraft Foods, Inc., which operates a supply plant at O'Neill, Nebraska, in Holt County, opposed any price change at its O'Neill plant. A spokesman stated that if prices in areas north of the marketing area nevertheless are reduced, then Holt, Antelope, Pierce, and Cedar Counties should be excluded from such changes. The witness explained that Kraft and its nearby competitors have supply plants in these counties.

The Kraft spokesman testified that any lowering of its price at O'Neill would put it at a competitive procurement disadvantage compared to Mid-Am's supply plant at North Platte, Nebraska. The North Platte plant, he said, is pooled under the Eastern Colorado order. At the North Platte location, which is about 200 miles southwest of O'Neill, the Eastern Colorado blend price has averaged about 50 cents above the Nebraska-Western Iowa Zone 1 blend price. He said this puts Kraft at a competitive disadvantage in competing for producers in the Nebraska counties of Holt, Rock, Brown, Blaine, Loup, and Garfield. As a result of the price differences, he claimed, Kraft in April 1979 started paying its producers a price above the minimum order price and was continuing to pay such a premium at the time of the reopened hearing in October 1979. He said that adoption of a 12-cent location adjustment at O'Neill, as proposed in the initial recommended decision, would make this situation worse.

A spokesman for Ravenna Cheese Company, Ravenna, Nebraska, testified in opposition to the proposed transfer of 20 Zone 3 counties into Zone 1. He said this would lower the uniform price at his plant location and make it more difficult for Ravenna to attract a Grade A milk supply in competition with Mid-Am, which procures milk in the same general area for the Eastern Colorado market. The witness suggested as an alternative



to the proposed change that only 5 Zone 3 counties (Greeley, Howard, Hall, Adams, and Webster) be transferred to Zone 1. He said this would eliminate any competitive problem between Zone 3 distributing plants (the Roberts Dairy plant at Grand Island in Hall County and the Abbotts Dairy plant at Hastings in Adams County) and Zone 1 distributing plants. Also, he said, this would allow Ravenna Cheese and the Oxford Cheese plant in Furnas County to remain in Zone 3. The witness testified that milk from his plant is transferred to the Roberts distributing plant at Grand Island.

The president of the Neu Cheese Company plant at Hartington, Nebraska, testified that he was opposed to the price changes set forth in the initial recommended decision. In this regard, it should be noted that the revised recommended decision had depicted this person's position as that of having no objection to the price changes. As pointed out in exceptions, the decision was in error.

The general manager of Gillette Dairy, which operates a distributing plant at Norfolk, Nebraska, testified against the proposed price changes, particularly as they relate to the 6.5-cent lower Class I price at the Wells Dairy plant at LeMars, Iowa. He said Gillette Dairy, which now has a Class I differential of \$1.60, competes extensively with Wells Dairy throughout northeastern Nebraska and eastern South Dakota. For this reason, he said, the lower Class I price at LeMars would disrupt the historical price relationship between Norfolk and LeMars and would result in Gillette Dairy being placed at a disadvantage in relation to its major competitor.

He noted that, like the LeMars area, the Norfolk area is a heavy milk production area. His plant, he said, is largely supplied from farmers within a 65-mile radius of Norfolk. The spokesman indicated that while their preference would be to keep the order's pricing structure as it is now, Gillette Dairy would support as an alternative to the proposed changes a reduction in the Class I differential at Norfolk to \$1.47. According to the spokesman, this would put Gillette Dairy in a better competitive position in relation to handlers regulated under the neighboring Eastern South Dakota and Iowa orders, as well as to the Wells Dairy at LeMars.

A Wells Dairy spokesman testified in support of the pricing structure adopted in the initial recommended decision. However, as discussed later, he stated that additional changes were needed in the order so that the location adjustments provided for in the initial

recommended decision would not be disallowed.

c. *Findings and conclusions based on the two hearing sessions.* The location pricing provisions under the order (zone prices and location adjustments at distant plants) assist in encouraging the movement of milk from supply areas to the principal population centers where it is processed for fluid use. Such provisions reflect the lesser value of milk when received at an outlying plant location or when diverted to an outlying location. Additionally, the location pricing provisions assist in maintaining a proper price alignment with nearby markets, which is essential to the attraction of raw milk supplies to various locations where needed.

Class I prices throughout the Federal order system generally increase with distance from the surplus milk producing region of Minnesota and Wisconsin. This is why, for example, the Class I differential under the Upper Midwest order is \$1.12, while it is \$1.40 under the Eastern South Dakota order, \$1.60 under Nebraska-Western Iowa, and \$2.30 under Eastern Colorado. The progressively higher prices reflect the theory that the Class I price in a market should not exceed the cost of importing milk from alternative sources of production. Since the Minnesota-Wisconsin area is the only area capable of supplying substantial quantities of supplemental Grade A milk to other markets east of the Rocky Mountains, it is used as the basing point for setting Class I prices applicable to the principal central market of each order.

Location adjustments serve several purposes, one of which is to attract a sufficient supply of milk to the market's distributing plants. If all of the distributing plants in a market were located in one central location, it might be appropriate to have minus location adjustments surrounding the central market to encourage milk to move there from outlying locations where it is produced. However, if there is a distributing plant in the area south or west of the central market (such as at Lincoln or Grand Island, for example), a lower price at that plant's location could jeopardize its supply of milk since the milk in that area could be marketed on an adjacent Federal order market and receive a higher return. Therefore, while location adjustments are needed to encourage milk to move from outlying market locations, consideration also must be given to the need for aligning prices between neighboring markets. For this reason, many Federal orders provide for minus location adjustments in a northerly direction from the market

and either plus location adjustments or no location adjustments in a southerly direction from the market.

The pricing structure for the Nebraska-Western Iowa market should insure that adequate supplies of milk for fluid use are available to handlers in the principal population centers of the market. Of the 1.9 million population in the Nebraska-Western Iowa marketing area, by far the largest metropolitan area is Omaha-Council Bluffs with an estimated 1977 population of 581,000. The next largest area is Lincoln with a population of 184,000. The only other metropolitan area is Sioux City with a population of 120,000.

The 3 pool distributing plants in the Omaha-Council Bluffs area and the single distributing plant in the Lincoln area process a relatively large proportion of the Class I milk priced under the order. (There are no distributing plants in Sioux City.) They are not only the major distributors in these areas but also have substantial distribution in other parts of the marketing area. Producer supplies of milk are moved to plants in these major population centers in the market from various locations throughout the marketing area and beyond.

The order's present pricing structure does not adequately encourage or compensate for the movement of milk from supply areas to plants in these population centers. This has been particularly true in the situation where the prices applicable to milk delivered to the Omaha-Lincoln area are the same or only slightly higher than the order prices applicable to outlying plant locations in northeastern Nebraska, northwestern Iowa, eastern South Dakota, and southwestern Minnesota.

Much of the milk supply in this market originates from these northern areas. In May 1979, 15 percent of the producer milk on the market came from 15 counties in southwestern Minnesota; 19 percent of the producer milk came from western Iowa; and 13 percent of the market's milk came from eastern South Dakota. In total, these 3 areas account for 47 percent of the milk on the market. In all of this territory, there are only 3 pool plants on this market—a pool distributing plant located at LeMars, Iowa, a pool supply plant located at Sibley, Iowa, and a pool supply plant at Freeman, South Dakota.

In northeastern Nebraska, there is an 11-county area in which 14 percent of the market's milk was produced in May 1979. In these 11 counties, there are 2 pool plants, both of which are cheese manufacturing plants that are qualified as pool supply plants. The Class I and

uniform prices in this area are the same as those in Omaha and Lincoln.

Several examples will highlight the pricing problems that now exist under the present pricing provisions.

A pool supply plant outside the marketing area is located at Sibley, Iowa. Sibley is about 175 miles from Omaha. The order now provides a transportation allowance of 1.5 cents per 10 miles to transport 100 pounds of bulk milk. At this rate, the price difference between Sibley—which is in a heavy production area—and Omaha—the largest city in the market—should be 27 cents ( $0.15 \times 18 = \$0.27$ ). However, the price at Sibley is now only 10 cents below the Omaha price. (Omaha has a Class I differential of \$1.60 compared to \$1.50 at Sibley.)

One of the recipients of AMPI's Sibley milk is Wells Dairy at LeMars, Iowa. The distance between LeMars and Sibley is about 52 miles. At 1.5 cents per 10 miles, the allowance for hauling milk from Sibley to LeMars would be 9 cents per hundredweight. Under the order, however, there is no difference in the prices at these two locations.

Kraft, Inc., operates a pool supply plant at O'Neill, Nebraska. Milk from this plant is shipped to a pool distributing plant at Lincoln, Nebraska. The distance from O'Neill to Lincoln is roughly 200 miles, yet there is no difference in prices between O'Neill, which is in a sparsely populated rural area, and Lincoln, the second largest city in the State.

Similar comparisons can be made with respect to the pool supply plants at Orchard, Nebraska and Hartington, Nebraska. There is presently no price adjustment to cover the cost of transporting milk from these supply plants to distributing plants to the south. Consequently, these costs must either be absorbed by the supply plant operator or, more likely, passed on to the distributing plant operator buying the milk.

Not only does the present pricing structure discourage the movement of milk to the population centers through supply plants, it also provides little or no incentive to move it to distributing plants on a direct-ship basis. Since producers generally bear the cost of transporting milk from their farms to the processing plant, they seek to find outlets which will provide the highest price and the least transportation cost. If a cheese plant happens to be the closest plant, and a producer can get the same price there that he can by shipping milk a farther distance to a distributing plant, he naturally will ship his milk to the cheese plant.

The current pricing provisions contribute to the problems described by distributing plant operators of getting a sufficient supply of milk at a reasonable price. By revamping Zone 1 as proposed herein and changing the application of location adjustments to outlying plants, the Zone 1 uniform price will be much more attractive relative to supply areas to the north. It will better insure the availability of milk at plants in the market's population centers.

Exceptions to the overall recommended revision in the location pricing structure were filed by AMPI, Beatrice, Kraft and the group of six proprietary handlers. Among other things, exceptors contend that the need for modifying Class I price zones and location adjustments, as stated above, was based to a large extent in terms of generating additional supplies for distributing plants in the market center(s). They argue that this finding is not only inconsistent with the record evidence, but is also diametrically opposite to the decision's finding on the pool supply plant shipping requirement issue where it was determined from the record evidence that distributing plants were not experiencing any difficulty in obtaining adequate supplies for fluid uses. In effect, exceptors contended that there is no record evidence to justify the recommended revision or that any disorderly marketing conditions are resulting from the order's present location pricing structure.

Contrary to exceptors' views, it is apparent from the preceding discussion that the decision is not based on correcting a current supply situation for distributing plants. Rather, the record of this proceeding established that marketing conditions today are substantially different from those on which the present location pricing structure were based initially. Moreover, the record indicates that a continuation of the present location pricing arrangement at outlying plants could provide a disincentive for producers to deliver their milk to distributing plants at the market center(s). The application of a Class I price at outlying plants that is equal to or above its economic value at the market center, which is the case now, will, over time, not facilitate the orderly movement of milk from farms to distributing plants that serve the principal market center(s).

The LOL and Wells Dairy proposals considered at the October 1978 hearing would have reduced the present Zone 2 price by 10 cents and would have increased by a maximum of 15 cents per hundredweight location adjustments outside the marketing area. By

themselves, these proposals would have caused serious problems in price alignment in northeastern Nebraska and in areas bordering the marketing area to the east, as pointed out by AMPI in its brief. Accordingly, it was provided in the initial recommended decision that minus location adjustments be applied in several northeastern Nebraska counties in order to provide an orderly transition in pricing from the major population center of the market to outlying plant locations. In conjunction with this change, it was also recommended that the 8 basing points in the order be replaced with only two, Norfolk and Omaha, Nebraska.

In the exceptions to the initial recommended decision, several handlers in northeastern Nebraska complained that they had no knowledge that price changes were being contemplated for their location; that the changes made were wrong; that they were denied the opportunity to testify as to the proper prices at their plant locations; and that in the ensuing 10 months since the initial hearing was held, marketing conditions had changed substantially enough to warrant reopening of the hearing.

As described earlier, these same handlers in northeastern Nebraska did testify at the reopened hearing against the price changes made in the initial recommended decision. After a thorough review of this additional testimony together with the comments contained in their post-hearing briefs and exceptions to the revised recommended decision on this matter, we continue to believe that the changes initially recommended are justified and appropriate under the current marketing conditions.

The only pool distributing plant outside the State of Nebraska is Wells Dairy, Inc., at Le Mars, Iowa. Wells Dairy is about 100 miles from its closest Order 65 regulated competitors, Gillette Dairy at Norfolk and Muller Dairy at Howells, Nebraska. Wells Dairy also competes with several other Zone 1 handlers in Omaha and Lincoln. The distance from Le Mars to Omaha is about 125 miles, and from Le Mars to Lincoln it is about 180 miles.

As adopted herein, the Class I differential at Le Mars would be reduced from \$1.50 to \$1.435. Several Zone 1 handlers expressed opposition to any decrease in price at Le Mars, claiming that it would have an adverse effect on their ability to compete throughout much of eastern Nebraska where their sales overlap with those of Wells Dairy. They urged that the present 10-cent difference in Class I prices that now exists for milk received at Le Mars and at Zone 1 plants be retained.

Based on the order's transportation allowance of 1.5 cents per 10 miles, which is only about one-half of the actual cost of hauling bulk milk, the 125-mile distance from Le Mars to Omaha would suggest a hauling cost of about 20 cents per hundredweight. Thus, it is not reasonable to expect that the adopted 16.5-cent lower price at Le Mars would be disruptive to Zone 1 handlers in competing with Wells Dairy for fluid milk sales in the Omaha-Lincoln area.

As noted earlier, the manager of Gillette Dairy at Norfolk testified that the 6.5-cent lower Class I price at Le Mars would put Gillette Dairy at a competitive disadvantage with Wells Dairy in northeastern Nebraska and southeastern South Dakota, where both handlers compete for sales. It is not the purpose of the order to guarantee a handler equal pricing with his competition regardless of where he chooses to market his milk. When a handler chooses to market his milk in a lower-priced area, this is a business decision he makes.

Milk prices are not established on the basis of resale competition among handlers. Indeed, if this were the case, there would be one Class I price throughout the country. Instead, they are established at a level that will insure an adequate supply of milk for that location. As mentioned before, this has resulted in a pricing system that increases with distance from the Minnesota-Wisconsin area.

The price at Le Mars in relation to Norfolk reflects the lesser value of milk at the Le Mars location. While the traditional 10-cent relationship between these two points has been increased to 16.5 cents, this only reflects the order's transportation allowance of 1.5 cents per 10 miles. It in no way gives Wells Dairy a raw milk cost advantage over Gillette Dairy at Norfolk or any place southwest of Norfolk, since the 16.5-cent location adjustment is roughly half of the actual cost of hauling milk from Le Mars to Norfolk.

Although at the reopened hearing Gillette Dairy proposed a reduction in the Class I price in Zone 1 from \$1.60 to \$1.47, there was no indication from the handler as to what he is now paying for his milk supplies or how he arrived at the \$1.47 other than it would put him in a better competitive position with respect to handlers regulated under the neighboring Iowa order.

There was nothing on the record which would indicate how the present price at Norfolk was placing Gillette Dairy at a competitive disadvantage in competing with either Wells Dairy or handlers regulated under the Iowa order. To the contrary, in those areas

southwest of Norfolk, where Gillette Dairy has the great majority of its sales, it clearly has a cost advantage over Wells Dairy or any competing Iowa handlers because of the sharply higher transportation costs for moving packaged milk. Accordingly, we can find no basis for reducing the Zone 1 class I differential to \$1.47.

AMPI, Beatrice and the group of six proprietary handlers excepted to the 6.5 cents per hundredweight reduction in the price at Le Mars, Iowa. Essentially, exceptions were a reiteration of positions presented at various stages of this proceeding. For the reasons already cited, the location adjustment rate adopted for Le Mars, Iowa, is reasonable under the present marketing situation. Accordingly, the exceptions are denied.

Contrary to AMPI's position, there have been significant changes in the market since the 1976 hearing that support the changes adopted herein. At the time of the last hearing, October 1976, there were no proposals to change location adjustments at plant locations outside the marketing area. As a result, there would have been serious problems—as pointed out by AMPI—in changing the Zone 2 price without also changing the price in the areas bordering the marketing area. In addition, in October 1976, there was a pool distributing plant located in Sioux City, which has since been closed, that was located about 25 miles from the Wells Dairy distributing plant in Le Mars. It would have been disruptive at that time to lower the Le Mars price without also adjusting the price at Sioux City.

The location adjustments adopted will not cause any misalignment in the eastern South Dakota-southwestern Minnesota area, as claimed by AMPI. The proposed location adjustments provide for better alignment with the Eastern South Dakota order and Upper Midwest order than do the existing location adjustments. As revised, the Order 65 Class I price differential at Sioux Falls, South Dakota, would be \$1.39 compared to \$1.40 at that location under the Eastern South Dakota order. The Order 65 Class I differential at New Ulm, Minnesota, where AMPI operates a nonpool manufacturing plant, would be \$1.19, compared to \$1.12 under the Upper Midwest order.

AMPI is correct that the proposal of Land O'Lakes would have caused some price misalignment under the existing price zones. However, with the elimination of 11 northeastern Nebraska counties (Antelope, Burt, Cedar, Cuming, Dakota, Dixon, Knox, Pierce, Thurston, Washington, and Wayne) and 6 Iowa

counties (Freemont, Harrison, Monona, Mills, Pottawattamie, and Woodbury) from the present Zone 1 and the complete elimination of the present Zone 2, as provided herein, the adopted location adjustments zoned for Norfolk and Omaha, Nebraska, will provide a smooth transition in pricing from Zone 1 to areas outside of Zone 1.

It is impossible to tell from the information on the record whether or not producers from Order 76 have shifted to Order 65, as contended by Land O'Lakes. In any event, whether they have or have not is not critical to the issue at hand. What is significant is that the Order 65 Class I price and uniform price adjusted to the South Dakota locations are too high relative to the prices in Zone 1 of the Nebraska-Western Iowa order. The AMPI witness admitted as much when he stated that "there really is inadequate incentive for any milk to move to the market in this Federal order."

AMPI contended in its brief of the initial hearing that "whenever a system of zone pricing is adopted in an order, such as the Order 65 system of zone prices, there can never be an incentive to move milk." Mid-Am's support of the proposal, AMPI argues, is "simply an argument to redistribute pool proceeds by reducing the price paid to AMPI producers and increase the prices received by Mid-America producers at its intra-market manufacturing plants."

With the present broad pricing zones and insufficient location adjustments, it is true that there is little or no incentive to move milk from production areas to distributing plants. However, by modifying the pricing structure, as adopted herein, a solution can be reached whereby significantly greater pricing incentives to move milk can be incorporated in the order, while at the same time the benefits of flat pricing for competing handlers in the heart of the marketing area can be maintained.

As mentioned earlier, at the reopened hearing an AMPI spokesman testified that its milk in eastern South Dakota and southwestern Minnesota is rarely needed in the market center. Therefore, he contended, while the proposed Class I location adjustments will compensate the cooperative for transportation costs when its milk is actually shipped to distributing plants from its outlying plants, at other times the proposed location adjustments will merely reduce the uniform price to AMPI members for no apparent reason.

The order should properly reflect the greater economic value of milk delivered to distributing plants nearer the market center in relation to plants more distant from the market. Conversely, it must

also recognize the lesser value of the milk when it is manufactured at an outlying manufacturing plant. To achieve this end, the same location adjustments must be applied to the uniform price as well as to the Class I price. If this were not done, a producer would have no incentive to deliver his milk directly to a city distributing plant instead of to a closer pool plant outlet. Accordingly, the order must be constructed so that location adjustments apply to both the Class I price and the uniform price, without regard to the quantity of milk actually shipped from a supply plant to a distributing plant.

The basing points for determining location adjustments should be limited to Norfolk and Omaha. These points were chosen as basing points because: (1) they are already used as basing points in the present order; (2) there are distributing plants located at both locations; (3) their use results in price alignment with other Federal order markets to the north and east; and (4) they provide the necessary price alignment at the various plant locations within the marketing area.

There is no reason to maintain Chadron, Grand Island, Lincoln, North Platte, Scottsbluff, and Sioux City as basing points. As provided herein, Grand Island and North Platte would be included in pricing Zone 1, while Lincoln is already in Zone 1. Milk moving into Zone 1 comes from north and east of the zone. Since Norfolk and Omaha are at the northern and eastern perimeters of the zone, it is not necessary to maintain the other basing points except for the purpose of having minus location adjustments to the south and west of the marketing area. However, milk does not move to the market from those areas—and is not likely to—because higher prices in neighboring Federal order markets to the south and west tend to attract the milk to those markets. In view of the fact that no milk moves into the market from the southern and western areas, no purpose would be served in maintaining minus location adjustments there.

There are no plants at either Chadron or Scottsbluff,<sup>7</sup> which are in northwestern Nebraska. In fact, in that part of the present Zone 3 that would be retained in the plus 15-cent price zone, there is only one small distributing plant, which is at Kimball, Nebraska, 45 miles south of Scottsbluff. There is no indication on the record that removal of Scottsbluff and Chadron as basing

points would have any effect on this handler's operations.

The group of six proprietary handlers excepted to the foregoing conclusion on the basis that there was no evidence or no proponent to warrant eliminating any of the basing points. For the reasons already stated, continuance of the present basing points would be contrary to the overall purpose of revising the Class I price zones and location adjustments as adopted in this decision.

As discussed previously and as shown on Map No. 1, Zone 1 would be enlarged by including 20 central Nebraska counties now in Zone 3 and 7 additional Nebraska counties not now included in any pricing zone. The 20 counties now included in Zone 3, all of which are in the marketing area, are Keith, Lincoln, Frontier, Red Willow, Custer, Dawson, Gosper, Furnas, Phelps, Harlan, Valley, Greeley, Sherman, Howard, Buffalo, Hall, Kearney Adams, Franklin, and Webster. The 7 counties now outside any pricing zone, and which also are outside the marketing area, are Perkins, Chase, Dundy, Hayes, Hitchcock, Pawnee, and Richardson. There are no plants receiving producer milk in any of these 7 counties, which are added to Zone 1 to facilitate the designation of the appropriate price in those areas.

The only 2 pool distributing plants that would be affected by this price change are located adjacent to the present Zone 1. One of the plants is located at Grand Island in Hall County and the other is at Hastings in Adams County.

While it is necessary to use the pricing mechanism to insure adequate supplies of milk, it is not in the public interest to provide any higher prices than are necessary for this purpose. Based on the evidence in the record, there appears to be no basis for maintaining a Class I differential of \$1.75 in central Nebraska.

Opposition to the proposal was testified to at both hearings and reiterated in exceptions filed to both the initial and revised recommended decisions. There was no convincing evidence to show how the market would be adversely affected if the present Zone 3 supply plants now on the market would shift to another market because of more attractive prices. It is true that a lower price in central Nebraska would widen the difference between the Eastern Colorado uniform price and the Nebraska-Western Iowa uniform price. However, the difference would not appear to be wide enough to make it worthwhile for supply plants to shift regulation to the Eastern Colorado market. In any event, there is no

indication that milk supplies for distributing plants in this market would be jeopardized under the pricing changes adopted herein.

At the reopened hearing, the Ravenna Cheese Company suggested that only 5 Zone 3 counties (Greeley, Howard, Hall, Adams, and Webster) be transferred to Zone 1, thereby leaving the supply plants operated by Ravenna Cheese and Oxford Cheese in Zone 3. This was supported by the group of six proprietary handlers in their exceptions to the revised recommended decision.

It would make no sense to adopt this suggestion, since this would make the price at these 2 supply plants higher than the price at the distributing plants to which they ship their milk. Thus, not only would there not be a transportation allowance built into the pricing structure, but there would actually be a disincentive to ship milk to distributing plants because the milk would be worth more when physically received at the supply plants.

To accommodate the revised pricing structure adopted herein, certain non-substantive conforming changes have been made in the order language. Pricing zones are no longer defined in the marketing area definition but instead are set forth in the provisions relating to plant location adjustments for handlers. Also, certain "dead" language has been removed from the sections concerning class prices and announcement of class prices.

*d. Application of Location Adjustment Credits.* The provision now in the order that assigns location adjustment credits on bulk milk transferred as Class I between pool plants should be modified in two respects. First, the credits should be increased by 10 percent to provide an allowance for unavoidable Class II and III use associated with a Class I operation. Second, when a location adjustment is not allowed on transferred milk, the transferor-handler should only be required to pay the Class I price at the transferee-plant rather than the Zone 1 Class I price.

Under the order's present procedure, Class I location adjustment credits on bulk transfers between pool plants (except transfers made on an agreed-upon Class II or III utilization) are determined by assigning the Class I utilization at the transferee-plant to the various sources supplying the plant. The Class I utilization is first assigned to other source milk (i.e., from other order plants and unregulated supply plants); next, the Class I utilization is assigned to milk received directly from producers (including milk received from a cooperative association or by diversion from another pool plant); and finally,

<sup>7</sup> At the October 1979 hearing, reference was made to a distributing plant that is under construction and that is scheduled to open in Scottsbluff in the spring of 1980.

any remaining Class I milk is assigned to bulk receipts from other pool plants, beginning first with transferor-plants with no location adjustment and then in sequence beginning with the plant at which the least location adjustment applies.

At the reopened hearing, representatives of Wells Dairy and Kraft, Inc., opposed this procedure. A Wells Dairy spokesman testified that additional changes were needed in the order so that the location adjustments provided for in the initial recommended decision would fully apply to Class I bulk transfers of milk between pool plants. Specifically, he proposed that the present provision—§ 1065.52(b)(2)—that allocates location adjustment credits to milk transferred between pool plants be eliminated. As a result of the present provision, he said, location adjustments provided for in the initial recommended decision would be restricted or eliminated entirely on bulk milk transfers between pool plants. He claimed that this would raise the cost of the milk to the transferee-handler.

The Wells spokesman contended that the present procedure will not encourage the movement of milk to distributing plants, which was the basis for restructuring the prices applicable at the various plants associated with the market. He testified that "provisions of the order should encourage the movement of milk to distributing plants. They should make it immaterial to the receiving handler as to whether the milk comes directly from farms or from other plants."

Although opposed to any change in the order's present location adjustment provisions, the Kraft representative testified that, if the proposed location adjustments are ultimately adopted, the Class I location adjustment credits on bulk transfers between pool plants should be modified in two ways: First, all transferor plants should share on a pro rata basis the amount of Class I disposition available at the transferee-plant. (In other words, no preference should be given to other source milk, direct-ship milk, or to any other transferor-plant shipping milk to the transferee-plant.) Second, the amount of location adjustment credits at the transferee-plant should be increased to 110 percent of such plant's total Class I utilization.

As pointed out by the spokesman for Kraft, because of the variations in daily demand for supply plant milk, some milk that is moved to bottling plants and intended for use as Class I milk cannot be so utilized and must be processed into manufactured products. He proposed that an allowance of 10

percent be provided for such unavoidable Class II and Class III uses in determining the aggregate amount of Class I milk that may be assigned to transferor-plants for location adjustment credit purposes. Presently, no allowance for unavoidable Class II and Class III uses associated with a Class I operation is provided under the order.

The procedure for applying Class I location adjustment credits should be modified to provide an allowance of 10 percent for unavoidable Class II and III uses associated with supplying the Class I needs of the transferee-plant. This allowance should be sufficient to accommodate the unavoidable Class II and Class III uses in balancing the receipts from supply plants with day-to-day bottling requirements of distributing plants.

The pro-rata assignment of location adjustment credits provided for in the Kraft proposal should not be adopted; neither should the proposal of Wells Dairy which eliminates the assignment procedure entirely.

Essentially, both the Wells Dairy and Kraft proposals would result in the full location adjustment credit on all bulk transfers that were classified in Class I, regardless of whether or not such milk was needed for Class I use at the transferee-plant. Thus, adoption of either proposal under the order could serve to encourage the movement of milk to distributing plants for Class II or III use.

Only that milk needed for Class I use should be encouraged to move from production areas to bottling plants. This is why location adjustments for handlers apply only on Class I milk. No location adjustments are applied to Class II and III milk, so as not to encourage the movement of milk for such uses.

It would not be appropriate under the order to encourage the movement of milk to the city for Class II use unless handlers paid for such transportation under the order. Otherwise, the handlers would get free transportation of this milk at the expense of all producers in the market. If distributing plant operators want milk for other than Class I uses, they should bear the transportation costs involved, either under the order or outside the order. Under the order, this could be accomplished by increasing the Class II price. Location adjustments could then be incorporated in the order to accommodate the movement of milk for this use. Any further accommodation for the movement of milk for Class II use should be accompanied by some restructuring of the classification and pricing provisions for such milk under

the order, which is beyond the scope of this proceeding.

Wells Dairy excepted to the denial of its proposal to eliminate the procedure of assigning location adjustment credits on bulk milk transferred as Class I between pool plants. However, the handler's exception provides no basis for taking a different position on this matter. For the reasons set forth above the order should continue to provide a procedure for assigning location adjustment credits on such milk movements.

The location pricing structure adopted herein (which includes the announced Class I price for Zone 1 with plus or minus price adjustments at other locations) requires a further modification in the application of Class I location adjustment credits.

Under the present order provisions, a disallowed location adjustment credit could result in a Class I price to the transferor-handler that is higher than the value of the milk at the transferee-plant. This should be changed so that the transferor-plant would have to account for such milk at the Class I price at the transferee-plant. For example, if milk were transferred from a plant with a minus 15-cent location adjustment to a plant with a minus 10-cent location adjustment, and there was no location adjustment credit allowed for the transferor-handler, then the transferor-handler would have to account to the pool for such transferred Class I milk at the Class I price at the transferee-plant, i.e., a Class I differential of \$1.50 (minus a 10-cent location adjustment). Since the maximum location value of the milk in this example is the Class I differential price of \$1.50, the order should not impose the higher f.o.b. market price—i.e., \$1.60—on any of the transferred milk.

In the event that bulk milk is transferred as Class I milk from a plant with a location adjustment to a plant with a greater location adjustment (for example, a movement from a plant with a \$1.50 Class I differential price to another plant with a \$1.40 Class I differential price), the Class I differential price to the transferor-handler would be the price at his location (i.e., \$1.50 in this example) without regard to assignment of location adjustment credits. Such assignment would not apply to this type of transfer, since movements of milk from a higher-priced area to a lower-priced area should not be encouraged.

4. *Payments to producer and cooperative associations.* The order should be amended to allow handlers, in making partial payments to producers, to make proper deductions from such

payments if authorized in writing by the producer.

Presently, the order allows handlers to make authorized deductions from producer payments only when making the final payment on the 15th day of the month. As adopted herein, the order also would allow such handler to make authorized deductions when making the partial payment on or before the 27th day of the month.

Kraft, Inc., proposed this change in the order, citing difficulties caused by the present provisions. A Kraft spokesman testified that there are now occasions when the balance owed to a producer at the time of final payment is less than the authorized deductions for that month. He said that deductions from producers' milk checks are made as an accommodation to producers who have executed assignments in favor of creditors and is a common practice within the dairy industry. He also stated that, when such deductions may only be made from the final payment, there is a wide disparity in the net amount of the final payment as compared to the partial payment. Producers, he said, have expressed dissatisfaction with this procedure, preferring instead to receive approximately equal semi-monthly payments.

The order should allow authorized deductions to be made at the time of partial payment as well as at the time of final payment. This will help insure that producers' obligations can be met through deductions from their checks. It will also aid producers in financial planning by providing equal or nearly equal payments twice a month.

5. *Charges on overdue accounts.* The order should provide a charge on all handler obligations to the market administrator that are overdue. Such charge should be 1 percent and should apply on the first day that a payment is overdue and on the same day of each succeeding month until the obligation is paid. Payments subject to the charge would be those due the market administrator for the producer-settlement fund, order administration, marketing services, and audit adjustments.

The institution of a late-payment charge was proposed by Mid-Am. As set forth in the hearing notice, the cooperative proposed that such charge apply to any overdue account due the market administrator by a handler. The late-payment charge, as proposed, would be three-fourths of 1 percent and would apply beginning the day following the date on which payment of an obligation is due.

At the hearing, Mid-Am proposed three changes to its original proposal: First, the application of the late-payment

charge would be expanded to apply also to overdue handler obligations to producers and cooperative associations; second, the rate of the late-payment charge would be changed to the prime rate plus two percentage points; and third, the charge would apply on a daily basis rather than on a monthly basis, beginning the first day after an obligation was due.

Mid-Am held that adoption of its proposal, as revised, would provide handlers with the necessary incentive for making prompt payments of both their order obligations to the market administrator and to producers and cooperative associations. Proponent cited the collection problems being experienced by the market administrator and indicated that producers have an interest in timely payments. In this connection, the Mid-Am spokesman pointed out that in the last year and a half there were at least 4 occasions when the payment due Mid-Am from the market administrator out of the producer-settlement fund was either late or reduced because handlers were delinquent in making their payments to the producer-settlement fund. In addition, he indicated that those handlers making late payments have a competitive advantage in their business operations relative to handlers making timely payments.

In support of the proposed late-payment charge, Mid-Am contended that the charge should be at least as much as the cost of obtaining a loan from commercial sources since delinquent handlers are in effect borrowing money from producers. The cooperative's spokesman indicated that a charge based on the prime rate plus 2 percentage points is in line with current interest rates on commercial loans. In urging that the charge be apportioned on a daily basis, the witness contended that assessing a charge for only the number of days that payment is actually late, rather than on a monthly basis, would encourage more timely payments.

A spokesman for Fairmont Foods Company supported the adoption of a charge on handler obligations that are late to the market administrator. He proposed that such charge be one percent per month and that it be applied on the first day that a delinquency occurs. The principal reason cited by Fairmont in supporting a late-payment charge was that it would prevent handlers who are delinquent in their payments to the market administrator from having a competitive advantage relative to those handlers making timely payments.

A number of handlers who did not testify at the hearing on this issue

submitted briefs in opposition to Mid-Am's proposal to assess a late-payment charge on handler obligations to producers and cooperative associations. Generally, they held that inadequate notice was given to interested parties to fully explore at the hearing the various ramifications of applying a late-payment charge on such transactions. Moreover, it was their position that this modification would improperly involve the government in the affairs of private parties.

The record evidence indicates that handlers in this market have been chronically late in paying their various order obligations to the market administrator. Data submitted into evidence by the market administrator's office demonstrated the severity of the problem. For example, during the 12-month period of October 1978-September 1979, the market administrator issued 193 billings to handlers. These covered monthly obligations of handlers to the producer-settlement, administrative expense, and marketing service funds, which were due by the 13th, 14th, and 15th day, respectively, of the month. For this 12-month period, none of the payments due the producer-settlement fund were received by the market administrator on time. Only 2.5 percent of the payments had been received by the 15th day of the month.

This record of payment delinquency likely can be attributed in part to the relatively short time between the mailing of the billings to handlers and the due date when such payments are due the market administrator. For example, in the case of payments to the producer-settlement fund, the market administrator's office completes such billings at the latest by the 12th of the month, and on the following day these payments are due from the handler. Nevertheless, even by the 20th day of the month, which should have been sufficient time to complete the billing and payment cycle through the mail, only 112 payments, or 58 percent of the payments due, were received by the market administrator. As late as the end of the month, 15 percent of the payments had still not been made.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the market-wide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is available to handlers with lower than average

Class 1 utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative expense and market service funds is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties on a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the cost of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Because of the late-payment problem that exists in the market, it is appropriate to adopt a late-payment charge of 1 percent per month of the unpaid balance on overdue handler obligations to the market administrator and to apply this charge the first day the obligation is overdue. Whether a charge of 1 percent will be sufficient inducement to handlers to make their payments to the market administrator on time can be determined only through experience. However, if such a charge is to have an impact, it must be an amount that approximates what a delinquent handler is charged by commercial banks for money borrowed for short-term purposes. If the charge is established at a somewhat lesser rate, handlers who may have payment problems would be encouraged to delay their payments, knowing that the late-payment charge is cheaper than borrowing money commercially at a higher loan rate. At the time of the hearing, the spokesman for Mid-Am indicated that the interest charge on short-term loans in the market was slightly over 12 percent per annum or 1 percent per month. In view of this, a monthly charge of 1 percent should provide reasonable assurance that producer funds do not represent a cheaper source of money.

A late-payment charge of this amount should apply irrespective of whether the obligation is paid 1 day late or 10 days late. If the late-payment charge were treated as interest and computed on a daily basis, as suggested by Mid-Am, the order would merely represent a banking service for handlers who desire to use producer funds as an alternative

source of money at the going interest rate. This is not the intended purpose of the late-payment charge. Rather, it is to be a charge that will induce handlers to pay their obligations to the market administrator on time.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1 percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed.

As proposed at the hearing, the order should apply a late-payment charge on overdue obligations of a handler operating a partially regulated distributing plant. Under certain conditions, such a handler may be required to make payments to the producer-settlement and administrative expense funds. In the absence of any late-payment charge, a partially regulated handler could have an advantage on his order obligations relative to fully regulated handlers who are subject to the additional charge when they fail to make timely payments. Also, as pointed out earlier, prompt payments to the administrative expense fund are essential to the market administrator's performance of his duties.

A late-payment charge should not apply on handler obligations to producers and cooperatives, as Mid-Am proposed at the initial hearing. Under the present payment practice, it would be difficult to know with certainty when payment has been made. This, of course, presents a problem of knowing when a late-payment charge should apply. The record does not provide an adequate basis for overcoming this problem, such as through the use of different payment or reporting procedures. Thus, such a charge should not be adopted without further exploration of this issue at another hearing.

Both Mid-Am and AMPI excepted to the above conclusion, arguing that payment dates to cooperatives and individual producers are ascertainable and enforceable. However, neither cooperative nor any other party testified at the reopened hearing on this issue. In the absence of evidence indicating a serious problem in this regard, we continue to believe that producers and cooperatives in this market are in the best position to ensure prompt payments for their milk. Accordingly, we reaffirm our earlier conclusion that a late

payment charge should not apply to this type of transaction.

Counsel for Kraft, through an objection raised at the hearing, argued that Mid-Am's proposal to apply a late-payment charge on handler obligations to producers and cooperatives should not be considered in this proceeding because proper notice was not provided to the public since the original late-payment proposal of Mid-Am that was included in the hearing notice applied only to handler obligations due the market administrator. The administrative law judge did not rule on the objection, but indicated that the objection should be resolved at the decision-making level in connection with the entire late-payment issue. Since it is concluded that there should be no late-payment charges on handler obligations to producers and cooperatives, there is no need to consider Kraft's objection.

As noted previously, part of the lateness in payments to the market administrator can be attributed in part to the relatively short time between the mailing of the market administrator's billings to handlers and the date by which such billings are to be paid. Presently, the uniform price is announced on the 12th day of the month (the latest date that billings are completed by the market administrator's office), and payments of such billings to the producer-settlement fund are due on the next day. It is obvious that this time interval is insufficient to allow for the transmission of the billings and payments through the mail. Similarly, it is unrealistic to expect the market administrator to make payment from the producer-settlement fund on the 14th day of the month, as now required by the order, if the necessary payments to the producer-settlement fund have not been received. Finally, if the market administrator is unable to make payments out of the producer-settlement fund by the 14th day of the month, those handlers receiving such payments cannot be expected to pay cooperative associations by the 14th day of the month or producers by the 15th day of the month, as the order requires.

A proposal that would have allowed more time for the submission of billings and payments through the mails was included in the notice of hearing. At the hearing, the proponent, Mid-Am, abandoned the proposal. In its brief, however, the cooperative indicated that it would be proper to consider its proposed change in payment dates in order to make the various payment dates under the order more practical and realistic in terms of achieving timely

payments. A witness for Fairmont Foods Company indicated support for the proposal but did not elaborate. No other parties either supported or opposed the proposal.

It would not be reasonable to impose a late-payment charge on handler obligations to the market administrator without providing handlers an opportunity to comply with the order in making the required payments. It is within this context that the changes in dates adopted herein are made.

The various payment dates in the order must be coordinated. The first payment due, the payment to the producer-settlement fund, must be coordinated with the announcement of the uniform price. It is only after this price is available that the obligations to and from the producer-settlement fund can be determined and payments made to producers and cooperatives.

The order provides for announcement of the uniform price by the 12th day of the month. Payments to the producer-settlement fund, therefore, should be made by the 15th of the month; payments to handlers from the producer-settlement fund should be made by the 16th day of the month; and payments to producers should be made by the 18th day of the month and to cooperative associations 1 day earlier. These payment dates give handlers a reasonable amount of time to comply with the order in making the required payments.

In conjunction with other changes adopted herein, the dates by which handlers are required to pay administrative and marketing service assessments to the market administrator also should be changed. Such payments are now due on the 14th day of the month for administrative assessments and 1 day later for marketing service assessments. No purpose is served by requiring payments to the producer-settlement, administrative expense, and marketing service funds on different dates. Accordingly, payments to the administrative expense and marketing service funds should be due on the same date that payments to the producer-settlement fund are due.

#### *6. Market administrator's reports and announcements concerning classification*

A proposal by Mid-America Dairymen, Inc., to require the market administrator to report to a cooperative association the classification of milk received by a handler from the cooperative's supply plant should be denied.

The testimony on the record did not clearly indicate the intent and need for

this change in the order. Moreover, Mid-Am proposed in its brief that no action be taken on the proposal. There was no other support for the proposal.

#### **Ruling on Proposed Findings and Conclusions**

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties were inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

A brief filed after the reopened hearing on behalf of Gillette Dairy Products, Orchard Dairy Products, Neu Cheese Company, Oxford Cheese Corporation, Ravenna Cheese Company, and Dodge Dairy Products alleges that this proceeding is legally deficient because: (1) proper notice was not given for all of the order amendments adopted in the initial recommended decision; and (2) there was a lack of substantial evidence to support such changes. Counsel for AMPI took a similar position at the reopened hearing and also in his brief.

Although the order changes set forth in the initial recommended decision were within the scope of the first hearing notice, the Department concluded on the basis of industry exceptions that interested parties should have an opportunity to address further the issues at a reopened hearing. Parties were permitted to testify not only on the original proposals but also on the order changes that the Department had set forth in its initial recommended decision.

With respect to the alleged lack of evidence, we find no basis for agreeing with this conclusion. The record provides an adequate basis for the proposed amendments adopted herein.

Six proprietary handlers, in their brief, requested that the proceeding be terminated because of the significant impact that they believe Mid-Am's acquisition of Roberts Dairy will have on the market's competitive structure. On the basis of this development, it was further requested that interested parties be allowed to submit proposals for consideration at a new hearing.

The acquisition of Roberts Dairy, which was a major fluid milk distributor in the market, occurred after the reopened hearing. Thus, the record of

the two hearing sessions does not reflect this development. However, there is no persuasive demonstration in the brief of the six handlers that this development nullifies the evidence received at the hearing or would materially affect the outcome of this proceeding if the knowledge of this event were made a part of the hearing record. Therefore, the request that the proceeding be terminated at this point is denied.

Handlers, of course may submit proposals to the Department for consideration at a hearing at any time. Any proposals received will be reviewed by the Department to determine if they are appropriate for a hearing.

#### **General Findings**

The following findings and determinations supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and affirmed, except where they conflict with those set forth below.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the market area. The minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

#### **Rulings on Exceptions**

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby



overruled for the reasons previously stated in this decision.

In their exceptions to the revised recommended decision, AMPI and the group of six proprietary handlers renewed their position that this proceeding is legally deficient because: (1) substantive order amendments were proposed for adoption in the decision without proper notice, and (2) there was a lack of substantial record evidence supporting such proposed amendments. Additionally, in its exception, the proprietary handler group reiterated its initial request that in view of the changed market circumstances alleged to be brought on by the acquisition of Roberts Dairy by Mid-Am, the present proceeding should be terminated and a new hearing be held.

These issues raised by exceptors were already fully considered under "Rulings on Proposed Findings and Conclusions." For the reasons stated therein the exceptions are hereby denied.

In its exceptions to the revised recommended decision, the proprietary handler group stated that the revised recommended decision discriminates "unjustly against independent producers and the handlers with whom they deal." The various points raised by the group in this regard, which relate to the proposed amendments on two issues (i.e., the pooling standards for supply plants and Class I price zones and location adjustments issues), are contained in the record of the proceeding and were fully considered in both the initial and revised recommended decisions under the issues opened for consideration. The exceptions provide no basis for reaching a different conclusion on these issues.

Following the close of the period for filing exceptions to the revised recommended decision, AMPI filed a motion requesting that the current proceeding be terminated. The cooperative claimed the following in support of its request:

"Over two years have elapsed since the original hearing on the proposals noticed in the original Notice of Hearing. Since that time, marketing conditions in the Nebraska-Western Iowa Marketing Area have undergone significant changes. The production conditions which originally impelled the Department to convene a hearing on the request of a major supply organization no longer obtain. A number of distributing plant handlers have either terminated operations or significantly changed their pattern of operations. The record upon which the Recommended and Revised Decisions were issued no longer describes the present production patterns of producers or the distribution

patterns of handlers regulated under the Order.

"Findings and Conclusions predicated on such a record would have no current validity."

The request for termination is not supported by any demonstration of how the changed marketing conditions claimed by AMPI make the conclusions of this decision and the proposed order changes inappropriate. This is no basis to conclude that the relevant marketing conditions on which the conclusions in this decision are based do not continue to exist at the present time. Terminating the proceeding would prevent the adoption of the amendments concluded herein to be necessary to effectuate the policy of the Act. Accordingly, the motion is denied.

#### Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Nebraska-Western Iowa marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

*It is hereby ordered*, That this entire decision, except the attached marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

#### Determination of Producer Approval and Representative Period

October 1980 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Nebraska-Western Iowa marketing area is approved or favored by producers, as defined under the terms of the order (as amended) and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on January 22, 1981.

**Harry C. Mussman,**

*Acting Assistant Secretary for Marketing and Transportation Services.*

*Order<sup>1</sup> amending the order, regulating the handling of milk in the*

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

*Nebraska-Western Iowa marketing area.*

#### Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Nebraska-Western Iowa marketing area.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

*Order relative to handling.* It is therefore ordered that on and after the effective date hereof the handling of milk in the Nebraska-Western Iowa marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing

Program Operations, on July 24, 1980, and published in the *Federal Register* on July 31, 1980 (45 FR 50773) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein except that a change is made in § 1065.7(b)(2):

1. Section 1065.2 is revised to read as follows:

**§ 1065.2 Nebraska-Western Iowa marketing area.**

The "Nebraska-Western Iowa marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties and townships listed below, including such territory as is now occupied and as may be occupied in the future by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments. Where such establishment is partly within and partly without the designated boundaries, the marketing area shall include the entire area encompassed by such establishment.

(a) Nebraska Counties: Adams, Antelope, Banner, Boone, Box Butte, Buffalo, Burt, Butler, Cass, Cedar, Cheyenne, Clay, Colfax, Cuming, Custer, Dakota, Dawes, Dawson, Deuel, Dixon, Dodge, Douglas, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Gosper, Greeley, Hall, Hamilton, Harlan, Howard, Jefferson, Johnson, Kearney, Keith, Kimball, Knox, Lancaster, Lincoln, Madison, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Phelps, Pierce, Platte, Polk, Red Willow, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, and York.

(b) Iowa Counties: Cass, Cherokee, Crawford, Fremont, Harrison, Ida, Mills, Monona, Montgomery, O'Brien, Page, Plymouth, Pottawattamie, Sac, Shelby, Sioux, and Woodbury.

(c) South Dakota Counties: That portion of Union County comprising Jefferson Township, North Sioux City, and the unorganized territory adjacent thereto, as defined and mapped in the United States 1960 Census of Population.

2. In § 1065.7, the word "January" in paragraph (d)(3) is changed to "April," and paragraphs (a) and (b) are revised as follows:

**§ 1065.7 Pool plant.**

(a) A distributing plant from which there is:

(1) Route disposition (except filled milk) in the marketing area during the month equal to not less than 15 percent of the Grade A milk received at such

plant from dairy farmers, supply plants (exclusive of transfers and diversions from plants qualifying as pool plants pursuant to this paragraph), and handlers described in § 1065.9(c); and

(2) Total route disposition (except filled milk) during the month or the immediately preceding month equal to not less than 35 percent of the Grade A milk received at the plant during such month from the sources specified in paragraph (a)(1) of this section.

(b) A supply plant from which during the month of volume of fluid milk products, except filled milk, transferred and diverted to pool distributing plants is 40 percent or more of the total Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant but excluding producer milk diverted to the plant pursuant to § 1065.13) and handlers described in § 1065.9(c), subject to the following additional conditions:

(1) Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of milk from the supply plant to pool distributing plants;

(2) The volume of fluid milk products included as qualifying shipments to any pool distribution plant pursuant to this paragraph shall be reduced by the volume of any fluid milk products transferred or diverted by the operator of such pool distributing plant to the supply plant or to any other plant operated by the operator of the supply plant.

(3) The shipping requirements of this paragraph may be increased or decreased up to 20 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments; and

(4) A supply plant that qualifies as a pool plant in each of the months of September through March shall be a pool plant for the following months of April through August unless written application is filed with the market administrator by the plant operator requesting the plant be designated a nonpool plant. In such case, nonpool status will be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of transfers and diversions. Any plant that qualifies as a

pool plant pursuant to this paragraph will be subject to any shipping requirement announced pursuant to paragraph (b)(3) of this section.

3. In § 1065.9, paragraph (c) is revised to read as follows:

**§ 1065.9 Handler.**

(c) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association. The milk shall be deemed to have been received from producers by the cooperative association at the location of the plant to which it is delivered. Milk delivered pursuant to this paragraph shall not include milk of its member producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section:

4. Section 1065.13 is revised to read as follows:

**§ 1065.13 Producer milk.**

"Producer milk" of each handler means all skim milk and butterfat contained in milk from producers that is:

(a) Received at a pool plant directly from a producer or a handler described in § 1065.9(c), excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1065.9(c) from producers in excess of the quantity delivered to pool plants;

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant. Milk delivered pursuant to this paragraph by a supply plant operator shall be limited to those producers who are located within 150 miles of the supply plant (as based on the post office address of the producer). Such milk shall be priced at the plant to which diverted; or

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1065.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless during the month at least one day's production of milk of such dairy farmer is physically received at a pool plant;

(2) The total quantity of milk diverted by a cooperative association during the month may not exceed 40 percent in the months of September through March, and 50 percent in other months, of the producer milk that the cooperative association causes to be delivered to or

diverted from pool plants during the month;

(3) The operator of a pool plant (other than a cooperative association) may divert for his account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity so diverted during the month may not exceed 40 percent in the months of September through March, and 50 percent in other months, of the milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator;

(4) The diversion limits of this paragraph may be increased or decreased up to 20 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(5) Any milk diverted in excess of the limits prescribed in paragraph (d) (2), (3), and (4) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the total milk diverted on the last day of the month, then the second-to-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for; and

(6) Diverted milk shall be priced at the location of the plant to which diverted.

5. In § 1065.41, paragraph (b)(2) is revised to read as follows:

§ 1065.41 Shrinkage.

\* \* \* \* \*

(b) \* \* \*

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1065.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

\* \* \* \* \*

6. In § 1065.42, paragraph (a) is revised to read as follows:

§ 1065.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1065.44(a)(12) and the corresponding step of § 1065.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1065.44(a)(7) or the corresponding step of § 1065.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1065.44(a) (11) or (12) or the corresponding step of § 1065.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

\* \* \* \* \*

§ 1065.44 [Amended]

7. In § 1065.44(a)(8)(ii)(c), the introductory text of (a)(11), and (a)(12)(i)(b), the words "and diversions" are added following the word "transfers" in the parenthetical expression and in § 1065.44(a)(13) the reference to "§ 1065.42(a)(1)" is changed to "§ 1065.42(a)."

8. In § 1065.50, paragraph (a) is revised as follows:

§ 1065.50 Class prices.

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$1.60.

\* \* \* \* \*

9. Section 1065.52 is revised to read as follows:

§ 1065.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the Nebraska counties of Adams, Boone, Buffalo, Butler, Cass, Chase, Clay, Colfax, Custer, Dawson, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Valley, Webster, and York.

(2) Zone 2 shall include the Nebraska counties of Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux.

(b) For producer milk received at a pool plant (or diverted to a nonpool plant) and which is classified as Class I milk without movement in bulk form to a pool plant at which a higher Class I price applies, the Class I price specified in § 1065.50(a) shall be adjusted for the location of the plant receiving the milk as follows:

(1) In Zone 1, no adjustment;

(2) In Zone 2, plus 15 cents;

(3) At a plant located outside of Zones 1 and 2 and in the States of Nebraska, Iowa, Minnesota, North Dakota, South Dakota (east of State Highway 73 only), or Wisconsin, the price shall be reduced by 1.5 cents per 10 miles or fraction thereof (by shortest hard-surfaced highway and/or all weather road distance as measured by the market administrator) that such plant is located from the nearer of the city halls in Norfolk or Omaha, Nebraska; and

(4) At any other location, no adjustment.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(d) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to § 1065.44

(a)(12) and (b) the pounds of packaged fluid milk products from other pool plants;

(2) Multiply the remaining pounds of milk by 110 percent;

(3) Subtract the pounds of bulk fluid milk products received at the transferee-plant from the following sources:

- (i) Producers;
- (ii) Handlers described in § 1065.9(c);
- (iii) Pool plants at which the same or a higher Class I price applies; and
- (iv) Receipts of diverted milk from pool plants;

(4) Assign any pounds remaining to transferor-plant in sequence beginning with the plant at which the least adjustment would apply; and

(5) Multiply the pounds so computed for each transferor-plant by the difference in the Class I prices applicable at the transferee-plant and transferor-plant.

10. Section 1065.53 is revised to read as follows:

**§ 1065.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the 5th day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1065.71 [Amended]**

11. In § 1065.71(a), the number "13th" is changed to "15th".

**§ 1065.72 [Amended]**

12. In § 1065.72, the number "14th" is changed to "16th".

13. Section 1065.73 is revised to read as follows:

**§ 1065.73 Payments to producers and to cooperative associations.**

(a) Each handler shall pay for milk received from producers for whom payment is not made pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 27th day of the month, the handler shall pay each producer who had not discontinued shipping milk to such handler for milk delivered during the first 15 days of the month. The amount to be paid for each hundredweight of milk delivered shall be not less than the applicable uniform price for the preceding month, less proper deductions authorized in writing by such producer;

(2) On or before the 18th day after the end of the month, the handler shall pay to each producer for each hundredweight of milk delivered the uniform price pursuant to § 1065.61, as adjusted pursuant to §§ 1065.74 and 1065.75, less the following amounts:

(i) the payments pursuant to paragraph (A)(1) of this section;

(ii) Deductions for marketing services pursuant to § 1065.86; and

(iii) Any proper deductions authorized in writing by the producer. However, if by the date specified above the handler has not received full payment for such month pursuant to § 1065.72, he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has determined that such cooperative association is authorized to collect payment:

(1) On or before the 26th day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 17th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for receipts of milk for which such cooperative association is the handler pursuant to § 1065.9(c) as follows:

(1) On or before the 26th day of the month, the handler shall pay for milk received during the first 15 days of the month. The amount to be paid for each hundredweight of milk delivered shall be not less than the applicable uniform price for the preceding month; and

(2) On or before the 17th day after the end of each month, the handler shall pay for each hundredweight of milk delivered the uniform price, as adjusted by the butterfat differential specified in § 1065.74, applicable at the location of the receiving handler's plant, less the amount paid pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer or diversion from a pool plant operated by the cooperative association as follows:

(1) On or before the 26th day of the month, the handler shall pay for each hundredweight of fluid milk products

received during the first 15 days of the month not less than the Class III price for the preceding month, adjusted by the butterfat differential pursuant to § 1065.74 for the preceding month; and

(2) On or before the 17th day after the end of the month, the handler shall pay for each hundredweight of fluid milk products received according to the classification of such fluid milk products pursuant to § 1065.42 at not less than the applicable class prices specified in § 1065.50, adjusted for the location of the transferee plant and by the butterfat differential specified in § 1065.74, less payment made pursuant to paragraph (d)(1) of this section;

(e) In making payments to producers pursuant to paragraphs (a) and (b) of this section, each handler shall furnish each producer or cooperative association with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate at which payment to the producer is required under the provisions of §§ 1065.61, 1065.74, and 1065.75;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed pursuant to § 1065.86 together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(g) Nothing in this section shall abrogate the right of a cooperative association to make payments to its member producers in accordance with the payment plan of such cooperative association.

14. Section 1065.75 is revised to read as follows:

**§ 1065.75 Plant location adjustments for producers and on nonpool milk.**

(a) The uniform price pursuant to § 1065.61 for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1065.52.

(b) For purposes of computations pursuant to § 1065.71(a)(2)(ii), the uniform price shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

15. A new § 1065.78 is added as follows:

**§ 1065.78 Charges on overdue accounts.**

Any obligation of a handler pursuant to §§ 1065.71, 1065.76, 1065.77(a), 1065.85, and 1065.86, for which remittance has not been made (or, if mailed, postmarked) by the date specified for such payment, shall be increased one percent, and any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall include unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

**§ 1065.85 [Amended]**

16. In the preamble of § 1065.85, the number "14th" is changed to "15th".

**United States Department of Agriculture  
Agricultural Marketing Service**

**Marketing Agreement Regulating the  
Handling of Milk in the Nebraska-  
Western Iowa Marketing Area**

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1065.1 to 1065.122, all inclusive, of the order regulating the handling of milk in the Nebraska-Western Iowa Marketing Area which is annexed hereto; and

II. The following provisions:

**§ 1065.123 Record of milk handled and authorization to correct typographical errors.**

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of October 1980, hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural

Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

**§ 1065.124 Effective date.**

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

IN WITNESS WHEREOF, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

\_\_\_\_\_  
(Signature)  
(Seal)  
By \_\_\_\_\_  
(Name) (Title)  
\_\_\_\_\_  
(Address)  
Attest \_\_\_\_\_  
Date \_\_\_\_\_  
[FR Doc. 81-2998 Filed 1-26-81; 8:45 am]  
BILLING CODE 3410-02-M

**CIVIL AERONAUTICS BOARD**

**[EDR-401A; Docket 38108; Dated: January 21, 1981]**

**14 CFR Part 250**

**Oversales and Denied Boarding  
Compensation**

**AGENCY:** Civil Aeronautics Board.  
**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Civil Aeronautics Board proposes to amend its regulations relating to oversales and denied boarding compensation to exclude carriers operating 60-seat and smaller aircraft from its requirements except in any market in which the carrier also operates larger than 60-seat aircraft. The purpose of the amendment is to exclude certificated carriers operating small aircraft from regulation of their oversales and denied boarding practices in the absence of a significant need for such regulation.

**DATES:** Comments by: March 30, 1981.

Comments and relevant information received after these dates will be considered by the Board only to the extent practicable.

Request to be put on the Service List by: February 11, 1981. Previous requests need not be repeated.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

**ADDRESSES:** Twenty copies of comments should be sent to Docket Section, Docket 38108, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., as soon as they are received.

**FOR FURTHER INFORMATION CONTACT:** Lawrence R. Krevor, Legal Processing Division, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428; (202) 673-5333.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 1, 1980, we issued EDR-401, 45 FR 31413, May 13, 1980, an Advance Notice of Proposed Rulemaking (ANPRM) in which we solicited comments from passengers, carriers, civic parties and other interested individuals and groups regarding whether, and in what form our oversales and denied boarding rules (14 CFR Part 250) should apply to commuter air carriers and to certificated carriers operating 60-seat and smaller aircraft.<sup>1</sup> The rule now applies to all certificated carriers, including those initially certificated through award of unused authority under section 401(d)(5) of the Federal Aviation Act of 1958, as amended, regardless of the size of aircraft the carrier operates.

Noncertificated carriers (commuters and other air taxis) are exempt from the rule. Carriers operating under dual commuter and certificate authority must conform to Part 250 in both their certificated and noncertificated operations.

In ER-1123, 44 FR 30080, May 24, 1979, we increased the size of aircraft authorized to operate under Part 298 of our Economic Regulations to 60 seats. (Part 298 exempts operators of small aircraft from the certification requirements of the Federal Aviation Act.) At that time, we promised to investigate and compare the costs and benefits of applying Part 250 to commuter carriers, with special emphasis on those in the 30 to 60 seat range, and to certificated carriers operating aircraft no larger than those used by commuter carriers. Although we had consistently applied Part 250 to all certificated carriers without regard to the size of aircraft they operate, we had not focused on the impact of this rule on the small, former commuter air carriers now becoming certificated—principally through the dormant authority

<sup>1</sup> Hereafter referred to as small aircraft.

provisions of the new Act. We reaffirmed our intention to investigate this question in Order 79-12-161, December 21, 1979, where we granted an exemption from Part 250 to a certificated carrier operating smaller than 30 seat aircraft and indicated our willingness to provide the same temporary relief to other similarly situated carriers. We issued EDR-401 in order that we might have more information regarding the impact of oversales regulation before developing a proposed rule. Subsequently, we granted temporary exemptions from Part 250 to approximately 20 certificated carriers operating small aircraft pending the overcome of this investigation and rulemaking.<sup>2</sup>

EDR-401 presented six policy options for regulating the oversales practices of operators of small aircraft.<sup>3</sup> In addition, it is requested comments on a number of specific questions designed to explore the issues involved in choosing among these options, including: (1) whether certification should be the controlling factor (or one of several factors) in determining the proper application of the rule; (2) what the likely costs of compliance with the rule would be; (3) how carriers operating both large and small aircraft would fall within the regulatory scheme; (4) what means are available to provide notice to consumers of a carrier's denied boarding practices and policies; (5) how the existing rule could be refined to reduce its compliance burden on small aircraft operators; and (6) whether there are special circumstances in which a stricter rule than that of general applicability should be required.

We received a total of 27 comments—from eight carriers, 13 individuals, three consumer groups, one trade association, one state transportation agency and one public airport district. The majority of comments support either Option 1 (applying the rule to the system-wide operations of all scheduled air carriers) or Option 2 (applying the rule only to

<sup>2</sup> See, e.g., Orders 80-5-9, May 1, 1980; 80-7-116, July 18, 1980.

<sup>3</sup> The six possible options for application of the rule were: (1) Apply the rule to the system-wide operations of all scheduled air carriers; (2) Apply the rule only to carriers operating larger than 60-seat aircraft (exempt all commuter carriers and certificated carriers operating smaller than 60-seat equipment); (3) Apply the rule to all carriers operating larger than 30-seat aircraft (exempt only commuters and certificated carriers operating smaller than 30-seat equipment); (4) Apply the rule to certificated carriers operating larger than 30-seat aircraft (exempt all commuter carriers, and certificated carriers operating the smaller equipment); (5) Apply the rule to all certificated carriers and to all commuter carriers operating larger than 30-seat aircraft (exempt only commuters using the smaller equipment); (6) Apply the rule to all certificated carriers only (the present rule).

carriers operating larger than 60-seat aircraft, i.e., a blanket exclusion of all commuter carriers and certificated carriers operating 60-seat and smaller equipment exclusively).<sup>4</sup> Most of those commenting in favor of expansion of the rule, and most of those supporting the exclusion of small aircraft, state that if we choose Option 1 we should refine Part 250 to reduce the disproportionate burden it now places on operators of small aircraft in relation to fares and revenues. The refinements suggested by the comments are similar to those on which we requested comment in EDR-401: (1) modifying the method for computation of denied boarding compensation (section 250.4) and (2) creation of an exception to eligibility for denied boarding compensation for passengers involuntarily bumped due to takeoff or landing weight limitations caused by weather or other unpredictable operational conditions. In this regard, a frequent comment was that payment of denied boarding compensation under Part 250 imposes an unfair penalty on small carriers when bumpings result from "no-record" passengers—passengers whose reservations have been confirmed by a travel agent or interlining carrier without informing the small carrier.

#### Legal and Policy Issues

##### *Criteria for Application of the Rule*

All of the comments which addressed the question of whether certification should continue to be the basis for application of Part 250 rejected this approach. With one exception, all supported aircraft size as the most appropriate benchmark for application of the rule.<sup>5</sup> In general, the comments

<sup>4</sup> Those organizations and individuals supporting extension of Part 250 to all scheduled air carriers, are: United States Office of Consumer Affairs (USOCA); Airline Passengers Association; Aviation Consumer Action Project; New York State Department of Transportation; Eleven persons filing comments as individuals (including six persons from Fort Wayne, Indiana, expressing concern about Air Wisconsin's oversales practices in providing replacement service for United. The large number of comments from Ft. Wayne may have been inspired by an article, "Overflows Bump into Cash Flow", Ft. Wayne Journal Gazette, June 26, 1980, encouraging people to write to the CAB to express an opinion.); Santa Maria Public Airport District.

Comments supporting limiting the rule to carriers operating larger than 60-seat equipment include those filed by: Air BVI; Air New England; Commuter Airline Association of America (CAAA's comments were approved by 12 member carriers and concurred in by two); Republic; USAir; Suburban; Business Aircraft; One person filing comments as an individual.

<sup>5</sup> One individual suggested that carriers operating small aircraft that develop a particularly bad record of bumping be required to furnish notice of their poor performance and/or pay denied boarding compensation. Thus, the rule would apply as a result of substandard performance.

stated that the problems of small aircraft operations necessitating overbooking (e.g., operational limitations based on weather conditions, limited capacity to accommodate "no-record" passengers and a high incidence of "no-show" passengers) do not change when a commuter carrier acquires certificate authority in some or all of its markets. The comments provided no support for the proposition that consumers expect improved performance of this area from certificated carriers.

The comments also provided little or no support for making any regulatory distinctions at the 30-seat mark. Air BVI, in supporting the exclusion of small aircraft from the rule, states that the 60-seat mark is consistent with the Board's determination in Part 298 that aircraft with 60 or fewer seats constitute "small aircraft" and warrant special relief from the full panoply of responsibilities placed on certificated carriers. Further, the distinction appears to be consistent with the operational realities of small aircraft. Many of those who would extend the rule to all air carriers see the 60-seat mark as an appropriate division for determining a class of carriers that should operate under a less complex and less burdensome form of the rule.

In EDR-401, we expressed concern that public confusion would result if different oversales rules were to apply to the different operations of a single carrier. This "mixed fleet" problem would exist if we exclude operations with small aircraft from the rule. In that case a carrier would be required to comply with the rule in its large aircraft operations but not in operations with small aircraft. The comments address this issue as primarily one of providing adequate notice to consumers. Suggested approaches include applying Part 250 only to the larger than 60-seat aircraft operations of a "mixed fleet" carrier or applying Part 250 to all operations of a carrier in a market in which the carrier operates large aircraft.<sup>6</sup> Of course, those advocating Option 1 find further support for their preference in the fact that it would minimize the "mixed fleet" problem—since all carriers would operate subject to some form of the rule.

#### *Need for Regulation*

Notwithstanding whether application of the rule should be based on certification or aircraft size, we also solicited comments on whether commuter carriers should become

<sup>6</sup> We adopted this second alternative in granting Altair Airlines a temporary exemption from Part 250. See Order 80-5-9, May 1, 1980.

subject to Part 250. We specifically solicited comments on whether oversales and the involuntary bumping of passengers with confirmed reservations is a significant problem in commuter operations as well as in operations with small aircraft by certificated carriers. We have attempted to determine whether the continued exclusion of commuters from Part 250 at a time when such carriers are assuming an increasingly important role in the national air transportation system would cause significant harm to the traveling public.

Little empirical data was submitted bearing on the need for regulation of oversales in operations with small aircraft. The United States Office of Consumer Affairs (USOCA) stated that the inconvenience and expense of involuntary bumping can be greater for passengers on small aircraft because such service often involves smaller communities with infrequent service and a large percentage of interlining passengers. This theme was repeated in a number of comments supporting extension of the rule. For example, USOCA cited CAB statistics that 9.6% of complaints regarding commuter carriers involve bumping as compared to 6.7% for certificated carriers. On the other hand, the Commuter Airline Association of America (CAAA) commented that the commuter industry presently operates without regulation of oversales and that it is unaware of any "groundswell of consumer demand for such rules". CAAA further noted that bumpings in small aircraft operations are most likely to occur from factors over which the carrier has no control—such as weather conditions or "no-record" passengers—than from the kind of deliberate, excessive oversales that Part 250 attempts to discourage and control.

#### CAAA Carrier Survey

In preparing its comments, CAAA surveyed its members regarding the questions raised in EDR-401. CAAA members include carriers holding certificated route authority operating small aircraft as well as commuter carriers operating exclusively under authority of Part 298. The CAAA survey indicates that deliberate oversales are a principal response of small aircraft operators to the problem of maintaining profitable load factors in light of significant numbers of "no-show" passengers. Twenty-five of the 32 carriers responding to the survey indicated they experience "no-show" factors of more than 10 percent; of these, six have experienced greater than 20 percent. Eighteen carriers stated that they deliberately overbook and fourteen

indicated that they do not. Carriers reporting bumpings said that they usually do not exceed 10 passengers per month.<sup>7</sup> All respondents indicated that they follow some policy for the treatment of passengers denied boarding involuntarily; however, more than half refunded only the ticket price for the flight from which bumped or booked the passenger on the next flight.<sup>8</sup>

Twenty-three carriers indicated that a major cause of involuntary bumpings is travel agents confirming tickets without informing the carrier. Fourteen carriers cited operational problems and 13 cited problems with other airlines as contributing to involuntary bumping.

The CAAA survey confirms that a very high percentage of commuter traffic is connecting. Twenty carriers stated that 70 percent or more of their customers are interline connecting passengers. Two carriers subject to Part 250 stated their costs of compliance with the rule—\$48,628 and \$41,800—but no detail or itemization was furnished.<sup>9</sup>

#### BCCP Passenger Survey

We also instructed our Bureau of Compliance and Consumer Protection (BCCP) to undertake a survey of individuals who have complained to it about a denied boarding experience involving small aircraft. The purpose of this survey was to gather data regarding the perceptions of consumers as to the need for the rule, its benefits to consumers and cost to the airlines. The survey solicited information only from persons sufficiently dissatisfied with a bumping that they sought assistance from BCCP. Forty-two of the 116 passengers who contacted the Bureau initially responded to the survey. A disproportionate number of responses were received from passengers bumped several times from one or two carriers. The 42 responses represent consumer experiences with 30 different carriers—23 commuters and seven small certificated carriers.

Twenty-eight of the 42 bumped passengers responding to the survey were able to arrange alternate transportation, the remaining fourteen were not. Of these 28 passengers, three were delayed for less than one hour, 12

<sup>7</sup> Six carriers responding to the survey follow Part 250; therefore, we assume that this includes bumpings by carriers not subject to the rule.

<sup>8</sup> Carriers subject to Part 250 must first solicit volunteers willing to give up their seat for a payment of the carrier's choosing. If the carrier involuntarily bumps a passenger it must pay the passenger denied boarding compensation as specified in the rule. In addition, the passenger retains his ticket for use on an alternate flight or for a refund.

<sup>9</sup> Although not specified, we assume these are annual costs.

were delayed one to three hours, five experienced a delay of three to five hours and six more than five hours. Two did not answer. A number of the passengers surveyed were aware of the difficulty carriers face in assuring high load factors; however, most felt that if an airline overbooks it should be responsible for any resulting inconvenience. Several passengers favored automatic penalties for "no-show" passengers to minimize overbooking. Others suggested that guaranteed reservations with automatic penalties for "no-show" passengers who fail to cancel before a set deadline be instituted in conjunction with Board regulation to reduce overbooking and involuntary bumping.

A substantial number of passengers responding to the BCCP survey were offered no denied boarding compensation. Some of these contacted BCCP or other consumer agencies and groups in their efforts to gain some recompense for their inconvenience and time and money spent in making alternative transportation arrangements. One respondent stated that absent Board regulation the individual would have little clout.

The BCCP survey points out that the bumped passenger's dissatisfaction increases when offered little or no help in making alternative arrangements. BCCP notes that the results of its survey emphasize the need for carriers to seek out passengers who will be least inconvenienced by bumping or who will volunteer in return for financial remuneration.

We are not aware of any serious overbooking and bumping problems by the nearly 20 certificated carriers operating small aircraft that we have temporarily exempted from the rule.<sup>10</sup>

#### The Proposal

Based on the comments and other data discussed above we have decided not to propose extending Part 250 in any form to commuter carriers. As noted above, substantial information has been provided indicating that the economic and operational realities of small aircraft are the same whether or not the carrier operates pursuant to certificate authority, the class exemption from section 401 of the Act described in Part 298 or other Board authority. Therefore, we propose to amend Part 250 to

<sup>10</sup> Source: CAB Form 251 reports of carriers temporarily exempted from Part 250, May 1980 through August 1980. We note that this represents only a few months experience for these carriers. On the other hand, this reporting period includes the summer season when temperature/humidity conditions are claimed to exacerbate the incidence of bumping for several carriers.

exclude from its scope the small aircraft operations of certificated carriers. Further, we propose that a carrier operating both larger than 60-seat aircraft and small aircraft be required to comply with the rule on all of its flights in any market in which it utilizes large aircraft.<sup>11</sup>

Our proposed rule bases the application of Part 250 on aircraft size; 60 seats would be the maximum size of small aircraft not subject to the rule. This definition appears to accord with the operational limitations of 60-seat and smaller turboprop and piston engine aircraft and is consistent with our general exemption in Part 298 of operators of small aircraft from many of the requirements of section 401 of the Act.

The basic questions in this investigation and rulemaking are whether to regulate the oversales and denied boarding practices of commuter carriers, and whether the same policy should also apply to certificated carriers operating small aircraft. We have never regulated the oversales practices of carriers operating solely under Part 298. To do so would institute a new regulatory scheme for this traditionally unregulated segment of the industry. We will not impose new regulation unless the information available to us demonstrates an unmet regulatory need sufficient to justify the burden of such regulation. This is especially true given the thrust of the Deregulation Act and our basic policy of relying on market solutions to the extent possible.

We issued EDR-401, rather than a proposed rule, because we had insufficient empirical data regarding the need for and relevant cost of regulating oversales in small aircraft operations. We believe that the empirical data now before us, while incomplete, fails to demonstrate the existence of a significant unmet need for regulation of the oversales practices of commuter carriers that outweighs the negative aspects of imposing a new regulatory burden on them. In the absence of demonstrated abuse of overbooking by a significant number of carriers operating small aircraft, and of evidence that such carriers will fail to develop satisfactory solutions to their oversales problems, we do not propose to submit a traditionally unregulated segment of the industry to this new regulatory scheme. We are aware that a few carriers operating small aircraft have in the past, and will continue to, excessively overbook and to expend few resources

<sup>11</sup> However, we solicit comments regarding other approaches to this "mixed fleet" issue as discussed more fully on page 10, infra.

to compensate the inconvenienced passenger. These few instances, however, do not, and should not, compel us to mandate a regulatory scheme for the entire industry. The comments and other information available to us demonstrate that the magnitude of the problem is simply not sufficient to justify such action.<sup>12</sup>

The problems that contribute to overbooking in operations with small aircraft do not disappear when a carrier receives certificate route authority. Therefore, we propose to amend Part 250 to exclude from its application certificated carriers operating 60-seat or smaller aircraft except in any market in which the carrier also operates larger than 60-seat aircraft. This would end the unequal treatment of certificated carriers operating commuter-type aircraft and services under the existing rule.

The proposed rule places responsibility for proper treatment of passengers on carrier management. Of course, a small aircraft operator may continue voluntarily to follow Part 250, in whole or in part, where it finds the rule consistent with its business interests. Carriers may find it desirable to solicit volunteers when oversales situations occur in order to identify those least inconvenienced by bumping or who will voluntarily relinquish their seats in return for compensation of the carrier's choosing. Further, although Part 250 in no way limits the right of an aggrieved passenger to seek greater compensation through recourse to the courts, it can, in effect, set an upper limit to the damage claims of most bumped passengers.<sup>13</sup>

#### *Mixed Fleet*

The proposed rule would require carriers operating both large and small aircraft to comply with the rule for all operations in a market in which the carrier operates large aircraft. This

<sup>12</sup> Further, even the comments in support of expanding Part 250 to commuter carriers recognize that creation of an exception to eligibility for denied boarding compensation for bumpings caused by weather or other unforeseen operational factors and limiting the amount of compensation under the rule (e.g. the price of the ticket for the flight) would be necessary to relieve the disproportionate burden that the rule would place on operators of small aircraft.

<sup>13</sup> In any case, Part 250 applies only where a carrier offers "confirmed reserved space"; it does not apply when the carrier utilizes some other form of reservations, such as "stand-by" or "conditional" reservations. Therefore, even an operator of small aircraft that would be subject to the rule in some or all of its markets (because it operates large aircraft) would remain free to experiment and innovate with new reservations practices to increase load factors and minimize the problem of no-show passengers and the need for overbooking. We encourage carriers to undertake such efforts.

involves basically two classes of carriers: (1) carriers whose fleets are predominately small aircraft and that are adding a few large jet aircraft to serve their largest markets, such as Altair and Empire, and (2) local service carriers, such as Republic and Frontier, that continue to operate a few smaller-than-60-seat turboprop aircraft. We anticipate that more carriers that once operated only commuter size aircraft will acquire larger jet equipment as they enter markets abandoned by the local service carriers.

We propose to treat this "mixed fleet" problem in the same manner that we did in Order 80-5-9, in which we granted Altair Airlines, Inc., a temporary exemption from Part 250. We exempted Altair from Part 250 except for its flights in any market in which it operates larger than 60-seat aircraft. We propose this approach since we have not received substantial comment as to whether a different solution would be less confusing to passengers or more easily administered by carriers. As noted previously, the comments responding to EDR-401 address this issue as primarily one of providing adequate notice to passengers regarding whether Part 250 applies on a particular flight. We are especially interested in receiving comments from consumer interests as well as carriers operating or planning to operate mixed fleets regarding whether this approach would result in undue confusion for consumers and suggestions for alternative solutions. For example, Part 250 could apply only to flights in which the carrier uses larger than 60-seat aircraft. An alternative approach would be to require carriers operating both large and small aircraft to comply with Part 250 in their entire operation.

#### *Notice of Oversales Practices*

By excluding carriers operating only small aircraft from Part 250, the proposed rule leaves unspecified the form of notice a carrier should use to communicate its unregulated overbooking practices to passengers. Similarly these carriers would not be required to nor would we allow them to file tariffs specifying that they overbook their flights. We have done this in temporarily exempting carriers from Part 250. It is also consistent with our proposal in EDR-404 that airlines be required to give notice to passengers about the terms of their contract of carriage and that tariff filings no longer automatically be part of that contract.<sup>14</sup> We emphasize that a critical factor in a

<sup>14</sup> EDR-404, Notice to Passengers of Conditions of Carriage, June 20, 1980, 45 FR 42629, June 25, 1980.



market solution to overbooking is the provision of actual notice to passengers of a carrier's oversales and bumping policies. We expect carriers to develop direct, easily understood notice to passengers in order to advise them of their oversales practices and minimize their potential liability for failure to disclose such practices. In the case of mixed fleet carriers, we have not proposed the form of notice a carrier should use in its unregulated markets. Of course, such a carrier would be subject to the public disclosure and other notice requirements of the rule in any market in which it is subject to Part 250. We would expect a mixed fleet carrier to apply to the Director, Bureau of Domestic Aviation, as set forth in section 250.9, for approval of alternative wording of its written explanation of its denied boarding policies to clarify those situations in which the rule applies to its mixed fleet operations.

#### Foreign Air Carriers

EDR-401 did not address the question of whether foreign air carriers holding permits under section 402 of the Act and operating small aircraft should receive the same treatment as their U.S. counterparts. Subsequently, the Bureau of Domestic Aviation, acting under delegated authority, granted temporary exemptions from Part 250 to Air BVI, Torontair and Windward Island Airways pending the outcome of this proceeding.<sup>15</sup> These exemptions treat foreign air carriers operating small aircraft in the same manner as their domestic counterparts. Air BVI commented that we should adopt this approach permanently since it and carriers like it compete with U.S. carriers operating small aircraft. We propose that foreign air carriers operating small aircraft receive the same treatment as U.S. commuter and small certificated carriers for purposes of Part 250. Therefore, Part 250 would be amended further to exclude these foreign carriers from the rule.

#### No-Record Passengers

A frequent comment of carriers responding to EDR-401 has been the complaint that "no-record passengers" are a major factor causing involuntary bumping. A "no-record passenger" is one who has a "confirmed" reservation from a travel agent or interlining carrier, that, in fact, has not confirmed the reservation.<sup>16</sup> This results in the

passenger holding a ticket that indicates a confirmed reservation although there is no record of it in the carrier's reservation system. In this way, the flight may become oversold without the carrier's knowledge. A number of carriers have commented that bumpings resulting from these causes are beyond their control and that therefore Part 250 imposes an unfair penalty in such circumstances. The proposed rule would, of course, eliminate this as a mandatory burden in small aircraft operations since Part 250 would not apply except in any market in which the carrier operates large aircraft. It would not, however, protect the passenger from the bumping although carriers would likely attempt to satisfy bumped passengers as a matter of sound business practice. Air BVI suggests that we amend our rules to make it an "unfair and deceptive practice" under section 411 of the Act for a travel agency or interlining carrier to confirm a reservation without notifying the actual carrier. CAAA comments that we should require travel agents and interlining carriers guilty of such practices to share liability for bumping. At this time, we will not propose to undertake a regulatory solution to this problem. We believe that carriers and other sellers of air transportation can arrange by contract suitable methods for avoiding this problem or allocating liability among themselves. However, we solicit additional comments on what methods or solutions carriers should undertake and regulatory approaches we might consider to address this problem.

#### Special Situations

In EDR-401, we specifically invited comments about whether there may be special situations, e.g., essential air service, in which operators of small aircraft should comply with a more stringent denied boarding rule than that of general applicability. Few comments were received addressing this issue. CAAA asserted that it would be contrary to the public interest and in violation of the Federal Aviation Act for us to require carriers to comply with a more stringent rule when providing essential and/or subsidized service. We do not agree; however, we do not at this time propose a different rule for carriers providing such service. We are not aware of a higher incidence of denied boardings by carriers providing essential air service nor that communities receiving essential air

service perceive a significant benefit in receiving service from carriers subject to the rule. We believe carriers providing essential air service have sufficient incentive to maintain satisfied customers that they will develop satisfactory solutions to oversales situations without Board imposed rules. However, we solicit comments from any interested parties as to why carriers providing essential or subsidized service should be subject to some form of oversales and denied boarding regulation and how it should be applied.

#### Initial Regulatory Flexibility Analysis

This NPRM, by proposing an exclusion from existing regulations for certain small carriers, is precisely the type of rulemaking encouraged by the Regulatory Flexibility Act, Pub. L. 96-354, which took effect January 1, 1981. The preceding discussion contains the reasons for Board action, the objectives of and legal basis for the proposed rule, and a description of significant alternatives to the proposed rule. This rule if adopted, would benefit about one-third of the approximately 70 certificated air carriers by excluding them from all requirements of the DBC rules, except for minimal reporting obligations (which already apply to them). There are no duplicative, overlapping or conflicting Federal rules.

#### Proposed Rule

Accordingly, The Civil Aeronautics Board proposes to amend 14 CFR Part 250, *Oversales*, as follows:

1. In § 250.1, the third paragraph "Carrier" would be revised to read as follows:

##### § 250.1 Definitions.

"Carrier" means (a) an air carrier, except a helicopter operator, holding a certificate issued by the Board pursuant to section 401(d)(1), 401(d)(2), 401(d)(5), 401(d)(7) of the Act, or an exemption from section 401(a) of the Act, authorizing the transportation of persons, or (b) a foreign route air carrier holding a permit issued by the Board pursuant to section 402 of the Act authorizing the transportation of persons.

2. In § 250.1, a definition would be added, in alphabetical order, to read:

##### § 250.1 Definitions.

"Large aircraft" means any aircraft which has a passenger capacity of more than 60-seats.

<sup>15</sup> Orders 80-6-89, June 16, 1980; 80-10-108, October 20, 1980.

<sup>16</sup> In Order 80-9-57, September 12, 1980, we asked interested persons to show cause why Rule 115 of the domestic passenger rules tariff, CAB No. 352, should not be amended to make it clear that once a

passenger obtains a ticket that reflects confirmed space, either from the airline or one of its agents, the reservation is confirmed even if there is no other record of the transaction.

3. Paragraph (a) of § 250.2 *Applicability*, would be revised to read as follows:

**§ 250.2 Applicability.**

(a) This part applies to every carrier, as defined in § 250.1, in markets in which the carrier operates large aircraft and which include a point within the United States or its territories or possessions, insofar as the carrier denies boarding to a passenger on a flight, or portion of a flight, for which the passenger holds confirmed reserved space and which is covered by a flight coupon naming any such point; *Provided, however*, that this part shall not apply to intra-Alaskan service conducted with aircraft whose maximum takeoff weight is 12,500 pounds or less.

(Sections 204, 403, 404, 407, 411; Pub. L. 85-726, as amended; 72 Stat. 743, 758, 760, 766, 769; 49 U.S.C. 1324, 1373, 1374, 1377, 1381)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary

[FR Doc. 81-2801 Filed 1-26-81; 8:45 am]

BILLING CODE 6320-01-M

**14 CFR Part 298**

[EDR-3250; Economic Regulations; Docket 30310]

**Certification of Commuter Air Carriers; Notice of Termination of Proceeding**

Dated: January 21, 1981.

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Termination of Rulemaking Proceeding.

**SUMMARY:** The CAB terminates a rulemaking on procedures for certification of commuter airlines that has been made unnecessary by the adoption of simplified certification procedures for all airlines.

**FOR FURTHER INFORMATION CONTACT:** Donald H. Horn, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, DC 20428, (202) 673-5205.

**SUPPLEMENTARY INFORMATION:** By Advance Notice of Proposed Rulemaking, EDR-325, 42 FR 26558, May 24, 1977, the Civil Aeronautics Board responded to the petition for rulemaking of four commuter airlines.<sup>1</sup> These carriers requested that the Board adopt a rule for the expeditious certification of commuter air carriers. The Advance Notice of Proposed Rulemaking sought

public comments regarding the desirability of certification for commuter carriers. A supplemental advance notice of proposed rulemaking, EDR-325A, extended the time for filing reply comments to July 29, 1977. Approximately forty comments and five reply comments were filed.

The Airline Deregulation Act became law on October 24, 1978. Section 401(p) of the Federal Aviation Act, 49 U.S.C. 1371(p), directed the Board to adopt simplified certification procedures. In PR-201, 44 FR 24266, April 25, 1979 (Docket 32466), the Board adopted such procedures. They appear in Subpart Q of the Rules of Practice in Board Proceedings (14 CFR, Part 302).

By adopting Subpart Q in Docket 32466, the Board essentially granted the request of the petitioners in this docket. Further consideration of the petition is therefore unnecessary.

Accordingly, the Board terminates the rulemaking proceeding begun by EDR-325 in Docket 30310.

(Secs. 204, 403, 404, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 788; 49 U.S.C. 1324, 1373, 1374, 1482)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-2742 Filed 1-26-81; 8:45 am]

BILLING CODE 6320-01-M

**DEPARTMENT OF COMMERCE**

**Office of the Secretary**

**15 CFR Subtitle A and Ch. IX**

**Improving Government Regulations; Semiannual Agenda of Regulations**

**AGENCY:** Department of Commerce.

**ACTION:** Amendment to semiannual agenda of regulations.

**SUMMARY:** In compliance with Executive Order 12044, the Department of Commerce (DOC) publishes twice a year an Agenda of significant regulatory actions under consideration by its various Department units. The Department's most recent Agenda was published on November 26, 1980 (45 FR 78919).

At the time of publication of the Department's November Agenda, three significant regulatory actions were omitted from the Agenda. This addendum hereby amends the DOC Agenda to reflect these omissions.

**FOR FURTHER INFORMATION CONTACT:** For additional information regarding any particular regulatory action contained in this addendum, contact the individual identified as the contact

person. Comments or inquiries of a general nature about the addendum should be directed to the following individual: Mr. Robert T. Miki, Deputy Assistant Secretary for Regulatory Policy (Acting), U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, Telephone Number: (202) 377-2482.

**INFORMATION CONTAINED IN ADDENDUM TO AGENDA:** The three regulatory actions contained in the addendum have all been determined significant by the Department. Two of the proposals are being developed by the National Oceanic and Atmospheric Administration's Office of Ocean Minerals and Energy (OME). These proposals deal with: (1) Ocean thermal energy conversion (OTEC) projects, and (2) deep seabed hard mineral resource recovery. Both proposals will be subject to a regulatory analysis. The third proposal, by the Office of Product Standards Policy, was finalized on January 6, 1981 (46 FR 1574). This regulation establishes procedures for listing and delisting voluntary standards bodies and their standards-developing groups. As required by Executive Order 12044, detailed information on each of the two pending regulatory proposals by OME is contained in the appendix.

Philip M. Klutznick,

Secretary of Commerce.

**Department Unit**

NOAA/Office of Ocean Minerals and Energy

**Title of Regulation**

Ocean Thermal Energy Conversion (OTEC) Regulations; 15 CFR Part 1001  
(a) *Description and Need:* The Ocean Thermal Energy Conversion Act of 1980, Pub. L. 96-320 (the "Act") authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to license (and requires persons to obtain licenses prior to) the construction, location, ownership, and operation of:

- OTEC facilities connected to the United States by pipeline or cable;
- OTEC facilities located in the territorial sea of the United States;
- OTEC plantships documented under the laws of the United States; and
- OTEC plantships that are constructed, owned, or operated by United States citizens.

The Act requires NOAA to issue regulations with respect to the licensing of these OTEC facilities and plantships, in accordance with the provisions of the Act. NOAA also is responsible for enforcing the Act and its implementing regulations.

<sup>1</sup> The four commuter air carriers filing a petition for rulemaking are Air Illinois, Cascade Airways, Golden West Airlines, and Swift Air.

(b) *Legal Authority:* Ocean Thermal Energy Conversion Act of 1980; 42 U.S.C. § 9101 et seq.; Pub.L. 96-320; 94 Stat. 974

(c) *Importance:*

(i) Significant: (yes x, no —, unknown —).

(ii) Major: (yes x, no —, unknown —).

(d) *Timetable—Anticipated Dates for Federal Register Publications:*

(i) In proposed form: March 2, 1981.

(ii) In final form: July 3, 1981.

(e) *Tentative Plan for Obtaining*

*Public Comments:* NOAA plans public meetings with representatives of affected industries, environmental groups, and State and local government officials. On October 30, 1980, a scoping meeting held in Washington, D.C. addressed the decisions involved in the rulemaking. On January 7, 1981, a public meeting was held in Washington, D.C. to discuss the Advance Notice of Proposed Rulemaking (ANPRM) published in the *Federal Register* on November 21, 1980 (45 FR 77039). The deadline for comments on the ANPRM is January 17, 1981. At least one public hearing will be held on the draft environmental impact statement (EIS) and proposed regulations after they are issued. Relevant documents will be sent to all persons who request them, and comments will be invited. Funds for public participation in the rulemaking and EIS process will be made available in accordance with 15 CFR Part 904, NOAA regulations on public participation.

(f) *Major Issues:* The regulations will address matters such as:

- the type of technical, financial, environmental and other information to be submitted with an application for construction, ownership, or operation of an OTEC facility or plantship;

- environmental safeguards and monitoring requirements; and

- methods of and requirements for avoiding undue interference with other users of the ocean.

(g) *Documents Available to the Public:* NOAA published a notice in the *Federal Register* requesting other federal agencies with expertise concerning, or jurisdiction over, OTEC facilities and plantships to provide NOAA a description of their expertise and statutory responsibilities. (45 FR 56857; August 26, 1980)

(i) Regulatory analysis required: (yes x, no —, unknown —). Anticipated date of draft analysis: March 2, 1981.

(ii) Other documents: An EIS will be prepared.

(h) *Agency Contact:* Robert W. Knecht, Director, Office of Ocean Minerals and Energy, Washington, D.C. 20235, (202) 653-7695.

## Department Unit

NOAA/Office of Minerals and Energy

### Title of Regulation

Deep Seabed Mining Regulations; 15 CFR Parts 970-971.

(a) *Description and Need:* The Deep Seabed Hard Mineral Resources Act, Pub. L. 96-283 (the "Act") authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible U.S. applicants licenses for exploration for deep seabed hard mineral resources and permits for the commercial recovery of such resources. It also requires U.S. citizens to obtain licenses or permits, as appropriate, prior to engaging in such activities. NOAA is required by the Act to issue regulations with respect to the licensing or permitting of these deep seabed activities, in accordance with the provisions of the Act. NOAA also is responsible for enforcing the Act and its implementing regulations.

(b) *Legal Authority:* Deep Seabed Hard Mineral Resources Act; 30 U.S.C. 1401 et seq.; Pub. L. 96-283; 94 Stat. 553.

(c) *Importance:*

(i) Significant: (yes x, no —, unknown —).

(ii) Major: (yes x, no —, unknown —).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: March 24, 1981.

(ii) In final form: September 21, 1981.

(e) *Tentative Plan for Obtaining*

*Public Comments:* NOAA intends to take several steps to involve those parties outside the agency in the regulation development process. The agency published in the *Federal Register* an advance notice of proposed rulemaking on July 28, 1980 (45 FR 49953), and sent copies of the notice to individuals or organizations already known to have an interest in the area of seabed mining. In addition, the notice requested that those who are interested in receiving relevant documents during the course of this rulemaking effort advise the agency, so that they may be added to a mailing list.

Furthermore, the Act requires that federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the recovery or processing of seabed mineral resources shall transmit to NOAA written comments as to their expertise or statutory responsibilities pursuant to the Act or any other federal law. NOAA is required to coordinate its functions under the Act with relevant federal agencies. To assure that these agencies are aware of this requirement, NOAA published a notice thereof in the *Federal Register*, and in addition sent individual

letters to those agencies with the most relevant responsibilities.

In developing these regulations, NOAA also intends to meet publicly with interested persons. At least one public meeting will be held prior to the issuance of proposed regulations, in order to get preliminary thoughts and comments from interested parties. In addition, pursuant to the Act, after proposed regulations are issued, NOAA will hold at least one public hearing to allow for further comments on the regulations.

(f) *Major Issues:* The regulations will address matters such as:

- (1) The financial and technological capabilities of applicants for licenses and permits;
- (2) resource development requirements of the Act;
- (3) environmental effects and safeguards;
- (4) international requirements of the Act;
- (5) the safety of life and property at sea; and
- (6) enforcement under the Act.

(g) *Documents Available to the Public:* NOAA published the above-referenced advance notice of proposed rulemaking in the *Federal Register* on July 28, 1980. Comments in response to that advance notice are available to the public. NOAA also published a notice in the *Federal Register* requesting other federal agencies with expertise concerning or jurisdiction over any aspects of the recovery or processing of seabed mineral resources to provide NOAA a description of their expertise or statutory responsibilities. (45 FR 49311; July 24, 1980).

(i) Regulatory analysis required: (yes x, no —, unknown —). Anticipated date of draft analysis: March 24, 1981.

(ii) Other documents: An environmental impact statement will be prepared.

(h) *Agency Contact:* Robert W. Knecht, Director, Office of Ocean Minerals and Energy, Washington, D.C. 20235, (202) 653-7695.

[FR Doc. 81-2591 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-BT-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[File No. 771 0047]

### Owens-Corning Fiberglas Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

#### Correction

In FR Doc. 81-1549 appearing on page 3544 in the issue of Thursday, January 15, 1981, on page 3546, third column, paragraph numbered (2), third line from the bottom, insert the following after

"Asphalt": "Facilities records shall be limited to records relating solely to".

BILLING CODE 1505-05-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 34-17460; File Nos. S7-855, S7-856]

#### Net Capital Requirements for Brokers and Dealers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Extension of comment period.

**SUMMARY:** On October 9, 1980, the Commission, in two releases, published for comment proposed amendments to its net capital requirements for brokers and dealers. One of the releases also solicited comment on a broad range of questions regarding the Commission's financial responsibility program for brokers and dealers. The Commission is extending the comment period for these releases to March 16, 1981.

**DATE:** Comments must be received on or before March 16, 1981.

**ADDRESSES:** Four copies of all comments should be submitted and addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. Comments should refer to File No. S7-855 or S7-856 and will be available for inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Gregory N. Smith, Division of Market Regulation, (202) 272-2368, 500 N. Capitol Street, N.W., Washington, D.C. 20549. For questions relating to the analysis and interpretation of the economic data, please contact Rosanne F. Greene, Directorate of Economic and Policy Analysis, (202) 523-5495.

**SUPPLEMENTARY INFORMATION:** On October 9, 1980, the Commission published for comment proposed amendments to the Commission's net capital rule, Rule 15c3-1 (17 CFR 240.15c3-1), which would lower capital requirements for firms operating pursuant to the so-called "alternative" net capital rule, paragraph (f) of Rule 15c3-1. The proposed amendments also would increase the percentage deductions ("haircuts") to be applied to proprietary holdings of certain debt securities to reflect the recent dramatic fluctuations in the market values of those instruments. Finally, the

Commission solicited public comment on a broad range of questions on the scope, adequacy and necessity of the Commission's financial responsibility rules.

Notice of the requests for comments was given by Securities Exchange Act Release Nos. 17208 and 17209 (October 9, 1980) and by publication in the Federal Register (45 FR 69911 and 69915 (October 22, 1980)). Interested persons were invited to submit written comments prior to January 15, 1980. Based on the comments received thus far, and a request by the Securities Industry Association for more time to develop supporting data, the Commission is of the opinion that it would be in the public interest to further extend the comment period.

Accordingly, the Commission today announces that it is extending the period for submission of written comments concerning the two above described releases and proposed amendments until March 16, 1981.

By the Commission.

George A. Fitzsimmons  
Secretary.

January 16, 1981.

[FR Doc. 81-2341 Filed 1-26-81; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 271

[Docket No. RM80-73 and RM80-74]

#### Gathering Allowances and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978; Extension of Time for Comments

January 21, 1981.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of inquiry; extension of comment period and notice of technical conference.

**SUMMARY:** On December 16, 1980, the Commission issued a Notice of Inquiry involving gathering allowances under section 110 of the Natural Gas Policy Act of 1978 (RM80-73) and compression allowances also under section 110 of the Natural Gas Policy Act of 1978 (RM80-74) (45 FR 84814, December 16, 1980). The comment period is being extended at the request of interested Producers and notice is given that a technical conference will be scheduled after the close of the written comment period.

**DATE:** Comments must be submitted on or before March 2, 1981.

**ADDRESS:** Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, D.C. 20425.

**FOR FURTHER INFORMATION CONTACT:** Kenneth F. Plumb, Secretary, (202) 357-8400.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2548 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RM79-76 (Louisiana-2)]

#### 18 CFR Part 271

#### High-Cost Gas Produced From Tight Formations

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the State of Louisiana Office of Conservation that the Haynesville Formation be designated as a tight formation under § 271.703(d).

**DATE:** Comments on the proposed rule are due on February 20, 1981.

**PUBLIC HEARING:** No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on February 5, 1981.

**ADDRESS:** Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Leslie Lawner, (202) 357-8307, or Ting Chin, (202) 357-8595/John Bassett (202) 357-8589.

**SUPPLEMENTARY INFORMATION:**

Issued January 21, 1981.

## I. Background

On December 31, 1980, the State of Louisiana Office of Conservation (Louisiana) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Haynesville Formation, located in the northwest part of the state of Louisiana, be designated as a tight formation in the Commission's regulations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Louisiana's recommendation that the Haynesville Formation be designated a tight formation should be adopted. Louisiana's recommendation and supporting data are on file with the Commission and are available for public inspection.

## II. Description of Recommendation

The recommended formation lies entirely within northern Bossier Parish, Louisiana, on the Arkansas border and is located in the southern portion of the Arkana Gas Field. (A more detailed description of the recommended area is contained in the recommendation on file with the Commission.) The Haynesville Formation is located below the Bossier Formation and above the Smackover Formation. The Haynesville Formation is defined as that formation occurring between the measured depths of 10,360 feet and 10,845 feet. In the Arkana Field, the Haynesville Formation consists of three members. The upper member is predominantly shale, 120 feet to 220 feet thick; the middle member is a sand 120 feet to 220 feet thick with shale stringers varying from 2 feet to 15 feet in thickness; and the lower member is 200 feet to 400 feet thick, consisting of shale and anhydrite.

## III. Discussion of the Recommendation

Louisiana claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Louisiana on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to

produce more than five (5) barrels of oil per day.

Louisiana further asserts that the requirements of Statewide Order No. 29-B will assure that development of the Haynesville Formation will not adversely affect any fresh water aquifer that is or is expected to be used as a domestic or agricultural water supply. In addition, Louisiana states that it is in the process of establishing rules and regulations in accordance with the Environmental Protection Agency's Underground Injection Control guidelines which it believes will further prevent the contamination of any fresh water aquifer.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980 in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Louisiana that the Haynesville Formation, as described and delineated in Louisiana's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

## IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 20, 1981. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Louisiana-2), and should give reasons, including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than February 5, 1981.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432.)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Louisiana's recommendation is adopted.

**Kenneth A. Williams,**  
Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is amended by adding new subparagraph (28) to read as follows:

### § 271.703 Tight formations.

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

(17) through (27) [Reserved]  
(28) *Haynesville Formation in Louisiana.* RM79-76 (Louisiana-2).

(i) *Delineation of formation.* The Haynesville Formation is found in the northern portion of Bossier Parish, Louisiana on the Arkansas border.  
(ii) *Depth.* The top of the Haynesville Formation is located at a depth of 10,360 feet and the base is located at 10,845 feet. In the Arkana Field, the Haynesville Formation consists of three members. The upper member is predominantly shale, 120 feet to 220 feet thick; the middle member is a sand, 120 feet to 220 feet thick with shale stringers varying from 2 feet to 15 feet in thickness; and the lower member is 200 feet to 400 feet thick, consisting of shale and anhydrite.

[FR Doc. 81-2936 Filed 1-29-81; 8:45 am]

BILLING CODE 6450-85-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

#### 20 CFR Part 404

#### Federal Old-Age, Survivors, and Disability Insurance; Deductions; Reductions; and Nonpayments of Benefits—Limit on Family Disability Insurance Benefits

#### Correction

In FR Doc. 80-39693 appearing on page 84086 in the issue of Monday,

December 22, 1980, on page 84087, second column, fifth line from the top, "ceiling" should be "ceilings"; and in the first line of the paragraph beginning "Part 404", "Chapter II" should read "Chapter III".

BILLING CODE 1505-01-M

## DEPARTMENT OF LABOR

### Employment Standards Administration

#### 20 CFR Part 725

#### Claims for Benefits Under Part C of Title IV of the Federal Mine Safety and Health Act, As Amended

**AGENCY:** Employment Standards Administration, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The proposed rule is intended to more clearly define those situations where a lessor of coal mining property will not be liable for the payment of Black Lung benefits to employees of the lessee. Lessors of coal mines believe that the present regulatory provisions set forth in § 725.491(b)(2) do not adequately define when a lessor will not be liable for the payment of benefits to a lessee's employees. The proposed revision will provide coal mine lessors with more specific guidelines for determining their potential liability under the Black Lung Benefits Act.

**DATES:** Written comments on the proposed rule must be submitted by March 30, 1981.

**ADDRESS:** Comments should be sent to Robert B. Dorsey, Employment Standards Administration, U.S. Department of Labor, Room C3316, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Dorsey, Acting Chief, Operational Policies, Regulations and Procedures Staff, Division of Coal Mine Workers Compensation, (202) 523-9486.

**SUPPLEMENTARY INFORMATION:** Section 725.491(b)(2) of Title 20, Code of Federal Regulations, as finally adopted and promulgated on August 18, 1978 (FR Doc. 78-23004, 43 FR 36802) was intended to inform coal mine lessors of the circumstances under which they might be found liable to pay benefits to a miner employed by a lessee of the lessor. In promulgating this rule the Department noted that the ultimate determination as to whether a lessor should be held liable for the payment of such benefits must be based on the facts in each case (see 43 FR 36803). The Department has been requested by the

National Council of Coal Lessors, Inc., to revise § 725.491(b)(2) to state that neither the reservation of certain enumerated rights by the lessor as set forth in the coal lease nor the exercise of those rights will be deemed to be an act of supervision or control over the leased mine or mines for the purpose of determining whether the lessor is an "operator" within the meaning of section 3(d) of the Black Lung Benefits Act. This proposal, which is intended to define those activities that will not constitute supervision or control, more accurately reflects the Department's position with respect to the liability of coal mine lessors and will avoid unnecessary litigation.

The Department of Labor has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and Department of Labor Guidelines (44 FR 5570) nor an initial regulatory flexibility analysis under 5 U.S.C. 603.<sup>1</sup>

Accordingly, the Department of Labor proposes to revise § 725.491(b)(2) of Title 20, Code of Federal Regulations, as follows:

#### § 725.491 Operator defined.

(b) \* \* \*

(2) An individual land owner or others who lease coal lands or mineral rights, who have never been coal mine operators or are not in the regular business of leasing coal mines, shall not be considered a coal mine operator in accordance with the terms of this section. Any other lessor of coal lands or mineral rights who directly or indirectly exercised or exercises supervision or control of a mine or mines, or other facilities where and when the miner was or is employed, may, under certain circumstances, be considered a coal mine operator in accordance with the terms of this section with respect to the employees of his lessee. However, the retention of a right by a lessor under the terms of a coal lease or otherwise, (i) to receive a tonnage royalty expressed in a stipulated amount per ton or as a percentage of gross sales price of coal mined and sold by the lessee, (ii) to receive a periodic minimum royalty or rental from the lessee expressed in dollars, (iii) to require the lessee to mine and process a stipulated tonnage during a given period, (iv) to inspect the mine

<sup>1</sup> A copy of a letter, dated January 19, 1981, from Ray Marshall to the Small Business Administration was filed with the original document. This letter certified that this rule would not have a significant economic impact upon a substantial number of small business entities.

or mines and facilities and the lessee's books and records, (v) to require the lessee to submit for prior approval by the lessor mining plans and projections prepared by the lessee, (vi) to require the use of modern mining machinery and equipment and modern mining practices adaptable to the mining conditions encountered (vii) to specify the mining method or methods and procedures for the weighing and shipment of coal, (viii) to require the lessee to mine all of the minable and merchantable coal in a workman-like manner and in accordance with all state and federal laws and regulations, (ix) to obtain upon default a confession of judgment by the lessee, (x) to consent to assignments and subleases, or (xi) to terminate the lease upon the lessee's failure to abide by the terms and provisions of the lease and upon any such termination to repossess the leased premises and any coal mining facilities on the leased premises, or the exercise of any of the above-mentioned rights by a lessor, shall not be deemed to constitute an act of supervision or control of a mine or mines or other facilities by the lessor for the purpose of determining whether such lessor is a coal mine operator with respect to the employees of its lessee. Where a lessor previously operated a coal mine, such lessor may, in accordance with section 422(i) of the Act, be considered a coal mine operator with respect to employees of any lessee of such mine where the leasing arrangement was executed or renewed after the effective date of this part and does not require the lessee to secure benefits provided by the Act.

(5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945, 33 U.S.C. 901 et seq.)

Signed this 19th day of January 1981, at Washington, D.C.

Ray Marshall,  
Secretary of Labor.

U.S. Department of Labor,  
Washington, D.C., January 19, 1981.  
Milton D. Stewart, Esq.,  
Chief Counsel for Advocacy,  
Small Business Administration,  
1441 L Street N.W.,  
Washington, D.C. 20416

Re: Proposed Amendment to Black Lung Regulations at 20 CFR 725.491(b)(2)

Dear Sir: I hereby certify that the amendment to this Department's Black Lung Regulations, proposed this date as section 725.491(b)(2) of Part 725, Title 20, Code of Federal Regulations, will not have a significant economic impact on a substantial number of small entities.

The proposed rule more clearly defines the term "operator", now appearing at 20 CFR 725.491(b)(2), as it applies to lessors of coal mining properties, to clarify the extent of their potential liability for benefits under the

Black Lung Benefits Act. This clarification was requested by representatives of the affected entities.

This certification is made pursuant to 5 U.S.C. 605(b).

Sincerely,

Ray Marshall,

Secretary of Labor.

(FR Doc. 81-3463 Filed 1-19-81; 5:02 pm)

BILLING CODE 4510-27-M

## Office of Pension and Welfare Benefit Programs

### 29 CFR Part 2510

#### Definitions and Coverage Under the Employee Retirement Income Security Act of 1974; Proposed Regulation Relating to Supplemental Payments

AGENCY: Department of Labor.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document contains a proposed regulation which provides guidance on the scope of the term "pension plan" under the Employment Retirement Income Security Act of 1974 (the Act), as amended by the Multiemployer Pension Plan Amendments Act of 1980. The regulation would enable employers to make certain voluntary payments to former employees under a welfare plan rather than under a pension plan to help offset the effects of inflation on pension benefits.

**DATES:** Written comments concerning the proposed regulation must be received by the Department of Labor (the Department) on or before March 30, 1981. Except as otherwise indicated, the regulation is proposed to be effective as of September 26, 1980, which is the applicable effective date of the Multiemployer Pension Plan Amendments Act of 1980.

**ADDRESS:** Interested persons are invited to submit written comments concerning the proposal to: Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Supplemental payment regulation. All submissions will be opened to public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Ave., NW., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. F. Nuissl, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C., telephone (202) 523-8671. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department proposes to amend Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations by adding a new paragraph (g) to § 2510.3-2. The proposed regulation is discussed below.

#### A. Need for the Regulation

The broad definition of the terms "employee pension benefit plan" and "pension plan" in section 3(2)(A) of the Act encompasses any plan, fund or program established by an employer which provides retirement income to employees. In general, therefore, payments by employers to supplement the pension benefits of their retirees ("supplemental payments") fall within the definition of those terms. During the present period of high inflation, many retired persons living on fixed incomes have been confronted with severe financial problems. As noted by the Senate Finance Committee and the Senate Labor and Human Resources Committee, many employers feel an obligation to help ease those problems by supplementing the pension benefits of retirees on a voluntary basis. See the Joint Explanation of Senate Bill 1076 (the Joint Explanation) by the Senate Finance Committee and the Senate Labor and Human Resources Committee, Congressional Record, S 10130, July 29, 1980. However, employers are sometimes not prepared to supplement retirees' pension benefits if in doing so they must comply with all the requirements of the Act which are applicable to pension plans.

#### B. Multiemployer Pension Plan Amendments Act of 1980

To assist employers in supplementing the pension benefits of retirees, section 409 of the Multiemployer Pension Plan Amendments Act of 1980 (the MPPAA, Pub. L. 96-364) amended the Act by adding section 3(2)(B), which, among other things, authorizes the Secretary of Labor to issue regulations treating supplemental payment arrangements as welfare plans rather than pension plans if a principal effect of the arrangements is not to evade the standards or purposes of the Act applicable to pension plans. Section 3(2)(B)(ii) of the Act specifically limits such treatment to arrangements under which the pension benefits of retirees and their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement. In response to this clear expression of legislative concern, the Department proposes to exercise its authority under section 3(2)(B) of the Act to prescribe the circumstances in

which employers may make voluntary payments under a welfare plan to supplement the pension benefits of retirees.

#### C. Discussion of Conditions

Supplemental payments which would otherwise be considered to be made under a pension plan would be made under a welfare plan if they meet the conditions of proposed regulation § 2510.3-2(g)(1). Those conditions are designed to satisfy the statutory requirement that welfare plan treatment not be available for a supplemental payment arrangement if a principal effect of the arrangement is to evade the standards or purposes of the Act applicable to pension plans.

The legislative history of this requirement makes it clear that Congress expected the Department to implement its authority under section 3(2)(B) of the Act by issuing regulations which consider the level of supplemental benefits when compared to retirees' total retirement benefits. See the Joint Explanation, Congressional Record, S 10130, July 29, 1980. The Senate Finance Committee specifically noted in the Joint Explanation that they expected the Department's regulations to treat as welfare plans arrangements where, for example, an employer pays monthly supplemental amounts to a retiree based on a formula amounting to 3 percent, multiplied by the number of years that the retiree's monthly pension benefit, multiplied by the retirees' monthly pension benefit, multiplied by the number of years that the retirees' pension benefit has been in pay status.

Under the formula contained in the Department's proposal, a monthly payment made under a supplemental payment welfare benefit plan may not exceed an amount equal to the payee's monthly pension benefit multiplied by the sum of specific percentages for each year or retirement, provided that the sum or these yearly percentages may not exceed a percentage equal to the cost of living increase since the participant's retirement. These annual percentages each equal the higher of 3 percent of one third of the percentage increase in the cost of living for that year. Accordingly, a supplemental payment based in part upon a factor of 3 percent for a particular year may be made under a welfare plan even though the cost of living for that year increases by less than 3 percent or does not increase at all. This formula is intended to lessen the likelihood that too large a percentage of a retiree's retirement income will consist of discretionary payments which are not afforded the protections of a pension plan. Employers

are not precluded, however, from providing further pensions benefit adjustments under their pension plans.

#### D. Arrangements for Pre-Act Retirees

As presently in effect, regulation 29 CFR 2510.3-2(e) (40 FR 34526, August 15, 1975) describes certain kinds of arrangements which the Department does not regard as employee benefit plans for purposes of Title I of the Act. Specifically, that regulation applies to arrangements providing for voluntary, gratuitous payments by employers to former employees who retired before September 2, 1974. If proposed regulation 29 CFR 2510.3-2(g) is adopted, both it and regulation section 29 CFR 2510.3-2(e) will be available with respect to arrangements for pre-Act retirees.

#### E. Temporary Safe Harbor for Arrangements Concerning Pre-1977 Retirees

The Department has taken the position in several advisory opinions that payments outside a pension plan for persons who retired prior to the end of 1976 (pre-1977 retirees) do not constitute an employee benefit plan so long as certain criteria are met. See also News Release USDL 76-707 (April 26, 1976).

As a result of the enactment of section 409 of the MPPAA, the Department is reexamining its positions with respect to the status of supplemental retirement income arrangements for pre-1977 retirees. The Department has incorporated the substance of its prior positions with respect to payments to pre-1977 retirees which were not described in 29 CFR 2510.3-2(e) into proposed regulation section 29 CFR 2510.3-2(g)(2) as a temporary safe harbor from coverage under Title I of the Act for payments made before January 1, 1982 to pre-1977 retirees. The Department contemplates that its previous views on the status of those payments will not apply after December 31, 1981.

#### F. Reporting and Disclosure

The Department recognizes that certain reporting and disclosure requirements of part 1 of Title I of the Act may not necessarily be appropriate to employee welfare benefit plans which provide exclusively supplemental payment benefits. Accordingly, the Department has under consideration the development of a regulation which would provide an exemption from certain reporting and disclosure requirements for supplemental payment plans maintained in accordance with the provisions of proposed regulation 29

CFR 2510.3-2(g). The Department expects to publish a notice of proposed rulemaking in this regard in the near future.

#### G. Classification

The Department has determined that this proposed regulation is a "significant" regulation within the meaning of the Department's Guidelines for improving Government regulations (44 FR 5570, January 26, 1979), issued to implement Executive Order 12044 (44 FR 12661, March 24, 1978). Because the Department has determined that this regulation is not "major" within the meaning of the Guidelines, a regulatory analysis, as described in Executive Order 12044, is not required.

#### H. Economic Impact on Small Entities

The Regulatory Flexibility Act (the RFA, Pub. L. 96-354, 5 U.S.C. 601-612) requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis whenever it is required to publish a general notice of proposed rulemaking for any proposed rule. The purpose of the analysis is to describe the impact of the proposed rule on "small entities," as defined in 5 U.S.C. 601(6). That definition incorporates the terms "small business" and "small organization," as defined in the RFA. However, in order to avoid unnecessary analyses, the RFA also provides that an analysis is not required if the head of the agency certifies that a proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605.

The term "small entity," as applied to "small businesses" and "small organizations" is defined in the RFA to mean, unless an agency establishes otherwise, a business or not-for-profit enterprise which is independently owned and operated and which is not dominant in its field. That definition will apply to this certification, because the Department has not yet established an alternative definition and because the Department believes that whatever alternative definition it ultimately may develop for purposes of administering the Act (if it should choose to establish an alternative definition) would not affect the certification. The Department further believes that it would not be in the best interests of retirees generally to delay this notice of proposed rulemaking until a decision is made on whether to establish an alternative definition in accordance with the procedures set forth in 5 U.S.C. 601.

Under the authority granted in 5 U.S.C. 605 and for the reasons set forth below, it is hereby certified that the

proposed regulation contained in this notice will not, if adopted, have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required in connection with the proposal.

The reasons for the certification are as follows. Employers wanting to supplement the pension benefits of retirees in order to help offset the effects of inflation may presently do so by raising the benefit levels under the pension plans which they sponsor. The proposed regulation provides employers of all sizes and types with an alternative and voluntary way of supplementing pension benefits. Specifically, if the regulation is adopted, employers will have the option of supplementing the pension benefits of retirees under a welfare plan. Presently there is no way of supplementing pension benefits outside of a pension plan for post-1976 retirees (with the limited exception of unfunded arrangements for a select group of management or highly compensated employees). Furthermore, it is the understanding of the Department that very few small entities have supplemental payment arrangements currently in effect for pre-1977 retirees. Because small entities will be free not to choose this optional way of supplementing the pension benefits of retirees, the proposed regulation will not impose any involuntary burden on them and will further impose no expense upon them unless they are in the extremely limited group of small entities which have adopted a supplemental payment plan in accordance with News Release USDL 76-707, in which case there may be a marginal economic cost for those few small entities.

#### I. Drafting Information

The principal author of this proposed regulation is Mr. R. F. Nussl of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs. However, others in the Department participated in developing the proposed regulation, both on matters of substance and style.

#### J. Statutory Authority

The regulation is proposed under sections 3(2) and 505 of the Act (29 U.S.C. 1002(2) and 1135).

#### K. Proposed Regulation

For the reasons set out in the preamble, the Department proposes to amend Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations by adding a new paragraph (g) to § 2510.3-2 to read as follows:



## § 2510.3-2 Employee pension benefit plan.

(g) *Supplemental payment plans*—(1) *General rule.* Generally, an arrangement by which a payment is made by an employer to supplement retirement income is an employee pension benefit plan. Under the authority granted in section 3(2)(B) of the Act, effective September 26, 1980 a supplemental payment plan shall be treated as a welfare plan rather than a pension plan for purposes of Title I of the Act if all of the following conditions are met:

(i) Payment is made out of the general assets of the employer for the purpose of supplementing the pension benefits of a participant or his or her beneficiary.

(ii) The employer is not obligated to continue the arrangement or to make the payment or similar payments for more than twelve months at a time.

(iii) No payment is made under the arrangement until a date two years or more after the beginning of the first month for which the pension benefit of the participant or his or her beneficiary was in pay status.

(iv) The amount payable under the supplemental payment plan to a participant or his or her beneficiary with respect to a month does not exceed the payee's supplemental payment factor ("SPF" as defined in paragraph (g)(3)(i) of this section) for that month, provided however that monthly amounts may be cumulated and paid in subsequent months to the participant or his or her beneficiary.

(2) *Temporary safe harbor for arrangements concerning pre-1977 retirees.*—(1) Notwithstanding paragraph (g)(1) of this section, effective January 1, 1975 an arrangement by which a payment is made prior to January 1, 1982 by an employer to supplement the retirement income of a former employee who separated from the service of the employer prior to January 1, 1977 shall be deemed not to have been made under an employee benefit plan if all of the following conditions are met:

(A) The employer is not obligated to make the payment or similar payments for more than twelve months at a time.

(B) The payment is made out of the general assets of the employer.

(C) The former employee is notified in writing at least once each year in which such a payment is made that the payments are not obligatory on the part of the employer and are not part of an

employee benefit plan subject to the protections of the Act.

(ii) A person who receives a payment on account of his or her relationship to a former employee who retired prior to January 1, 1977 is considered to be a former employee for purposes of this paragraph (g)(2).

(3) *Definitions.* For purposes of this paragraph (g)—

(i) The term "supplemental payment factor" ("SPF") means, as to any particular month, an amount which is derived by multiplying (A) the amount of a participant or beneficiary's pension benefit amount (as defined in paragraph (g)(3)(ii) of this section) for that month, by (B) the sum of the index level percentages (as defined in paragraph (g)(3)(iii) of this section) for each calendar year or part thereof with respect to which the participant and his or her beneficiary have received pension benefits, provided however that this sum may not exceed the maximum cost of living increase (as defined in paragraph (g)(3)(iv) of this section) for that month.

(ii) The term "pension benefit amount" ("PBA") means, as to any particular month, the amount of pension benefits payable in the form of an annuity to a participant or his or her beneficiary for that month under all pension plans sponsored by an employer.

(iii) The term "index level percentage" ("ILP") means: 3% for years before 1980; 4% for the year 1980; and, for years after 1980, a percentage equal to the higher of 3% or the following fraction (rounded off to the nearest full percentage):

$$\frac{\text{CPIU}_2 - \text{CPIU}_1}{3 \text{ CPIU}_1}$$

where  $\text{CPIU}_2$  = the average CPIU for the immediately preceding calendar year, and  $\text{CPIU}_1$  = the average CPIU for the year before that. The term "CPIU" is defined in paragraph (g)(3)(v) of this section.

$$(2) \text{ ILP for 1981} = \frac{250.0 - 217.4}{3(217.4)} = .0499 = 5\% \text{ (rounded off).}$$

$$(3) \text{ ILP for 1982} = \frac{272.0 - 250.0}{3(250.0)} = .0293 = 3\% \text{ (rounded off).}$$

(iv) The term "maximum cost of living increase" means, as to any month, a percentage equal to the following (rounded off to the nearest full percentage):

$$\frac{\text{CPIU}_2 - \text{CPIU}_1}{\text{CPIU}_1}$$

where  $\text{CPIU}_2$  = the average CPIU for the immediately preceding calendar year, and  $\text{CPIU}_1$  = the average CPIU for the calendar year in which the participant retired.

(v) The term "CPIU" means the U.S. City Average All Items Consumer Price Index for All Urban Consumers, published by the U.S. Department of Labor, Bureau of Labor Statistics. Data concerning the average CPI-U for a particular year can be obtained by asking the U.S. Department of Labor, Bureau of Labor Statistics, Division of Consumer Prices and Price Indexes, Washington, D.C. 20212.

(4) *Examples.* The following examples illustrate how this paragraph (g) works. Assume that the SPF for each month in these examples is computed on the basis of a percentage which is less than the maximum cost of living increase for that month, within the meaning of paragraph (g)(3)(iv) of this section.

*Example (1).* E, an employer, decides to make a payment to R for September 1982 under a supplemental payment welfare benefit plan. R has been receiving monthly benefits of \$500 in the form of an annuity under E's defined benefit pension plan since retirement from E on July 1, 1977. In addition, throughout 1982 R receives monthly benefits of \$300 paid by the Social Security Administration. The average CPIU for 1977 = 181.5. The average CPIU for 1979 = 217.4. Assume for the purpose of this example that the average CPIU for 1980 = 250.0 and that the average CPIU for 1981 = 272.0. R's SPF for September 1982 = \$105, computed as follows:

(1) PBA for September 1982 = \$500.

(4)  $SPF = PBA \times [\text{sum of ILP's for the years 1977 through 1982}] = \$500 \times [3\% + 3\% + 3\% + 4\% + \% + 3\%] = \$105$ .

If E's supplemental payment to R with respect to September 1982 does not exceed \$105 and if the other conditions of paragraph (g)(1) of this section are met, the payment will be treated as made under a welfare plan rather than under a pension plan.

*Example (2).* Assume the same facts as those in Example (1), except that E, having not made any previous payments to R under its supplemental payment plan, decides to make a lump sum supplemental payment to R with respect to all months of R's retirement from July 1, 1977 through September 30, 1982. The maximum aggregate amount of the lump sum supplemental payment E may make to R with respect to this period is \$3795, computed as follows:

(1) PBA for each month between July 1, 1977 and September 30, 1982 = \$500.

(2) Maximum for six months of 1977 =  $SPF$  for each month in 1977  $\times$  number of months R received pension benefits in 1977 =  $\$15 \times 6 = \$90$ , where  $SPF$  for each month in 1977 =  $PBA \times ILP$  for 1977 =  $\$500 \times 3\% = \$15$ .

(3) Maximum for 1978 =  $SPF$  for each month in 1978  $\times$  number of months R received pension benefits in 1978 =  $\$30 \times 12 = \$360$ , where  $SPF$  for each month in 1978 =  $PBA \times [\text{sum of ILP's for 1977 and 1978}] = \$500 \times [3\% + 3\%] = \$30$ .

(4) Maximum for 1979 =  $SPF$  for each month in 1979  $\times$  number of months R received pension benefits in 1979 =  $\$45 \times 12 = \$540$ , where  $SPF$  for each month in 1979 =  $PBA \times [\text{sum of ILP's for 1977 through 1979}] = \$500 \times [3\% + 3\% + 3\%] = \$45$ .

(5) Maximum for 1980 =  $SPF$  for each month in 1980  $\times$  number of months R received pension benefits in 1980 =  $\$65 \times 12 = \$780$ , where  $SPF$  for each month in 1980 =  $PBA \times [\text{sum of ILP's for 1977 through 1980}] = \$500 \times [3\% + 3\% + 3\% + 4\%] = \$65$ .

(6) Maximum for 1981 =  $SPF$  for each month in 1981  $\times$  number of months R received pension benefits in 1981 =  $\$90 \times 12 = \$1080$ , where  $SPF$  for each month in 1981 =  $PBA \times [\text{sum of ILP's for the year 1977 through 1981}] = \$500 \times [3\% + 3\% + 3\% + 4\% + \%] = \$90$ .

(7) Maximum for nine months of 1982 =  $SPF$  for each month in 1982  $\times$  number of months R received pension benefits in 1982 =  $\$105 \times 9 = \$945$ , where  $SPF$  for each month in 1982 =  $PBA \times [\text{sum of ILP's for the years 1977 through 1982}] = \$500 \times [3\% + 3\% + \% + 4\% + 5\% + 3\%] = \$105$ .

(8) Sum of maximum amounts for the period from July 1, 1977 through September 30, 1982 = \$3795.

A lump sum supplemental payment to R with respect to the period from July 1, 1977 through September 30, 1982 which does not exceed \$3795 may be made under a welfare plan rather than under a pension plan if the

other conditions of paragraph (g)(1) of this section are met. If E makes this payment, any further supplemental payment to R with respect to any month between July 1, 1977 and September 30, 1982 would be made under a pension plan.

*Example (3).* Assume the same facts as those in Example (1). In September 1982, after receiving the supplemental payment of \$105, R dies. R's beneficiary, B, immediately begins

(1) PBA for January 1983 = \$300.

(2)  $ILP \text{ for } 1983 = \frac{303.0 - 272.0}{3(272.0)} = .0379 = 4\% \text{ (rounded off)}$ .

(3)  $SPF = PBA \times [\text{sum of ILP's for the years 1977 through 1983}] = 300 [3\% + 3\% + 3\% + 4\% + 5\% + 3\% + 4\%] = \$75$ .

If E's supplemental payment to B with respect to January 1983 does not exceed \$75 and if the other conditions of paragraph (g)(1) of this section are met, the payment will be treated as made under a welfare plan rather than under a pension plan.

*Example (4).* The written instrument governing a supplemental payment welfare benefit plan established by F, an employer, provides for payments which are consistent with paragraph (g) of this section. The board of directors of F adopts a resolution authorizing F to make equal monthly payments under that plan for an indefinite period beginning on September 1, 1982. Under the resolution, the payments may continue at the discretion of F's management until the board passes another resolution terminating its prior authorization. Assume that the resolution does not obligate F to make any payments at all. F's management decides to make equal monthly supplemental payments for twelve months beginning on September 1, 1982. S, whose pension under F's defined benefit pension plan has been in pay status since retirement from F in January 1978, receives \$600 in monthly pension benefits in the form of a level straight life annuity under that plan. Assume that the ILP for 1981 = 5% and that the ILP for 1982 = 3%. S's SPF for September 1982 = \$108, computed as follows:

(1) PBA for each month during the twelve month period beginning on September 1, 1982 = \$600.

(2)  $SPF = PBA \times [\text{sum of ILP's for the years 1978 through 1982}] = \$600 \times [3\% + 3\% + 4\% + 5\% + 3\%] = \$108$ .

Beginning on September 1, 1982, F may make twelve equal monthly payments of \$108 under its supplemental payment welfare benefit plan without exceeding S's SPF for any month in that period. Note that in this example:

1. The amount of a supplemental payment to S with respect to a particular month during the period may not necessarily be as high as the maximum amount which F could pay to S for that month and still be within paragraph (g)(1) of this section.

2. Rather than making a \$108 payment during each month, F could have postponed some or all of those monthly payments and paid the postponed amounts at a later time.

*Example (5).* Assume the same facts as

receiving monthly benefits of \$300 in the form of an annuity under E's defined benefit pension plan. E decides to make a payment to B with respect to January 1983 under its supplemental payment plan. Assume for the purpose of this example that the average CPIU for 1981 = 272.0 and that the average CPIU for 1982 = 303.0. Assume also that the ILP for 1981 = 5% and that the ILP for 1982 = 3%. B's SPF for January 1983 = \$75, computed as follows:

those in Example (4), except that after making five monthly supplemental payments of \$108 each to S and otherwise satisfying the conditions of paragraph (G)(1) of this section, F, in accordance with the terms of its board's resolution, decides not to make any further supplemental payments to S. Because F's supplemental payments to S are not part of a pension plan, F is not required under the Act to continue to make any supplemental payment to S.

*Example (6).* G, an employer, decides to make a payment to T with respect to January 1982 under a supplemental payment welfare benefit plan. The pension plan sponsored by G is a defined contribution plan which provides an annuity option at retirement. T, who retired from G on October 1, 1977, had an aggregate balance of \$50,000 as of that date in an individual account maintained on T's behalf under G's pension plan. T elects to take the lump sum rather than the annuity option. Because T does not receive annuity benefits under G's pension plan, T's PBA and SPF for January 1982 are zero.

Signed at Washington, D.C. this 19th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, United States Department of Labor.

[FR Doc. 81-2577 Filed 1-21-81; 8:55 am]

BILLING CODE 4510-29-M

## VETERANS ADMINISTRATION

### 38 CFR Part 3

#### Veterans Benefits; Length of Service Requirement

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendment.

**SUMMARY:** The Veterans Administration is proposing to amend its regulations to implement a new law, the Department of Defense Authorization Act, 1981. This law generally provides that no Federal benefits shall be payable to a person who enlists in the armed forces and who fails to complete at least 24 months of the person's term of enlistment.

**DATES:** Comments must be received on or before February 25, 1981. It is proposed to make this change effective September 8, 1980, the effective date specified in the new law designated as Pub. L. No. 96-342.

**ADDRESSES:** Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420.

Comments will be available for inspection at the above address during normal business hours until March 9, 1981.

**FOR FURTHER INFORMATION CONTACT:** T. H. Spindle (202-389-3005).

**SUPPLEMENTARY INFORMATION:** The Department of Defense Authorization Act, 1981, Pub. L. No. 96-342, section 1002 added section 977 to title 10, United States Code. This new section provides that a person who enlists in a regular component of the armed forces after September 7, 1980, and who fails to complete at least 24 months of the original period of enlistment shall not be eligible for any Federal right, privilege or benefit based upon that period of service.

An exception is made for a person who was discharged for hardship or disability or if it is later established that the person is suffering from a service-connected disability not the result of the person's willful misconduct and not incurred during a period of unauthorized absence.

This law will have little effect on the programs covered by Part 3, Title 38, Code of Federal Regulations which is the subject of this amendment. These programs are nonservice-connected disability and death pension, service-connected disability compensation, dependency and indemnity compensation, and the burial allowance.

The language of 10 U.S.C. 977 expressly limits its application to servicepersons. It does not prohibit the payment of death benefits to the survivors of a veteran who served less than 24 months of his or her original period of enlistment. Thus, section 977 has no effect on the entitlement criteria applicable to payment of dependency and indemnity compensation and the burial allowance.

Under present law nonservice-connected disability pension and death pension are payable only if the qualifying period of service was at least partially during a period of war. 38 U.S.C. 501(4), 521(j), 541(a). Since the period of service referred to in 10 U.S.C. 977, i.e., after September 7, 1980, is peacetime service, disability and death pension are not payable based upon

such service without regard to the enactment of section 977.

Disability compensation is payable for disability resulting from service incurred disease or injury. Under 38 U.S.C. 310 no compensation is payable for a disability that is the result of a veteran's own willful misconduct. Under 38 CFR 3.1(m)(1) compensation is not payable for a disease or injury if at the time the injury was suffered or the disease contracted the veteran was avoiding duty by desertion, or was absent without leave (AWOL) which materially interfered with the performance of military duty. Thus, the only effect of 10 U.S.C. 977 on payment of compensation is to provide an absolute bar to payment based on a disability incurred during a period of AWOL in the case of a veteran who did not serve the required 24 months.

It is proposed to implement 10 U.S.C. 977 by the addition of 38 CFR 3.12a.

#### Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm, Monday through Friday (except holidays) until March 9, 1981. Any person visiting the Veterans Administration Central Office in Washington, DC for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: January 16, 1981.

By direction of the Administrator.

**Rufus H. Wilson,**  
Deputy Administrator.

1. In Part 3 § 3.12a is added to read as follows:

#### § 3.12a Length of service requirement.

(a) *General.* Any person who enlists in a regular component of the armed forces after September 7, 1980, and who fails to complete at least 24 months of his or her original period of enlistment shall not be eligible to receive disability compensation based on the period of service of less than 24 months.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply to the following persons:

(1) A person who was discharged under 10 U.S.C. 1173 (hardship discharge) before completing 24 months of service.

(2) A person who was discharged under chapter 61 of title 10, United States Code (disability discharge) before completing 24 months of service.

(3) A person who failed to complete at least 24 months of service if it is later established that the person is suffering from an injury or disease incurred in or aggravated during the period of service of less than 24 months provided that the injury or disease was not the result of the person's willful misconduct and was not incurred during a period of unauthorized absence. 10 U.S.C. 977

#### § 3.13 [Amended]

2. Section 3.13(b) is amended by deleting the reference "§ 3.3(d)(3)" and inserting "§ 3.3(b)(3) and (4)."

[FR Doc. 81-2937 Filed 1-28-81; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-5-FRL 1736-1]

### Approval and Promulgation of Implementation Plans; Ohio Sulfur Dioxide Control Strategy

**AGENCY:** U.S. Environmental Agency.

**ACTION:** Proposed Rulemaking.

**SUMMARY:** The purpose of this notice is to repropose rulemaking to approve and disapprove certain portions of the Ohio State Implementation Plan (SIP) for sulfur dioxide which were proposed on February 25, 1980 (45 FR 12266) and to discuss the results of the United States Environmental Protection Agency (USEPA) review of the additional technical support and documentation the Ohio Environmental Protection Agency (OEPA) submitted to USEPA during the public comment period. The following portions of the Ohio sulfur dioxide plan are being repropose today: (1) those parts of the plan which USEPA proposed to approve on February 25, 1980 only if OEPA submitted necessary technical support and documentation during the public comment period, (2) those parts of the plan which USEPA initially proposed to approve but, as a result of additional review, has determined to be deficient, (3) the five counties which were still undergoing review at the time of the February 25, 1980 proposed rulemaking, and (4) the regulations which OEPA

withdrew during the public comment period. USEPA is reproposing these parts of the plan to allow the public an opportunity to comment on the additional information now available.

A separate notice is also being published today promulgating the plan for the remaining counties that USEPA proposed to approve on February 25, 1980, (except for Lucas County and the Columbus and Southern Ohio Electric Poston plant in Athens County which will be handled separately). That notice also included final action on Ohio Rules 3745-18-01 to 3745-18-06. All public comments regarding those specific counties and the Ohio Rules are addressed in that notice.

**DATE:** Comments on this proposed rule are due by February 26, 1981.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for inspection:

United States Environmental Protection Agency, Region V, Air and Hazardous Materials Division, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, Division of Authorization and Compliance, 361 E. Broad Street (6th floor), Columbus, Ohio 43215

Copies of the Docket #5A-80-3 are on file for copying and inspection during normal business hours at USEPA, Region V and at: U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Air Programs Branch, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312-886-6088.

**SUPPLEMENTARY INFORMATION:** This notice discusses USEPA's review of the Ohio SO<sub>2</sub> SIP in three parts: Introduction, Background, and Control Strategy Demonstration.

### I. Introduction

On September 12, 1979, the Governor of Ohio submitted a Sulfur Dioxide (SO<sub>2</sub>) Control Plan to the United States

Environmental Protection Agency (USEPA) for inclusion in the State Implementation Plan (SIP) for Ohio. Supplemental technical support materials were submitted by the Director of the Ohio Environmental Protection Agency (OEPA) on October 23, 1979, January 10, 1980, and January 28, 1980. On February 12, 1980, the Director of the OEPA submitted the Ohio Administrative Code (OAC) rules 3745-18-01 to 3745-18-94, in final form, as adopted by the Order of November 14, 1979, effective in Ohio December 28, 1979. OEPA requested that the Sulfur Dioxide Control Plan be substituted for the existing Federal control strategy and regulations for sulfur dioxide. The SO<sub>2</sub> Plan was submitted pursuant to the requirements specified in § 110 of the Clean Air Act and 40 CFR Part 51.

On February 25, 1980, (45 FR 12266), USEPA proposed: (a) to approve those portions of the Ohio submittal for which there is an enforceable control strategy that assures the attainment and maintenance of the National Ambient Air Quality Standards for sulfur dioxide, (b) to approve other portions of the submittal only if the State of Ohio provided specified technical support and documentation during the public comment period, and (c) to disapprove those portions of the submittal for which there are deficiencies in the methodology or inadequate technical justification.

At the time of the proposed rulemaking, a 60 day public comment period was provided. On April 25, 1980, however, in response to the request of several utilities in Ohio and due to the complexity of the proposed rulemaking, USEPA published in the *Federal Register* an extension of the public comment period to May 26, 1980. During the public comment period, a total of 31 comments were received, including 37 volumes of technical support materials submitted by the State of Ohio on May 16, 1980. The State of Ohio's May 16, 1980 submission is discussed in this proposal. All other public comments have been or will be addressed in other notices.

USEPA has extensively reviewed the State of Ohio's May 16, 1980 submittal. Based on this review USEPA is reproposing rulemaking on the following portions of the Ohio sulfur dioxide plan: (1) those parts of the plan which USEPA proposed to approve on February 25, 1980 only if OEPA submitted necessary technical support and documentation during the public comment period, (2) those parts of the plan which USEPA initially proposed to approve but, as a result of additional review, has

determined to be deficient, (3) the plan for five counties which was still undergoing review at the time of the February 25, 1980 proposed rulemaking, and (4) the regulations which OEPA withdrew during the public comment period. USEPA is reproposing these parts of the plan to allow the public an opportunity to comment on the additional information now available.

USEPA proposes to approve the sulfur dioxide emission limits for the following counties: Greene County, Hamilton County (Cincinnati Gas & Electric—Miami Fort, Monsanto, Gulf Oil, Chevron Asphalt) Lake County all (except Painesville Municipal Power Plant—Boiler #5 and Cleveland Electric Illuminating Company—Eastlake and Ohio Rubber), Montgomery County (except Dayton Power & Light—Tait and Hutchings and Bergstrom Paper), Sandusky County, Trumbull County, and Vinton County.

USEPA propose to approve the sulfur dioxide emission limits for Butler County (except City of Hamilton Power Plant and Crystal Tissue) and Hamilton County (only DuPont—Fort Hill) only if the State of Ohio provides the required PSD analysis.

USEPA proposes to disapprove the sulfur dioxide emission limits for the following counties: Adams County (Dayton Power & Light—Stuart), Allen County (Cairo Chemical), Butler County (City of Hamilton Power Plant and Crystal Tissue), Clermont County (Cincinnati Gas & Electric—Beckjord), Coshocton County (Columbus & Southern Ohio Electric—Conesville), Cuyahoga County, Franklin County, Gallia County (Ohio Valley Electric Company—Kyger Creek, Ohio Power—Gavin), Lake County (Cleveland Electric Illuminating—Eastlake and Painesville Municipal Power Plant—Boiler #5), Lawrence County (Allied Chemical—South Point), Lorain County (Cleveland Electric Illuminating—Avon Lake, Ohio Edison—Edgewater, U.S. Steel—Lorain and B. F. Goodrich Co.), Mahoning County, Montgomery County (Dayton Power and Light—Tait and Hutchings and Bergstrom Paper), Morgan County (Ohio Power—Muskingum River), Pike County, Ross County (Mead Paper), Stark County, Washington County (Ohio Power—Muskingum River and Shell Chemical), Wayne County (Orrville Municipal Power Plant), and Wood County (Libbey-Owens-Ford—Plant Nos. 4 and 8 and No. 6).

Table 1 includes a county-by-county summary of the technical deficiencies listed in the February 25, 1980 *Federal Register*, the additional information submitted by OEPA during the public comment period, and the remaining

deficiencies for each county. Table 2 lists the counties whose control strategy USEPA proposed to approve in the February 25, 1980 notice, but, as a result of additional review, USEPA has determined that the control strategies are deficient. OEPA withdrew the OAC Rules for the sources listed in Table 3.

Therefore, the plan is deficient for those sources.

No action is being taken at this time on the regulations for Lucas County and for the Columbus and Southern Ohio Electric Poston plant in Athens County pending further USEPA review.

If OEPA corrects the deficiencies in

the plan for the indicated counties during the public comment period, USEPA will review this information to determine if the emission limits will provide attainment and maintenance of the National Ambient Air Quality Standards and, if necessary, propose rulemaking.

Table 1.—Summary of Counties With Technically Deficient Emission Limitations as Published in Feb. 25, 1980 (45 FR 12266) Proposed Rulemaking

County	Deficiency, as listed in proposal	Affected sources	Additional information submitted by Ohio EPA or USEPA study	Remaining deficiencies
Adams	Regs based on monitoring, modeling ignored	DP&L Stuart	Limited modeling and monitoring data	Inadequate control strategy.
Butler	a. Incomplete documentation	All	Area source inventory	None.
	b. Reserved emission limit	City of Hamilton Power Plant	None	Reserved emission limit.
Clermont	Regs based on monitoring, modeling ignored	CG&E Beckjord	Limited modeling and monitoring data	Inadequate control strategy.
Coshocton	Reserved emission limit	C&SOE Conesville	None	Reserved emission limit.
Dayahoga	a. Receptor resolution	All	None (USEPA study)	Inadequate control strategy.
	b. Incomplete documentation	All	Complete computer print-outs	None.
Franklin	a. Receptor resolution	All	None (USEPA study)	Inadequate control strategy.
	b. Incomplete documentation	All	Complete computer print-outs	None.
Gallia	Secondary standard not protected	OVEC Kyger Creek OP Gavin	None	Inadequate control strategy.
Greene	Background	All	Area source	None.
Hamilton	Incomplete documentation	CG&E Miami Fort, Monsanto, Gulf Oil, Chevron Asphalt, DuPont	Area source inventory	None.
Lake	a. Receptor resolution	All but CEI Eastlake & Ohio Rubber	None (USEPA study)	None.
	b. Incomplete documentation	All but CEI Eastlake & Ohio Rubber	Complete computer print-outs	None.
	c. Typographical error	Painesville Muni Nos. 2, 3, 4	Correction	None.
	d. Reserved emission limit	Painesville Muni No. 5	None	Reserved emission limit.
	e. CEI Eastlake emission limit	CEI Eastlake	None	Inadequate emission limit.
Lorain	a. Reserved emission limit	OE Edgewater	None	Reserved emission limit.
	b. CEI Avon Lake emission limit	CEI Avon Lake	None	Inadequate emission limit.
Mahoning	Reserved emission limits	All	None	Reserved emission limits
Montgomery	a. Receptor resolution	All	None (USEPA study)	Inadequate control strategy for DP + L Tait and Hutchings.
	b. Incomplete documentation	All	Complete computer print-outs	None.
Morgan	Inadequate documentation	OP Muskingum River	Nothing	Inadequate control strategy.
Ross	No documentation	Mead Corporation	OEPA withdrew regulation	None.
Sandusky	Background	All	Background data	None.
Stark	a. Receptor resolution	All	None (USEPA study)	Inadequate control strategy.
	b. Incomplete documentation	All	Complete computer print-outs	None.
Thurbutt	Background	All	Background data	None.
Winton	Incomplete documentation	All	Complete modeling results	None.
Washington	a. No documentation	Shell Chemical	OEPA withdrew regulation	None.
	b. Inadequate documentation	OP Muskingum River	None	Inadequate control strategy.

Table 2.—Summary of Counties With Technically Deficient Emission Limitations Not Listed in the Feb. 25, 1980, Proposal

County	Deficiency	Affected sources	Needed corrective action
Lawrence	Inadequate control strategy	Allied Chemical South Point	Adequate control strategy.
Pike	Inadequate control strategy for 3-hr standard.	All	Adequate control strategy.
Wayne	Inadequate control strategy for 3-hr standard.	Orville Municipal Power Plant	Adequate control strategy.
Wood	Inadequate control strategy	Libbey-Owens-Ford	Adequate control strategy.
Butler	Lack of PSD analysis	All	PSD analysis.
Hamilton	Lack of PSD analysis	DuPont—Fort Hill	PDS analysis.

Table 3.—Source Regulations Withdrawn by Ohio EPA

County	Source	Deficiency
Allen	Cairo Chemical	No control strategy.
Butler	Crystal Tissue	No control strategy.
Lorain	U.S. Steel—Lorain—B. F. Goodrich—Avon Lake	No control strategy.
Montgomery	Bergstrom Paper	No control strategy.
Ross	Mead Paper	No control strategy.
Washington	Shell Chemical	No control strategy.

The measures proposed for promulgation today will be in addition to, and not in-lieu of, existing SIP

regulations. The present emission control regulations for any source will remain applicable and enforceable to

prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance

with the new regulations; or if it chooses, challenging the new regulations. In some instances, the present emission control regulations contained in the Federal SIP are different from the regulations currently being enforced by the State. In these situations, the present Federal SIP will remain applicable and enforceable until there is compliance with the newly promulgated and Federally approved regulations. Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The Agency solicits comments on this proposed SIP revision from all interested parties. USEPA also encourages residents and industries in adjoining States to comment on any interstate air quality impacts of the proposed revision.

## II. Background

On January 30, 1972, the State of Ohio submitted its "Implementation Plan for the Control of Suspended Particulate, Sulfur Dioxide, Carbon Monoxide, Hydrocarbons, Nitrogen Dioxide, and Photochemical Oxidants in the State of Ohio" to the Administrator of the U. S. Environmental Protection Agency. This plan was submitted pursuant to section 110 of the Clean Air Act, as amended, which requires states to adopt implementation plans to achieve and maintain the National Ambient Air Quality Standards (NAAQS). On May 31, 1972 (37 FR 10842), the Administrator approved the Ohio plan with specific exceptions. Subsequently, amendments were submitted that permitted full approval of the plan on September 22, 1972 (37 FR 19806).

On June 28, 1973, the United States Court of Appeals for the Sixth Circuit decided the case of *Buckeye Power Company, et al. v. EPA* 481 F.2d 162. The court vacated the Administrator's approval of the Ohio plan and remanded the case to the Agency for compliance with section 553 of the Administrative Procedure Act, to take comments, data, or other evidence from interested parties and to express the basis for ensuing administrative actions.

On August 27, 1973, the State of Ohio withdrew from the proposed Ohio plan the control strategy and regulations for control of sulfur dioxide. The remainder of the plan was proposed on November 15, 1973 (38 FR 31543) and was approved

on April 15, 1974 (39 FR 13530), with specific exceptions. Because the State of Ohio withdrew the originally submitted control strategy and regulations for control of sulfur dioxide, that portion of the plan was disapproved.

On May 30, 1974, the State of Ohio submitted a proposed sulfur dioxide strategy and regulations to the Administrator to cure the defects in the Ohio Implementation Plan noted in the April 15, 1974 *Federal Register*. On September 13, 1974, however, the Ohio Environmental Board of Review overturned a portion of these regulations, thereby rendering them unenforceable. Since the plan for control of sulfur dioxide could no longer be effectuated as designed by the State, the Administrator deemed it an ineffective submission and no further rulemaking action was taken. The State of Ohio formally withdrew the proposed regulations on July 16, 1975.

On November 10, 1975, the Administrator proposed an alternate plan for the control of emissions of sulfur dioxide in the State of Ohio (40 FR 52410).

On August 27, 1976, USEPA promulgated regulations for the control of sulfur dioxide in Ohio (41 FR 36323). The regulations were amended on November 30, 1976 (41 FR 52455), May 31, 1977 (42 FR 27588), August 15, 1979 (44 FR 47769), and December 5, 1979 (44 FR 69928), January 4, 1980 (45 FR 1022), January 21, 1980 (45 FR 3906), June 24, 1980 (45 FR 42279), July 25, 1980 (45 FR 49550) (45 FR 49599), September 22, 1980 (45 FR 62815), November 4, 1980 (45 FR 73043), November 7, 1980 (45 FR 73927), November 26, 1980 (45 FR 78684) and December 1, 1980 (45 FR 79451).

On November 12, 1976, the Sixth Circuit Court of Appeals stayed the enforcement of the federally promulgated regulations in response to challenges that were filed by industrial and utility petitioners. The Court directed USEPA to collect and evaluate additional data and to make appropriate changes in the regulations. On May 31, 1977, (42 FR 27588) USEPA promulgated the necessary corrections in the regulations, and they applied to the petitioners.

On February 13, 1978, and June 29, 1978, the Sixth Circuit Court upheld USEPA's use of the RAM model and other modeling techniques in the development of the Ohio SO<sub>2</sub> Plan. In October 1978 and January 1979, the U.S. Supreme Court declined to review the Sixth Circuit decision.

Ohio has submitted the proposed SO<sub>2</sub> revisions to replace the federal regulations.

## III. Control Strategy Demonstration

OEPA has submitted a comprehensive control strategy and regulations to protect the primary and secondary standards for sulfur dioxide in the State of Ohio. Individual emission limitations are specified for the majority of sulfur dioxide sources in the State on a county-by-county basis, although some smaller sources are required to comply with a process compliance equation or a county-specific fuel burning regulation.

The control strategy developed by OEPA contains one unique concept. As an integral part of the control strategy for many counties a mandatory reduced operating level is specified for specific sources on a calendar quarter basis. The emission limitation, however, for most of these sources is constant throughout the year. Further discussion of the control strategy demonstration can be found in the February 25, 1980 *Federal Register* (45 FR 12286) and in the Final Rational Document contained in docket 5A-80-3.

OEPA generally used the same models that USEPA used in developing the Federal control strategy for sulfur dioxide in Ohio, although the application of the models occasionally differed. OEPA utilized 1964 meteorological data and a 1974 emissions inventory.

A. Counties with Technically Deficient Emission Limitations which were not listed in the February 25, 1980 Proposal.

### Lawrence County

OEPA control strategy modeling for Lawrence County contains some errors in the emissions inventory. If the results are manually corrected, then at least one violation of the 24-hour primary standard is predicted. The predicted violation is apparently due almost solely to emissions from the Allied Chemical facility in South Point, Ohio. Therefore, USEPA proposes to disapprove the emission limit for this source. The Agency approved the control strategy for the remainder of Lawrence County in a previous notice.

### Pike and Wayne Counties (see Section C—Secondary Standard)

#### Wood County

In Wood County, OEPA adopted less stringent emission limits than those in the existing Federal SIP for the Libbey-Owens-Ford Plants No. 6 in Rossford, Ohio and Nos. 4 and 8 in Toledo, Ohio. No technical support was submitted by OEPA to demonstrate that these relaxed limits will protect the NAAQS. Consequently, USEPA proposes to disapprove OEPA's emission limits for the Libbey-Owens-Ford Plants No. 6 and Nos. 4 and 8 in Wood County.

### *Hamilton and Butler Counties (PSD Review)*

The PSD regulations (45 FR 52676, August 7, 1980) were considered by USEPA in their review of the OEPA SO<sub>2</sub> SIP. Under the PSD regulations, SIP relaxations must be evaluated for possible increment consumption. As discussed in the regulations, a review of increment consumption is necessary if: (a) the baseline date for § 107 attainment/unclassified area has been triggered, and (b) the proposed SIP revision is expected to result in any increase over baseline emissions. For SO<sub>2</sub> in Ohio, the § 107 designations apply on a county-by-county basis. USEPA has determined that the baseline date for SO<sub>2</sub> has been triggered in six counties (i.e., Union, Noble, Pickaway, Harrison, Butler, and Hamilton). The regulations require increment consumption analysis for SIP revisions in cases where the revisions result in an increase over baseline emissions. In this case baseline emissions are represented by the existing federal SIP. Consequently, an increment analysis is necessary in those cases where Ohio has proposed relaxations of the federal emission limits.

In four of the counties (Union, Noble, Pickaway, and Harrison), OEPA has not proposed any relaxations from the existing USEPA SIP. Thus, no review of PSD increment consumption is necessary.

In Butler County, OEPA has proposed regulations that may represent increases in baseline emissions. Therefore, a PSD analysis is necessary while USEPA is today proposing to approve the control strategy for Butler County, final action will not be action until the state has submitted the final PSD analysis and the analysis has been subject to public comment.

In Hamilton County, OEPA has proposed a relaxation for only the DuPont-Fort Hill facility and has not provided an analysis of PSD increment consumption. A PSD analysis is required for this proposed SIP relaxation. While USEPA is today proposing to approve the control strategy for DuPont-Fort Hill, final action will not be taken until the state has submitted the necessary PSD analysis and the analysis has been subject to public comment.

### *B. Receptor Resolution in the Critical Day RAM Analyses*

The modeling methodology employed by OEPA utilized, in most cases, a receptor grid with 1.0 km spacing in critical day RAM analyses. These analyses located the highest, second high sulfur dioxide impact points on which emission limitations in urban and

multiple source area were based. In developing its emission limitations, USEPA used a different receptor grid. USEPA utilized the RAM model's significant point receptor option to locate receptors at the estimated points of maximum impact from specified significant point sources according to the resultant meteorology for the day in question.

To evaluate the adequacy of OEPA's receptor grid, USEPA hired a contractor to examine the resolution provided by the OEPA and USEPA receptor networks in Cuyahoga, Franklin, Lake (rural eastern half), Montgomery, Stark, and Summit Counties. Ground-level concentrations for OEPA's emission inventory (Ohio's source operating and emission parameters at its reduced load control strategy option) were calculated at USEPA's points of maximum impact or "hot spots." These "hot spots" were determined from USEPA's design load inventory.

At the time of the February 25, 1980 proposed rulemaking, only the analysis for Summit County was complete. Therefore, USEPA proposed rulemaking for Summit County in the February 25, 1980 notice. USEPA proposes rulemaking today based on the completed analyses for the remaining counties.

The modeling results indicated that OEPA's control strategy is inadequate to protect the ambient standards in all of Cuyahoga, Franklin, and Stark Counties and in parts of Montgomery County. Numerous violations of the NAAQS were predicted at various USEPA critical receptors. Therefore, USEPA proposes to disapprove the control strategy and regulations for all of Cuyahoga, Franklin, and Stark Counties. In Montgomery County, only the OEPA limits for the Dayton Power and Light Tait and Hutchings plants are inadequate to protect the NAAQS. Thus, USEPA proposes to disapprove the emission limitations for these two sources and to approve the control strategy for the remainder of Montgomery County. The modeling analyses are discussed in detail in a report located in the Docket 5A-80-3 "PES Ohio SO<sub>2</sub> Report—Revised".

The modeling results for the rural eastern half of Lake County did not predict any violations using OEPA's control strategy at USEPA's critical receptors. Therefore, USEPA proposes to approve the control strategy for the rural, eastern half of Lake County with the exception of the emission limit for the Painesville Municipal Power Plant Boiler #5. This emission limitation contains a deficiency which is discussed elsewhere in this notice.

### *C. Secondary Standard*

Although OEPA's emission limitations for the Ohio Valley Electric Corporation Kyger Creek plant and Ohio Power Company Gavin plant in Gallia County are identical to those contained in Section 52.1881(b)(28) of the existing federal SIP, the regulations adopted by OEPA may be deficient with respect to attainment and maintenance of the secondary standard. As discussed in the February 25, 1980 proposal, the federal plan for this area did not address the attainment and maintenance of the secondary standard for SO<sub>2</sub>. USEPA is currently reviewing the adequacy of its Gallia County regulations to protect the secondary standard in response to a remand by the United States Court of Appeals for the Sixth Circuit in *Northern Ohio Lung Association v. EPA*, 572 F.2d 1182 (1978).

During the public comment period, OEPA did not demonstrate to USEPA that the regulations can protect the secondary National Ambient Air Quality Standard for SO<sub>2</sub> in Gallia County. USEPA, therefore, proposes to disapprove OEPA's emission limitations for Gallia County.

In the February 25, 1980 proposed rulemaking, USEPA proposed to approve the OEPA emission limitations for Pike and Wayne Counties. After additional review in response to the above cited remand, USEPA has discovered deficiencies with respect to the secondary standard which were not addressed in the original proposal. In Pike County, OEPA's proposed emission limitations are identical to those in the federal plan. In Wayne County, OEPA's proposed emission limits are either identical (e.g., Orrville Municipal Power Plant) or more stringent than those in the federal plan. The existing federal emission limitations for Pike County and the Orrville Municipal Power Plant in Wayne County, however, do not protect the secondary standard. Therefore, USEPA proposed rulemaking to correct the deficiencies in the federal plan for Pike and Wayne Counties in a separate action. USEPA proposes to disapprove OEPA's emission limitations for Pike County and the Orrville Municipal Power Plant in Wayne County since these limits will not protect the 3-hour secondary standard.

### *D. Technical Support and Documentation*

On February 25, 1980, USEPA proposed to approve the sulfur dioxide emission limits for several counties in Ohio only if the State of Ohio provided certain technical information during the comment period and only if USEPA's

review indicated the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide would be attained and maintained. On May 16, 1980, the State of Ohio submitted 37 volumes of additional technical support in response to this notice. USEPA has extensively reviewed this submittal. USEPA proposes to approve the plan for the counties in which the necessary technical support was submitted and to disapprove the plan for the counties in which sufficient technical justification was not submitted or the information submitted indicated that the NAAQS would not be attained and maintained.

1. In parts of Adams (Dayton Power & Light Stuart Station) and Clermont Counties (Cincinnati Gas & Electric Beckjord Station), OEPA discarded the reference modeling results in favor of monitoring data for the purpose of setting emission limitations. Status quo regulations were set because there were no monitored violations. In the February 25, 1980 proposed rulemaking, USEPA requested OEPA to justify its decision not to use the reference model (CRSTER or MAXT 24) and to provide an attainment demonstration. During the public comment, OEPA submitted modeling that it claimed demonstrated that the reference model predicted unrealistically high ground-level concentrations for these two plants.

USEPA's review of this additional material indicates that OEPA's modeling for the Dayton Power & Light Stuart Station is erroneous because it relied on Huntington/Huntington meteorological data rather than Cincinnati/Dayton meteorological data. Additionally, OEPA's submittal for Adams County did not provide: (a) information about the existing monitoring data around the plant, (b) comparisons between modeled and monitoring concentrations, and (c) modeling of actual emissions and on-site meteorological data for the same period of time as the monitoring.

USEPA's review of OEPA's modeling for the Cincinnati Gas & Electric Beckjord Station indicates that the high ground-level concentrations are consistent with USEPA's previous analysis. Further, OEPA's analysis does not support its claim that the model overpredicts since modeling was not performed with actual emissions and on-site meteorological data for the same period of time as the monitoring and comparisons were not made between modeled and monitored concentrations. Additionally, inadequate spatial resolution of the existing monitoring network (i.e., 2 monitors located 7 km away) prevents the existing data from

being used to establish emission limitations for Beckjord.

Therefore, OEPA's analyses do not support its claim that the reference model overpredicts for parts of Adams and Clermont Counties. USEPA proposes to disapprove the proposed regulations for Adams (Dayton Power & Light Stuart Station) and Clermont (Cincinnati Gas & Electric Beckjord Station). The remainder of the Plan for Adams and Clermont Counties was previously approved.

2. OEPA's original submittals did not document if a constant background concentration was used or if area sources were modeled in lieu of a constant background level in the following counties: Franklin, Butler, Cuyahoga, Greene, Hamilton, Lake (eastern half), Montgomery, Sandusky, Stark, and Trumbull. Therefore, USEPA's February 25, 1980 proposed rulemaking requested that OEPA submit either area data source or document that a constant background concentration was applied in these counties.

During the public comment period, OEPA identified the area source inventories in Butler, Cuyahoga, Franklin, Greene, Hamilton, Lake, Montgomery, Stark, and Trumbull Counties and the background level for Sandusky County.

Therefore, OEPA's subsequent submittal corrects this particular deficiency in the plans for these counties. Some of these counties, however, have other deficiencies which are discussed elsewhere in this proposal. USEPA is proposing to approve the plan for Greene, Hamilton (in part), Sandusky and Trumbull Counties in which this was the only deficiency.

3. OEPA's initial submittals provided incomplete technical support for a number of counties. In the February 25, 1980 proposed rulemaking, USEPA requested OEPA to submit the following information: a) the results of all critical day analyses using the proposed control strategy for Cuyahoga, Franklin, Stark, Lake (eastern portion) and Montgomery Counties, and b) documentation demonstrating that no highest, second high concentration exceeds the NAAQS in Stark, Franklin, and Cuyahoga Counties, and c) the modeling results for Vinton County.

During the public comment period, OEPA submitted the requested information for these counties. Nevertheless, as discussed above in section III.B., demonstrations in Cuyahoga, Franklin, Montgomery (part), and Stark Counties are not valid as demonstrated by USEPA's receptor resolution analyses. Consequently,

USEPA proposes to disapprove the plan for all of Cuyahoga, Franklin, and Stark Counties and only Dayton Power and Light Tait and Hutchings in Montgomery County. USEPA proposes to approve the Ohio plan in Lake County (eastern portion) and Vinton County since there are no remaining deficiencies.

4. The emission limitations contained in the OEPA plan for the Cleveland Electric Illuminating Company (CEI) Avon Lake and Eastlake Power Plants are the same emission limitations proposed by USEPA in the June 12, 1979 **Federal Register** (44 FR 33711). The State cited USEPA's proposal as its justification for the proposed emission limitations.

On June 24, 1980 (45 FR 42279), USEPA promulgated emission limitations for the two CEI plants which differ from the June 12, 1979 proposal. In setting these final limits, the previously proposed limits were shown by USEPA to be inadequate to protect the ambient standards. Therefore, USEPA proposes to disapprove USEPA's emission limits for CEI Eastlake and Avon Lake.

5. The emission limitation contained in the OEPA plan for the Ohio Power Muskingum River Power Plant in Morgan and Washington Counties is based on an alternative control strategy prepared by Ohio Power and submitted to OEPA. OEPA submitted the technical support prepared by Ohio Power to USEPA as justification for its adoption of these emission limits. In the February 25, 1980 notice, USEPA requested that OEPA submit additional technical documentation supporting the proposed OEPA emission limitation. During the public comment period, OEPA did not submit any further technical justification. Therefore, USEPA, is proposing to disapprove the emission limits for the Ohio Power Muskingum River Power Plant in Morgan and Washington Counties. (See Docket #5A-80-3).

6. Reserved Emission Limitations: OEPA's control plan contained provisions in which no emission limitation was specified for certain or all sources in six counties although the sources themselves were named in the provisions.

During the public comment period, OEPA did not submit emission limitations for these sources. Further, OEPA did not demonstrate that the ambient standards will be protected with these sources unregulated. Therefore, USEPA proposes to disapprove the State's SO<sub>2</sub> plan for the following sources: City of Hamilton Power Plant, Boiler No. 9 (Butler County); Columbus and Southern Ohio Electric Conesville Station, Boilers Nos.



1-4 (Coshocton County); Painesville Municipal Power Plant, Boiler No. 5 (Lake County); all sources in Mahoning County; and Ohio Edison Edgewater Power Plant, Boilers Nos. 1.5 (Lorain County). The federal regulations remain in effect as a result of this disapproval. (Note, the February 25, 1980 notice also identified Coulton Chemical in Lucas County as having reserved regulations. As noted previously, however, this rulemaking action does not include Lucas County.)

In the May 16, 1980 submittal the State of Ohio withdrew OAC Rules 3745-18-06(H), 3745-18-15(B), 3745-18-53(E), 3745-18-63(K), 3745-18-77(B), and 3745-18-90(C). These rules contain emission limitations for the following plants: Cairo Chemical Corporation in Allen County, Crystal Tissue Company in Butler County, U.S. Steel Corporation, Lorain-Cuyahoga Work in Lorain County, Bergstrom Paper Company in Montgomery County, Mead Corporation in Ross County, and Shell Chemical Company in Washington County. Additionally on December 19, 1980 EPA received a letter from the State of Ohio withdrawing OAC Rule 3745-18-53(A). This rule contains the emission limitations for the B.F. Goodrich Company, Avon Lake Chemical Plant in Lorain County.

Since the State of Ohio withdrew the regulations cited above, the plan for those sources is deficient. Therefore, EPA proposes to disapprove those portions of the plan.

Interested persons are invited to comment on the proposed OEPA SO<sub>2</sub> SIP. Comments should be submitted to the address listed in the front of this notice. Public comments received within thirty days of publication will be considered in USEPA's final rulemaking on the SIP. All comments received will be available for inspection at USEPA, Region V Office, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Under Executive Order 12044 (43 FR 12561), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels proposed regulations "specialized." USEPA has reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979, by the Administrator, and has determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached

rule will not have a significant economic impact on a substantial number of small entities. This action approves state actions and in cases where USEPA is disapproving state actions the existing federal SIP remains in effect. Therefore, this action imposes no new requirements for the sources in Ohio. Moreover, due to the nature of the federal-state relationship, federal inquiry into the economic reasonableness of the state actions would serve no practical purpose and could well be improper.

This Notice of Proposed Rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: January 16, 1981.

John McGuire,  
Regional Administrator.

[FR Doc. 81-2735 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 52

[A-5-FRL 1738-5]

#### Ohio; Approval and Promulgation of Implementation Plans

**AGENCY:** Environmental Protection Agency ("EPA").

**ACTION:** Notice of additional comment period.

**SUMMARY:** On June 24, 1980 EPA promulgated final sulfur dioxide (SO<sub>2</sub>) emission limitations for Cleveland Electric Illuminating Company's Avon Lake and Eastlake power plants in Ohio. See 45 FR 42279. EPA has received three petitions for reconsideration including requests for an opportunity to comment on EPA's action. EPA has decided that a comment period is appropriate. Accordingly, EPA is inviting all interested persons to submit comments on the emission limitations promulgated on June 24, 1980. EPA will reconsider the emission limitations in light of all comments received.

**DATE:** Comments must be received by March 30, 1981.

**ADDRESSES:** Comments should be submitted to: Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Docket No. 5A-79-1, containing information pertinent to EPA's June 24, 1980 emission limitations is available for inspection and copying during normal business hours at the above address and at EPA's Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Comments received in response to today's notice

will also be filed in Docket No. 5A-79-1 and will be available as described above.

**FOR FURTHER INFORMATION CONTACT:** Steve Rothblatt, Chief Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/886-6030.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 12, 1979, EPA proposed to revise the emission limitations applicable to the Avon Lake and Eastlake power plants owned by the Cleveland Electric Illuminating Company (CEI). See 44 FR 33711. EPA proposed to change the emission limitations from 1.15 to 6.09 lbs. sulfur dioxide (SO<sub>2</sub>) per million BTU (MBTU) for the Avon Lake plant and from 1.43 to 6.58 lbs. SO<sub>2</sub> per MBTU for the Eastlake plant. As discussed in the proposal, the proposed emission limitations reflected the emission levels of the plants at that time.

EPA proposed this change because it had concluded that the urban RAM model, which had been used to calculate the original, lower limitations, was inappropriate for use in the areas where CEI's plants are located.

In the same notice EPA announced that it would continue to analyze the impact of the plants' emissions, requiring CEI to install a detailed monitoring network around each plant. EPA also noted that further dispersion modeling of the plant's emissions might be performed in the future.

On January 4, 1980, EPA suspended the date (October 19, 1979) on which CEI was required to comply with the existing 1.15 and 1.43 lbs. emission limitations. See 45 FR 1022. The suspension was necessary because a requested extension to the comment period on the proposed emission limitations had made it impossible for EPA to take final action on its proposal to change the limitations prior to the compliance date. EPA suspended the compliance date to no later than June 17, 1980, the attainment date in the Ohio state implementation plan for SO<sub>2</sub>.

The Commonwealth of Pennsylvania, several Northeastern states, and an environmental group filed petitions for review of EPA's compliance date suspension in the U.S. Court of Appeals for the Sixth Circuit (Nos. 80-3147 and 80-3148). EPA made a commitment to the Court that, consistent with its compliance date suspension, it would take final action on the proposed emission limitations prior to the June 17, 1980, attainment date.

On June 17, 1980, the Administrator took final action on the CEI emission limitations. The Administrator's action was published in the *Federal Register* on June 24, 1980. See 45 FR 42279. EPA set the Avon Lake limitations at 4.10 or 4.65 lbs. SO<sub>2</sub> per MBTU, depending on the sulfur content of oil burned at the plant, and set Eastlake's limitations at 5.64 lbs. SO<sub>2</sub> per MBTU. These final limitations are somewhat stricter than the proposed "status quo" limitations, but not as strict as the previously effective 1.15 and 1.43 lbs. limitations.

EPA explained that MPTER modeling performed in designing the monitoring networks had suggested that the proposed "status quo" limitations might not be adequate to prevent violations of the SO<sub>2</sub> standards. Comments submitted on the proposed status quo limitations expressed similar doubts. Consequently, EPA decided to perform a further modeling analysis of the Avon Lake and Eastlake SO<sub>2</sub> emissions. The CRSTER model, EPA's preferred model for isolated sources in non-urban areas, was used for this additional analysis. The analysis showed that emission limits of 4.10/4.65 and 5.64 lbs. were needed to prevent SO<sub>2</sub> violations under class A stability conditions.

During this time, EPA was also preparing a final rulemaking on stack height regulations proposed on January 12, 1979. See 44 FR 2608. EPA's proposed stack height regulations generally allowed sources automatic credit for stack heights up to a good engineering practice height, as determined by an EPA formula. EPA had become increasingly concerned that stack height increases allowed under the proposed regulations might contribute to long-range transport of pollutants and acid deposition. Accordingly, EPA decided to modify its stack height proposal. The revised policy requires certain sources seeking to raise existing stacks to demonstrate through fluid modeling or field studies that the increased stack height is necessary to avoid excessive concentrations due to downwash, wakes or eddies.

EPA announced this policy change as part of its final action on the CEI emission limitations and applied the revised policy in developing the emission limitations. EPA determined it was appropriate to apply this new policy to CEI because CEI had replaced existing stacks at each of the two points with taller stacks. Therefore, EPA also modeled the two power plants using the old stacks and assuming no credit for the new, taller stacks. This modeling showed that lower emission limitations would be needed to prevent standards

violations: 3.43 or 3.93 lbs. SO<sub>2</sub> per MBTU at Avon Lake (depending on SO<sub>2</sub> content of fuel burned) and 3.04 lbs. SO<sub>2</sub> per MBTU at Eastlake.

As a result of the policy revision, EPA promulgated two sets of emission limitations: 4.10/4.65 lb. for Avon Lake and 5.64 lb. for Eastlake, based on the CRSTER modeling under Class A conditions with credit for a good engineering practice stack height as calculated under EPA's proposed stack height regulations, and 3.43/3.93 lb. for Avon Lake and 3.04 lb. for Eastlake based on the same modeling using the existing stacks and assuming no credit for the new taller stacks. The first set of limitations was made immediately effective; the second set of limits was made effective a year later in order to provide CEI with an opportunity to demonstrate through fluid modeling or field studies that the stack height increases were necessary to avoid excessive concentrations due to downwash, wakes or eddies.

*Petitions for Reconsideration.* In August 1980, CEI, the North American Coal Corporation, the NACCO Mining Company, and the Northern Ohio Lung Association filed petitions for reconsideration. Petitioners requested that EPA provide an opportunity for comment on the June 1980, final rulemaking and reconsider the rule in light of comments received. CEI also requested that EPA stay the effectiveness of both sets of emission limitations during the reconsideration.<sup>1</sup> The petitioners stated that they had had no opportunity to comment on the use of the CRSTER model and Class A stability, and on EPA's stack height policy change as applied to CEI.

EPA believes that it should provide the fullest possible opportunity for public participation in its rulemakings. EPA promulgates rules without providing every opportunity for public comment only when circumstances require immediate action. In this rulemaking, because the Ohio implementation plan and EPA's commitment to the Sixth Circuit Court of

Appeals required action by June 17, 1980, the Agency was unable to provide as much opportunity for comment as it would have preferred to do.

EPA believes that providing an opportunity for comment at this time on the June 1980 rulemaking will promote the goal of broad public participation. Accordingly, EPA today solicits comments on its June 1980 promulgation of SO<sub>2</sub> emission limitations for CEI's Avon Lake and Eastlake power plants. All comments received within 60 days of the publication of this notice will be considered. After careful consideration of all timely comments, EPA may, if appropriate, revise either or both sets of emission limitations.

*Request for Stay.* CEI's petition for reconsideration also requested that EPA stay both sets of emission limitations while the Agency responded to the petitions. However, CEI has failed to show that it satisfies the tests for granting a stay. In particular, CEI has not shown that a stay is needed to prevent substantial harm to itself. CEI recently informed EPA that it is currently meeting the 4.10/4.65 lb. emission limitations at its Avon Lake plant and the 5.64 lb. emission limitation at its Eastlake plant. In addition, CEI has failed to demonstrate that a stay is needed to prevent public harm. In fact, as stated in the June 24, 1980, rulemaking, EPA's modeling indicates that the currently effective emission limitations are necessary to prevent violations of the national SO<sub>2</sub> standards. Therefore, these limitations should continue in effect to protect public health. Finally, CEI has made no showing that it is likely to succeed on the merits. CEI's comment period request includes no new data or arguments for EPA to evaluate in determining whether any revision to the emission limitations is necessary. EPA is therefore denying CEI's request for a stay of the effectiveness of the 4.10/4.65 lb. and 5.64 lb. emission limitations.

EPA has determined that it is appropriate to defer action on the stay request as to the second, more restrictive set of emission limitations which are based on the revised stack height policy. EPA believes that, if possible, the decision on that stay request should await promulgation of EPA's final stack height regulations. However, EPA intends to rule on the requested stay as to the second set of emission limitations well before their effective date of June 24, 1981, even if the stack height regulations have not yet been promulgated.

<sup>1</sup> The petitions indicated that they were submitted under Section 307(d)(7)(B) of the Clean Air Act as petitions for reconsideration of a final rule promulgated under Section 307(d) of the Act. Section 307(d)(7)(B) requires EPA to reconsider such a final rule upon receipt of a petition showing (1) that grounds for an objection to a rule arose after the comment period, but within the time specified for judicial review, and (2) that the objection is of central relevance to the outcome of the rule. 42 USC 7607(d)(7)(B).

Regardless of whether these petitions meet the requirements of Section 307(d)(7)(B), EPA is treating these petitions as requests for a comment period and for an administrative stay of the effective date of a rule under Section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705.

**Summary**

EPA is today announcing a 60-day period for the submittal of comments on the emission limitations for CEI's Avon Lake and Eastlake power plants promulgated on June 24, 1980. EPA is denying CEI's request for stay of the currently effective limitations of 4.10 or 4.65 lbs SO<sub>2</sub> per MBTU (depending on sulfur content of oil burned) for Avon Lake and 5.64 lbs. SO<sub>2</sub> per MBTU for Eastlake. Therefore, these limitations remain in effect. EPA is deferring decision on CEI's request for stay of the 3.43/3.93 lb. limitation for Avon Lake and the 3.04 lb. limitation for Eastlake, which become effective on June 24, 1981 unless CEI demonstrates that certain stack height increases are necessary to avoid excessive concentrations due to downwash, wakes or eddies.

(Sections 110 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7410 and 7601)

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

[FR Doc. 81-2658 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

**40 CFR Part 52**

[A-5-FRL 1739-7]

**Approval and Promulgation of Nonattainment Area Plans; Ohio**

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Rulemaking.

**SUMMARY:** The purpose of today's notice is to announce receipt of a proposed revision to the Ohio State Implementation Plan, to discuss the results of EPA's review of that revision and to invite public comment. The proposed revision is for the primary total suspended particulate (TSP) nonattainment area of Middletown, Ohio. This proposed revision consists of revised rule 08 of Chapter 3745-17 of the Ohio Administrative Code and a control program developed pursuant to rule 08 for the ARMCO Middletown Works plant. EPA is today proposing conditional approval of this revision to the Ohio SIP.

**DATE:** Comments on this proposed revision to the Ohio SIP and on EPA's proposed action must be received by February 26, 1981.

**ADDRESSES:** Copies of the proposed SIP revision are available for inspection at the following addresses:

United States Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, 361 East Broad Street, Columbus, Ohio 43216.

**WRITTEN COMMENTS SHOULD BE SENT TO:**

Mr. Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

**SUPPLEMENTARY INFORMATION:** On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in Ohio as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO), and ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), total suspended particulates (TSP) and nitrogen dioxide (NO<sub>2</sub>).

Part D of the Clean Air Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for those areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. In certain circumstances an extension is provided to no later than December 31, 1987 for ozone and/or carbon monoxide.

The requirements for an approvable SIP are described in a *Federal Register* notice published April 4, 1979 (44 20372) and are not repeated here. Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

On June 13, 1980 and September 19, 1980 the State of Ohio submitted proposed revisions to the total suspended particulate (TSP) portion of the Ohio SIP.

These proposed revisions contained control strategies for each of the TSP nonattainment areas in the State. A control strategy for Butler County, Ohio which includes the primary nonattainment area of Middletown, Ohio, was contained in this submittal. In the December 1, 1980 *Federal Register* (45 FR 79153), EPA announced receipt of these proposed revisions. Additionally, EPA indicated that it was reviewing the control strategies and proposed revisions and would propose rulemaking in the near future.

On January 6, 1981, the Ohio Environmental Protection Agency (Ohio EPA) notified the EPA that, in lieu of the plan previously submitted for the City of Middletown, it will be submitting a revised control strategy for that area. A public hearing on the revised plan will be conducted in Columbus, Ohio on February 10, 1981, with final adoption scheduled for March of 1981. The revised control strategy will consist of the following: (1) rules 01 to 11 of Chapter 3745-17 of the Ohio Administrative Code (OAC) (2) control programs developed pursuant to rule 08, which will reduce fugitive dust emissions from open fugitive dust sources located in the area, and (3) a modeling analysis which will assess the TSP emission in the area and will demonstrate attainment of the TSP NAAQS by December 31, 1982. The major difference between the revised control strategy and the control strategy submitted for Butler County, Ohio in June and September of 1980 is proposed rule 08. Proposed rule 08, which has not yet completed the necessary state procedures for adoption, requires most owners or operators of fugitive dust sources located in the area to develop their own control programs for decreasing fugitive emissions. Proposed rule 08 exempts from compliance the number 3 Blast Furnace, the number 15 Basic Oxygen Furnace and the number 16 Basic Oxygen Furnace located at ARMCO's Middletown plant.

Although rule 08 has not yet been adopted, EPA is today proposing rulemaking action on it because of its effect on the implementation of an existing Court Order. Under this Court Order, ARMCO must install equipment to control fugitive emission associated with its blast furnace and basic oxygen furnaces. Unless ARMCO secures approval from Ohio EPA and EPA of an emission control program which will ensure attainment and maintenance of the TSP NAAQS in the Middletown area, without additional control on these three fugitive sources, the company must submit by April 1, 1981, its final engineering plans for these sources and must proceed with implementing the remaining elements of the Court Order.

In an effort to expedite EPA's rulemaking procedures and to prevent the installation of any unnecessary control equipment on these three sources, the State has submitted to EPA a copy of proposed rule 08, description of ARMCO's control strategy, and the most recent monitored ambient air quality data for the Middletown area. The State, in its January 6, 1981 letter, requested that EPA review the proposed

rule 08 and ARMCO's control strategy developed pursuant to it, and proceed with Federal rulemaking. Additionally, the State indicated that in February, EPA would receive a copy of the modeling analysis conducted for the area. This modeling analysis will indicate whether the revised control strategy will be adequate to ensure attainment of the TSP NAAQS by December 31, 1982.

It should be noted that, even though EPA is today proposing conditional approval of revised rule 08 and ARMCO's control strategy, EPA will not complete Federal rulemaking until all state procedural requirements are satisfied and the regulatory and nonregulatory portions of this SIP revision are formally submitted by the Governor or his designee. Any substantive changes in the final SIP revision submitted which are not discussed or anticipated in this **Federal Register** notice will be addressed in a supplemental notice of proposed rulemaking. Additionally, it should be noted that EPA at this time, EPA is not proposing action on rules 01-07 and 09-11 of the OAC. Rulemaking on the adequacy of these rules will be discussed in a separate **Federal Register** notice.

EPA's proposed action on this proposed SIP revision may take one of three forms: approval, conditional approval, or disapproval. A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583) and the November 23, 1979 **Federal Register** (44 FR 67182). A conditional approval requires the State to submit additional materials by the specified deadlines negotiated between the State and EPA prior to final rulemaking. A conditional approval will mean that the restrictions on new major source construction in the area will not apply unless the State fails to submit the necessary material by the scheduled date, or if it is not approved by USEPA. Conditional approvals will not be granted without strong assurance by the appropriate State official(s) that the deficiencies will be corrected by the date specified.

EPA will follow the procedures described below when determining if the requirements of the conditional approval have been met.

1. When the State submits the required additional documentation, EPA will review the additional documentation. EPA will publish a notice of final rulemaking approving the additional documentation if it has determined that the public has had adequate opportunity to know and comment on the contents of the

documentation. Otherwise, EPA will publish a notice in the **Federal Register** announcing receipt and availability of the submission and that the conditional approval is continuing pending EPA's final action on the submission.

2. EPA will evaluate the State's submission and public comments on the submission to determine if noted deficiencies have been fully corrected. After review is complete, a **Federal Register** notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions of growth are in effect.

It should be noted that the measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations; or if it chooses, challenging the new regulations. In some instances, the present emission control regulations contained in the federally approved SIP are different from the regulations currently being enforced by the State. In these situations, the present federally approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally approved regulations. Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is an instance of delay or lapse of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the requirements of the new regulations and the requirements of the existing regulation such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new regulation. In this situation, the State may exempt a source from compliance

with the pre-existing regulation. Any exemptions granted will be reviewed and acted on by EPA either as part of these promulgated regulation or as a future SIP revision.

Discussed below is a synopsis of the proposed control strategy and EPA's proposed action on it. EPA solicits comments from all interested parties on both the proposed SIP revision and on EPA's proposed action.

#### Synopsis of Middletown Control Strategy

To remedy the TSP nonattainment problem in the City of Middletown, the original strategy contained in the June and September submittals relied on OAC rules 01 (Definitions), 02 (Ambient Air Quality Standards), 03 (Measurement Methods and Procedures), 04 (Attainment Dates and Compliance Time Schedules), 05 (Non-Degradation Policy), 06 (Classification of Regions), 07 (Control of Visible Air Contaminants from Stationary Sources), 08 (Restriction of Emission of Fugitive Dust), 09 (Restrictions on Emissions and Odors from Incinerators) and 10 (Restriction on Particulate Emissions and Odors from Fuel Burning Equipment) and 11 (Restriction on Particulate Emissions from Industrial Processes).

On January 6, 1981, the State informed EPA that this original strategy would be revised for the Middletown, Ohio primary nonattainment area. Although the revised control strategy will rely on State adopted rules 01-07 and 09-11, previously adopted rule 08 will be revised. Revised rule 08 will require the owner or operator of a fugitive dust source located in the area to develop a control program for that source. The number 3 Blast Furnace and the numbers 15 and 16 Basic Oxygen Furnaces located at ARMCO's Middletown Works plant are exempted from compliance with rule 08. However, for these sources, the new control strategy must have appropriate emission limitations which reflect status quo. Although the required fugitive dust control programs for all of the affected sources of fugitive emissions in the area have not been submitted to EPA for review, the State did submit along with its January 6, 1981 letter, a description of the open dust control strategy developed by ARMCO for its Middletown Works plant. This program, included as part of the Middletown control strategy, will reduce fugitive emissions in the area by implementing the following measures on plant property: reducing vehicular traffic, cleaning paved roads, treating unpaved surfaces with dust suppressants, reducing bare areas by means of road

paving and vegetative cover and installing spray systems for coal and other storage piles. As part of the official SIP revision the State will submit the enforceable control strategy developed by ARMCO for its Middletown Works plant.

ARMCO has been implementing this control strategy since approximately August 1, 1980. Since that time, the monitoring data for the area has shown that significant progress has been made in improving air quality. Although attainment of the TSP NAAQS has not yet been achieved, the continued operation of the ARMCO control strategy plus the implementation of controls on other sources in the area which will be regulated by rules 01-07, revised rule 08 and rules 09-10, should lead to attainment of the TSP NAAQS by December 31, 1982. To ensure that the revised control strategy will be adequate to ensure attainment of the TSP NAAQS by December 31, 1982, the State is requiring ARMCO to submit, prior to February 17, 1981, a modeling analysis for the area. This modeling analysis, which will be submitted to EPA as part of the revised control strategy for the area, will be based on the allowable emission rates for all the point sources located in the county, and will analyze the emissions impact of the control strategy at all of the monitor locations in the area. By performing this modeling analysis, a refined assessment can be made of the impact of the TSP control strategy on the ambient air quality in the area and whether attainment of the TSP NAAQS can be achieved by December 31, 1982.

#### EPA's Evaluation and Proposed Action

The monitoring data submitted for the area, although it does not show attainment at the present time, does show significant improvement in the TSP air quality in the area. In particular, at the Srepcor monitor for the period before implementation of the ARMCO control strategy (March-July 1980) the geometric mean value was 91 micrograms per cubic meter (91,  $\mu\text{g}/\text{m}^3$ ). For the period after implementation of the ARMCO control strategy, (August-November 1980) this improved to 77  $\mu\text{g}/\text{m}^3$ . Based on this monitoring data; ARMCO's continued implementation of its fugitive dust control program; and the individual control programs developed pursuant to revised rule 08, EPA believes that the revised control strategy developed for Middletown, Ohio will demonstrate attainment of the TSP NAAQS by December 31, 1982. In order for EPA to verify that attainment of the TSP NAAQS will be achieved by December 31, 1982 EPA must evaluate

and approve the modeling analysis developed for the area. The State indicated in its January 6, 1981 letter that EPA will receive a copy of the modeling analysis by mid-February 1981.

The modeling analysis will be based on the allowable emission limitations for each of the point sources located in the county. The modeling analysis must include sufficient information for EPA to determine how the analysis was conducted and how the maximum hourly allowable and annual emission rates were calculated. In particular, information on the process weight rate, the uncontrolled emission rate, the hours of operation and, for boilers, the heat input must be included. Until EPA takes final action on rules 01-07 and 09-11 the emission limitations in the current federally approved SIP will be effective and enforceable. Therefore, EPA will examine the emission limitations for each point source in the modeling analysis to determine whether they are equal to or less stringent than the emission limitations contained in the current federally approved SIP. If the proposed emission limitations in the modeling analysis are equal to or less stringent than what is currently enforceable EPA can ensure attainment through enforcement of the existing SIP. EPA will approve the modeling analysis, if the modeling analysis: (1) contains the specific information outlined above and conforms with EPA modeling guidelines, (2) contains emission limitations for each of the point sources which are compatible with the emission limitations contained in the current federally approved SIP and (3) demonstrates attainment of the TSP NAAQS by December 31, 1982.

As stated previously, EPA will propose rulemaking on the approvability of rules 01-07 and 09-11 and rule 08 for the remainder of the State in a future **Federal Register**. In that **Federal Register** EPA's proposed rulemaking action on these rules will be predicated on the enforceability of these rules and their compatibility with the emission limitations utilized in the modeling analysis submitted to and approved by EPA.

EPA will approve revised rule 08 if: (1) it is adopted by the State in its present form and submitted without any significant changes; (2) the modeling analysis meets the requirements described above; and (3) prior to EPA final rulemaking the state submits for approval or commits itself to submit on a schedule negotiated between the state and EPA, the individual enforceable control programs required by proposed

rule 08 for each of the fugitive emission sources located in the primary nonattainment area. In addition, EPA will approve ARMCO's control strategy developed for the sources at ARMCO's Middletown Works plant if it is submitted to EPA as part of the official SIP revision and if it contains enforceable measures which are consistent with the modeling analysis.

Upon receipt of the modeling analysis and the enforceable ARMCO control strategy EPA will publish in the **Federal Register** a notice(s) which announces the availability of these documents and which extends the public comment period by an appropriate length of time so as to provide interested individuals an opportunity to comment on the acceptability of these documents.

Pursuant to the provisions of 5 United States Code section 605(b), I hereby certify that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This action only approves state actions and imposes no new requirements. Furthermore, due to the nature of the federal-state relationship, as defined by the Clean Air Act, federal inquiry into the economic reasonableness of the state actions would serve no practical purpose and could be improper.

Under Executive Order 12044 (43 FR 12661), EPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels proposed regulations as "specialized." I have reviewed this regulation pursuant to the guidance in EPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirement of Executive Order 12044.

Interested persons are invited to comment on the revised Ohio SIP and on USEPA's proposed actions. Comments should be submitted to the address listed in the front of this Notice. Public comments received on or before February 26, 1981, will be considered in EPA's final rulemaking on the SIP. All comments received will be available for inspection at Region V Office Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

This Notice of Proposed Rulemaking is issued under the authority of Section 110 of the Clean Air Act as amended.

Dated: January 20, 1981.

John McGuire,

Regional Administrator.

[FR Doc. 81-2978 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 52

[A-3-FRL 1739-4]

### Commonwealth of Pennsylvania; Proposed Revision of the Pennsylvania State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Commonwealth of Pennsylvania has submitted a proposed revision to its State Implementation Plan to incorporate an alternative emission reduction option (bubble) plan. They have requested that the plan be approved for three greenhouse facilities of Andre Greenhouses, Inc. located in Southampton, Wyndmoor, and Doylestown, Pa. This plan consists of a bubble permit and regulations which apply only to the three Andre facilities, and allow the combustion of fuel oils of a greater sulfur percentage than allowed by current regulations, provided that daily and weekly emission average do not exceed limit designed to be comparable to existing regulations. Natural gas will be combusted in one boiler at each facility in order to meet the limits mentioned above while burning oil in the other boiler at each facility. These boilers range from 250 to 500 horsepower apiece. The overall weekly and annual emissions from any of these facilities will not increase as a result of this plan.

The Commonwealth has requested, and EPA has agreed, that bubble applications be proposed concurrently by EPA and the Department of Environmental Resources (DER) in order to expedite the approval process. Assuming that there are no public comments which would negatively affect the approvability of the bubble, and that the bubble proposal does not change substantively during the public comment period, DER and EPA can then concurrently issue final approval of the bubble.

**DATE:** Comments must be submitted on or before February 26, 1981.

**ADDRESS:** Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the

following offices:

U.S. Environmental Protection Agency,  
Air Programs Branch, Curtis Building,  
6th and Walnut Streets, Philadelphia,  
Pa 19106, ATTN: Patricia Sheridan  
(3AH10).

Pennsylvania Department of  
Environmental Resources, Bureau of  
Air Quality Control, 200 North 3rd  
Street, Harrisburg, PA 17120, ATTN:  
Mr. James Hambricht.

Public Information Reference Unit,  
Room 2922, EPA Library U.S.  
Environmental Protection Agency, 401  
M Street, S.W. (Waterside Mall),  
Washington, D.C. 20560

All comments on the proposed  
revision submitted on or before  
February 26, 1981, will be considered  
and should be directed to: Mr. Gregory  
D. Ham, Air Programs Branch (3AH12),  
Air, Toxics and Hazardous Materials  
Division, U.S. Environmental Protection  
Agency, Region III, Curtis Building, 10th  
Floor, 6th and Walnut Streets,  
Philadelphia, PA 19106, ATTN:  
(AH026PA).

**FOR FURTHER INFORMATION CONTACT:**

Mr. Gregory D. Ham (3AH12), U.S.  
Environmental Protection Agency,  
Region III, Air Programs Branch, Curtis  
Building, 10th Floor, 6th and Walnut  
Streets, Philadelphia PA 19106, (215)  
597-2745.

**SUPPLEMENTARY INFORMATION:** The  
proposed changes to the Pennsylvania  
regulations were submitted on  
September 30, 1980. The proposed  
changes will allow the implementation  
of an alternative emission reduction  
option (bubble) plan in accordance with  
EPA's Bubble Policy published in the  
*Federal Register* on Tuesday, December  
11, 1979 (44 FR 71789). DER and EPA are  
processing this proposal concurrently.  
The public hearing was held by DER on  
December 17, 1980. All comments  
received at the hearing and any written  
comments received by DER on or before  
January 16, 1981, will be considered.

The Andre facilities consist of three  
greenhouse complexes, each heated by 2  
package boilers (ranging from 250 to 500  
horsepower). Two of these, located in  
Southampton and Doylestown, Pa., are  
located in the outer zone of the  
Southeastern Pennsylvania Air Basin,  
and are restricted to 1% sulfur content in  
fuel oils, or 1.2 lbs. SO<sub>2</sub>/million Btu heat  
input for sources burning other than fuel  
oils. The other, in Wyndmoor, Pa., is in  
the inner zone and is therefore limited to  
a sulfur content of 0.5%, or 1.0 lbs SO<sub>2</sub>/  
million Btu heat input.

The proposed bubble plan would  
allow for the combustion of 2.5% sulfur  
fuel oil (#6) in one boiler at each

facility. The other boiler at each facility  
would burn natural gas. The total  
emissions at each facility will not  
exceed previous emissions based on  
annual fuel usage data for the three  
previous consecutive years. In addition,  
the averaging provisions protect against  
violations of the short and long-term  
SO<sub>2</sub> National Ambient Air Quality  
standards. Therefore, the air quality in  
the area will not be adversely affected.

The proposed regulations to  
implement this plan will become  
Sections 128.11, 128.12, and 128.13 of the  
Pennsylvania Air Resources Regulations  
for the Southampton, Doylestown, and  
Wyndmoor facilities, respectively.  
These Sections consist of five  
Subsections. Subsection (a) identifies  
the facility to which the Section applies.  
Subsection (b) prohibits the owner or  
operator of the facility from storing or  
using No. 6 fuel oil with a sulfur content  
in excess of 2.5 percent by weight.  
Subsection (c) prohibits the owner or  
operator from causing, suffering, or  
permitting the SO<sub>2</sub> emission rate from  
the facility at any time in excess of a  
weekly average of 1.0 lbs. SO<sub>2</sub> per  
million Btu heat input, and an hourly  
average maximum of 2.5 lbs. SO<sub>2</sub> per  
million Btu heat input for the  
Southampton and Doylestown facilities.  
The Wyndmoor facility (Section  
128.13(c)) is limited to 0.5 and 2.5 lbs.  
SO<sub>2</sub> per million Btu heat input for the  
weekly and hourly maximum averages,  
respectively. Subsection (d) would cause  
the Section to become null and void if  
one or more of the combustion units are  
permanently shut down. Subsection (e)  
relieves the facility listed in Subsection  
(a) from the requirements of Section  
123.22(e), (Sulfur Compound Emissions,  
Combustion Units, Southeast  
Pennsylvania Air Basin), provided that  
the facility is in compliance with this  
Section and the terms and conditions of  
the operating permit issued for this  
facility.

The public is invited to submit, to the  
address stated above, comments on  
whether the proposed changes to the  
regulations should be approved as a  
revision of the Pennsylvania State  
Implementation Plan.

The Administrator's decision to  
approve or disapprove the proposed  
revision will be based on the comments  
received and on a determination of  
whether the amendments meet the  
requirements of Section 110(a)(2) of the  
Clean Air Act and 40 CFR Part 51,  
Requirements for Preparation, Adoption,  
and Submittal of State Implementation  
Plans.

Under Executive Order 12044 EPA is  
required to judge whether a regulation is

"significant" and therefore subject to the procedural requirements of the Order or whether it may follow other "specialized" procedures. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

[42 U.S.C. 7401.642]

Dated December 30, 1980.

Alvin R. Morris,

Acting Regional Administrator.

[FR Doc. 81-2921 Filed 1-26-81; 8:45]

BILLING CODE 6560-36-M

#### 40 CFR Part 60

[AD-FRL 1738-8 Docket No. OAQPS A-79-52]

#### Standards of Performance for New Stationary Sources; Bulk Gasoline Terminals; Extension of Public Hearing and End of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Additional public hearing and extension of comment period.

**SUMMARY:** This notice announces that the public hearing which will be held on January 21, 1981, on the proposed new source performance standards for bulk gasoline terminals will be continued on January 28, 1981. This second public hearing day has been scheduled to provide interested persons who are unable to attend the January 21, 1981, hearing an opportunity for oral presentation of data, views and arguments concerning the proposed standard. The end of the comment period on the proposed standard has been extended until March 20, 1981.

**DATES:** The second public hearing will be held on January 28, 1981, beginning at 1:00 P.M. Written comments to be included in the record on the proposed standard and written comments responding to, supplementing, or rebutting written or oral comments received at the public hearing must be postmarked no later than March 20, 1981.

**ADDRESSES:** Comments on the proposed standards should be submitted (in duplicate if possible) to Central Docket Section (A-130), Attention: Docket Number A-79-52, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

**Public Hearing.** The January 21 public hearing will be held at E.R.C. Auditorium, R.T.P., North Carolina 27711. The January 28 public hearing will be held at the Office of Administration Auditorium, R.T.P.,

North Carolina 27711. Persons wishing to present oral testimony at the January 28 hearing should, if possible, notify Mrs. Naomi Durkee, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5271.

**FOR FURTHER INFORMATION CONTACT:** Susan R. Wyatt, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

**SUPPLEMENTARY INFORMATION:** On December 17, 1980, EPA proposed a standard of performance for new stationary sources; bulk gasoline terminals (FR Vol. 45, No. 244, p. 83126). It was also announced that a public hearing will be held on January 21, 1981, to receive oral comments on this proposal and that the end of the comment period would be February 17, 1981.

Subsequently EPA received a request from the National Tank Truck Carriers (NTTC) to postpone the hearing. NTTC represents for-hire tank truck owners who would potentially be affected by the standard, and requested the postponement to provide additional time to survey their members. NTTC has indicated that a one week delay will provide sufficient additional time.

EPA agrees with this request. However, this request was not received in time to give sufficient notice to persons planning to attend the January 21, 1981, hearing. Therefore, the January 21, 1981, hearing will be held as scheduled. However, a continuation session of the hearing will be held on January 28, 1981, at 1:00 P.M. to hear NTTC comments and comments from any other persons who are unable to attend the January 21, 1981, hearing.

Requests for a 60-day delay of the public hearing and a 60-day delay of the end of the comment period were received from the American Petroleum Institute. This request expressed the need for additional time to review the technical information in the proposal. As a result of this request, the end of the comment period has been extended to March 20, 1981.

Dated: January 15, 1981.

David Hawkins,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-2981 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-26-M

#### 40 CFR Part 60

[AD-FRL 1739-1]

#### Standards of Performance for New Stationary Sources; Graphic Arts Industry; Publication Rotogravure Printing; Clarification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; clarification.

**SUMMARY:** This document clarifies a proposed rule on the standards of performance for publication rotogravure printing presses that appeared at page 71538 in the *Federal Register* of Tuesday, October 28, 1980, (45 FR 71538). The action is necessary to cite the source of the referenced SIC product classes and to clarify what products are covered under these product classes.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gene W. Smith, Section Chief, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

**SUPPLEMENTARY INFORMATION:** The Environmental Protection Agency is clarifying the proposed definition of "publication rotogravure printing press" appearing in the first column on page 71552 in the *Federal Register* issue of October 28, 1980. This clarification notice is being published because several rotogravure printers and one State Agency requested clarification of the SIC product classes used to define "publication rotogravure printing press." The source of the five-digit SIC product classes referenced in the proposed definition was not cited in the proposed rulemaking. These classes were taken from the 1972 Census of Manufacturers (U.S. Department of Commerce, Bureau of the Census, 1972 Census of Manufacturers, Vol II, Industry Statistics, Part II, SIC Major Groups 27-34, August 1976, p. 27B21-27B22). The above edition lists the following products under SIC codes 27541 and 27543:

Product	Product class	Product code
Publication Printing, Gravure	27541	
Newspapers	27541	11
Magazines and periodicals, excluding magazine and comic supplements for Sunday newspapers	27541	33
Magazine and comic supplements for Sunday newspapers	27541	35
Catalogs	27541	74
Directories:		
Telephone	27541	77
Other, including business reference services	27541	79

—Continued

Product	Product class	Product code
Publication printing, gravure, n.s.k.	27541	00
Advertising Printing, Gravure (designed to sell products or services)	27543	
Advertising printing (direct mail, including circulars, letters, pamphlets, cards, and printed envelopes)	27543	41
Display advertising:		
Posters, including outdoor advertising; car cards; and window	27543	43
Counter, and floor displays; point-of-purchase, and other printed display material	27543	45
Preprinted newspaper inserts (advertising supplements not regularly issued):		
Rolls, including hi-fi and spectrocolor	27543	46
Sections (2 pages or more)	27543	47
Other advertising printing, including brochures, pamphlets, catalog sheets, circular folders, announcements, package inserts, book jackets, market circulars, magazine inserts, etc.	27543	49

The use of SIC product classes will be deleted in final rulemaking. Instead, only the above list of products will be included in the definition of "publication rotogravure printing press."

Dated: January 15, 1981.

David Hawkins,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-2960 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-26-M

#### 40 CFR Part 81

[A-5-FRL 1739-5]

#### Designation of Areas for Air Quality Planning Purposes; Sulfur Dioxide; Indiana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rulemaking.

**SUMMARY:** EPA has modeled the ambient sulfur dioxide (SO<sub>2</sub>) concentrations of Jefferson County, Indiana. This computer dispersion modeling predicts that violations of the secondary SO<sub>2</sub> national ambient air quality standard (NAAQS) occur in Jefferson County. EPA is proposing rulemaking for public comment which would redesignate Jefferson County, Indiana nonattainment for the secondary NAAQS.

#### WRITTEN COMMENTS SHOULD BE SENT TO:

Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. In reply refer to: File B46.

**FOR FURTHER INFORMATION CONTACT:** Robert Miller, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230

South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

Technical information in the proposed redesignation is available at the above address and at:

Docket #5H-80-10, Control Docket Section, West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460

Air Pollution Control Division, Indiana State Board of Health, 1330 W. Michigan Street, Indianapolis, Indiana 46206.

**SUPPLEMENTARY INFORMATION:** On December 19, 1978, the Commonwealth of Kentucky petitioned the Administrator to determine if the Indiana-Kentucky Electric Corporation Clifty Creek Power Plant in Jefferson County, Indiana emits sulfur dioxide in excess of that amount allowed under section 126 of the Clean Air Act (CAA), as amended (44 FR 29495, May 21, 1979). EPA held a hearing on this petition in June 1979. The record was twice reopened for public comment on November 5, 1979 and December 5, 1979 (44 FR 83552 and 69978). EPA has not yet proposed its findings on Kentucky's petition.

In partial response to this petition, EPA modeled the Jefferson County area utilizing the single source CRSTER and multiple source MPTER computer dispersion models. The meteorological input data for the modeling analysis was a combination of surface data from the Cincinnati Airport, tower data from Clifty Creek Liberty Ridge site and mixing heights from Dayton, Ohio. One full year of meteorological data (1976) was selected for input to CRSTER and MPTER. The emission inventory and plant operating parameters used in the modeling analysis represent maximum operating conditions. The source of the data was the Indiana Air Pollution Control Agency for all sources except Clifty Creek. The Clifty Creek data were obtained directly from Indiana-Kentucky Electric Company (IKEC); owner of the facility. Clifty Creek was modeled utilizing the following input parameters: an emission rate of 6.54 pounds of SO<sub>2</sub>/MMBTU (11.77 grams/megacalorie), a heat input per boiler of 1984 MMBTU/hour (500 Gcal/hour), coal with an average sulfur content of 3.68 percent and a heat value of 10,698 BTU/pound (5 943 cal/g), and the pre-1971 stack height of 682 feet (207.87 meters). Significantly higher stacks have recently been erected for the Clifty Creek facility. EPA utilized the pre-1971 stack height in its modeling, because credit for the increased stack height has not been justified under USEPA's revised stack height policy, announced on June 24,

1980 (45 FR 42279). That policy requires existing sources seeking stack height increases as part of a SIP revision to demonstrate through fluid modeling or field studies that the increased height is necessary to prevent excessive concentrations due to downwash, wakes or eddies.

The CRSTER model was used to determine the location of the critical receptors in Indiana and Kentucky. The MPTER model was used to provide a higher resolution analysis at the critical receptor locations and to estimate the combined impact from Clifty Creek and background sources located within a 20 km radius of Clifty Creek. The MPTER-calculated highest, second-highest concentrations, including background, for 3-hour and 24-hour averaging periods were 2015 µg/m<sup>3</sup> and 255 µg/m<sup>3</sup>, respectively, for the critical receptor which is located 1.5 km NNW of Clifty Creek in Jefferson County, Indiana. Therefore, the modeling predicts that the primary, but not the secondary, SO<sub>2</sub> NAAQS have been attained in Jefferson County. The highest, second highest 3-hour prediction occurred under Pasquill-Gifford Stability Class A meteorological conditions for 2 of the 3 hours. EPA has determined that Class A conditions can not be excluded in determining emission limitations for power plants (45 FR 41501, June 19, 1980). The modeling predicts that an emission limitation of 4.19 pounds of SO<sub>2</sub>/MMBTU (7.54 g/Mcal) for Clifty Creek is necessary to attain the NAAQS.

Because of these predicted violations of the 3-hour secondary NAAQS for SO<sub>2</sub>, i.e., 2015 µg/m<sup>3</sup> vs. the 3-hour standard of 1300 µg/m<sup>3</sup>, EPA notified Indiana on August 8, 1980, that it intended to redesignate Jefferson County nonattainment for the secondary SO<sub>2</sub> NAAQS under section 107(d) of the CAA. EPA requested all available data which the State had on Jefferson County's SO<sub>2</sub> status as required by Section 107(d)(2). The State responded on September 5, 1980 by recommending that EPA not redesignate the County at this time because the State does not concur with the modeling methodology. EPA has determined that the modeling was properly performed and, therefore, is proposing rulemaking for public comment which would redesignate Jefferson County, Indiana for SO<sub>2</sub> from "Cannot Be Classified" to "Does Not Meet Secondary Standards." The status of the SO<sub>2</sub> SIP for Jefferson County is discussed in the Rules and Regulations section of this issue of the *Federal Register*. In addition, if Jefferson County is finally designated as nonattainment for the secondary SO<sub>2</sub> standard, the



State will be required to submit a SIP revision to satisfy the requirements of Part D of the CAA. EPA is soliciting public comments on its proposed redesignation of Jefferson County, Indiana for SO<sub>2</sub>.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this redesignation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed action imposes no regulatory requirements, but will only change an air quality designation. Any regulatory requirements which may become necessary as a result of this action will be dealt with in a separate action.

Under Executive Order 12044 (43 FR 126), EPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the order or whether it may follow other specialized development procedures. EPA labels these order regulations "specialized." I have reviewed this proposed regulation pursuant to the guidance in EPA's response to Executive Order 12044, "Improving Environmental Regulations", signed March 29, 1979, by the Administrator, and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sections 107 and 301(a) of the Clean Air Act, as amended.)

Dated: December 19, 1980.

John McGuire,

Regional Administrator.

(FR Doc. 81-2822 Filed 1-26-81; 9:45 am)

BILLING CODE 6560-38-M

#### 40 CFR Part 123

[SW-4-FRL 1736-3]

#### Kentucky's Application for Interim Authorization, Phase I, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of public hearing and public comment period.

**SUMMARY:** EPA has promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (as amended) to protect human health and the environment from the improper management of hazardous waste. Phase I of the regulations were published in the *Federal Register* on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the

availability for public review of the Kentucky application for Phase I Interim Authorization, inviting public comment, and giving notice of a public hearing to be held on the application.

**DATE:** Comments on the Kentucky Interim Authorization application must be received by March 2, 1981.

**PUBLIC HEARING:** EPA will conduct a public hearing on the Kentucky Interim Authorization application at 7 p.m. on Monday, February 23, 1981. The Commonwealth of Kentucky will participate in the public hearing.

**ADDRESSES:** The public hearing will be held at: Capitol Plaza Tower Auditorium, Wilkinson Boulevard and Mero Street, Frankfort, Kentucky 40601.

Copies of the Kentucky Interim Authorization application are available at the following addresses for inspection and copying by the public:

- (1) Division of Waste Management, State Department for Natural Resources and Environmental Protection, Pine Hill Plaza, 1121 Louisville Road, Frankfort, Kentucky 40601, telephone: 502/564-6716
- (2) Environmental Protection Agency, Regional Office Library, Room 121, 345 Courtland Street, N.E., Atlanta, Georgia 30365, telephone: 404/881-4216
- (3) EPA Headquarters Library, Room 2404, 401 M Street SW., Washington, D.C. 20460

Written comments, requests to speak at the hearing, and requests for further information should be addressed to: Patricia S. Zweig, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, telephone 404/881-3966.

**SUPPLEMENTARY INFORMATION:** In the May 19, 1980 *Federal Register* (45 FR 33063) the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations establish, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous wastes, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate

in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted Interim Authorization. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for Interim Authorization, the State hazardous waste program must, among other things:

(1) have been in existence prior to August 17, 1980, and

(2) be "substantially equivalent" to the Federal program.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 123 Subpart F (45 FR 33479).

The Commonwealth of Kentucky has submitted a complete application to EPA for Phase I Interim Authorization. Copies of the Commonwealth's submittal are available for public inspection and comment as noted above.

#### Conduct of Hearing

The hearing is intended to provide an opportunity for interested persons to present their views and submit information for consideration by EPA in the decision whether to grant Kentucky Interim Authorization for Phase I of the RCRA program.

The hearing will be informally structured. Individuals providing oral comments will not be sworn in, nor will formal rules of evidence apply. Questions may be posed by EPA personnel to persons providing oral comments; however, no cross-examination by other participants will be allowed.

The Commonwealth will testify first and present a short overview of the Kentucky's program. Other commenters will then be called in the order in which their requests were received by EPA. As time allows, persons who did not sign up in advance but who wish to comment on the Commonwealth's application for Phase I Interim Authorization will also be given an opportunity to testify. Each organization or individual will be allowed as much time as possible for oral presentation based on the number of requests to participate and the time available for the hearing. As a general rule, in order to ensure maximum participation and allotment of adequate time for all speakers, participants should limit the length of their statements to five minutes.

Dated: January 16, 1981.

John A. Little,

Acting Regional Administrator.

[FR Doc. 81-2748 Filed 1-29-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 410

[WH-FRL 1738-3]

### Textile Mills Point Source Category, Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA is making available additional information relating to the proposed effluent limitations and standards for the Textile Mills Point Source Category as published October 29, 1979 (44 FR 62204). Some of the information is correspondence files not originally included in the administrative record. Other information relates to the removal of toxic pollutants by publicly owned treatment works (POTWs). In addition, this notice presents possible revisions to BOD, COD, TSS and total phenols effluent limitations and standards resulting from changes in subcategorization, expansion of the data base and modifications in statistical methodology. There are also new data that EPA is considering as a basis for changing the regulation relating to control of toxic metals in textile mill effluents. Finally, EPA is considering changing certain assumptions in its estimate of cost of the technologies selected for BCT, BAT, NSPS, PSES and PSNS. The purpose of this notice is to invite comments related to this information.

**DATES:** A period of 45 days from the date of publication in the **Federal Register** will be allowed for submission of comments on this proposal. Comments must be submitted to the address below by March 13, 1981.

**ADDRESS:** Send comments to James R. Berlow, Effluent Guidelines Division, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Attention: EGD Docket Clerk, Textiles, (WH-552). A copy of the supporting information and all public comments submitted in response to this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213. (EPA Library), 401 M Street S.W., Washington, D.C. 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

#### FOR FURTHER INFORMATION CONTACT:

James Berlow (202) 426-2554.

**SUPPLEMENTARY INFORMATION:** On October 29, 1979, the Environmental Protection Agency proposed a regulation to establish best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) limitations for existing sources, new source performance standards (NSPS), and pretreatment standards for existing and new sources (PSES and PSNS) for the Textile Mills Point Source Category under the Clean Water Act, 33 U.S.C. 1251 *et seq.* (44 FR 62204). The public comment period on the proposed regulation closed February 15, 1980. The Agency is now reopening the comment period for 45 days to accept public comment on the additional information discussed below. Public comment must be limited to the information discussed below.

#### I. Correspondence Files and POTW Data

When the Agency proposed the effluent limitations and standards, it compiled the administrative record of the Agency's actions for review by the public. Subsequently, the Agency discovered that some general correspondence files of the project officer were not included in the administrative record. Therefore, EPA is adding these materials to the administrative record and making them available for public comment.

In addition, EPA has developed information on the capability of publicly owned treatment works (POTWs) to remove toxic pollutants. These data are useful in determining whether pollutants "pass through" the POTW. Under Section 307(b) of the Clean Water Act, EPA must establish national pretreatment standards for pollutants that pass through. EPA's approach in determining whether pollutants are passing through the POTW is based on the fundamental principal established by Congress that the amount of pollutants discharged by an indirect discharger and the POTW acting together should not exceed the amount of pollutants discharged by a direct discharger. In making this determination, EPA compares the percent of a specific pollutant removed by a POTW with the percent removal obtained by a direct discharger applying best available technology. If the POTW removes less than would be removed by a direct discharger, the pollutant is deemed to be passing through and EPA will establish technology-based pretreatment standards. EPA believes that these new data support its decision that toxic metals contributed by the

textile industry pass through the POTWs and, accordingly, that indirect dischargers should pretreat their wastewater. These data are being made available in the Public Information Reference Unit and public comment is invited. For more information on the Agency's pretreatment policy, persons are referred to the general pretreatment regulations, 40 CFR Part 403.

#### II. Changes in Subcategorization

In response to the comments submitted on the proposed regulation, EPA has reviewed the definitions of the industry subcategories. As a result of this review, the Agency is considering three changes. First, EPA would include a separate subdivision of the Low Water Use Processing Subcategory for greige mills using water jet weaving. The wastewater discharged per ton of production is higher for these mills than the rest of the subcategory therefore justifying separate limitations for water jet weaving. In addition, water jet weaving is a new process which was not considered in the 1974 promulgated regulation. Second, several commenters suggested that the proposed effluent limitations and standards for the subdivisions of the Woven Fabric Finishing Subcategory (Simple Processing, Complex Processing, and Complex Plus Desizing) encouraged the use of bleaching at mills in the Simple Processing Subdivision that also perform desizing on greater than 50 percent of their production. By adding an unnecessary bleaching operation these mills would qualify for the Complex Plus Desizing Subdivision which has less stringent limitations and standards. EPA agrees that this situation is undesirable and is considering placing all mills desizing greater than 50 percent of their production in a single Desizing Subdivision. Mills desizing 50 percent or less of their production would continue to qualify for the Simple or Complex Processing Subdivisions based on the definition of those subdivisions provided in the proposed regulation (44 FR 62210). Third, EPA is considering alteration of the definition of Knit Fabric Finishing—Complex Processing Subdivision to include mills that perform fabric scouring on greater than 50 percent of their production in addition to performing dyeing or printing operations on greater than 5 percent of their production. Scouring previously was not an operation that placed a mill in the Complex Processing Subdivision. The Agency has reviewed its data and found that fabric scouring contributes significantly to the wastewater discharge. Therefore, addition of scouring to the list of complex

processing operations is appropriate. This change would result in less stringent limitations and standards for the Complex Processing Subdivision because of the increase in the median wastewater discharge rate. The Simple Processing Subdivision also would have slightly more stringent limitations and standards. These more stringent limitations and standards are the result of a decreased median wastewater discharge rate and, in the case of COD, an improved performance for biological treatment. This change is consistent with the public comments.

### III. BOD, COD, TSS and Total Phenols Effluent Limitations

EPA proposed BAT effluent limitations and NSPS for COD, TSS and total phenols and BCT effluent limitations and NSPS for BOD and TSS. (See 44 FR 62230-62241). EPA based these proposed limitations and standards on wastewater flow and pollutant concentration data acquired from textile mills in each of the nine subcategories. (See Sections V and VII of the *Development Document for Effluent Limitations Guidelines and Standards for the Textile Mills Point Source Category* (Proposed), EPA 440/1-79/022b, October 1979—hereinafter cited as *Development Document*). EPA derived the limitations and standards from the application of statistical techniques to the flow and concentration data. (See Sections IX and X of the *Development Document*). During the process of examining the public comments and developing the final regulation, EPA extensively reviewed the data base supporting the proposed limitations and standards. This review led EPA to make changes in the data base including a request for additional data from 10 mills which had submitted only limited data to the Agency. In response to this request, the Agency has received a substantial amount of new data from the 10 mills. In addition, EPA reviewed and revised the statistical methods used to derive the effluent limitations and standards.

The expansion of the data base and the modification of the statistical methodology, as well as minor changes in subcategorization (Section II), have resulted in changes in the BAT effluent limitations and NSPS for COD, TSS and total phenols and the BCT effluent limitations and NSPS for BOD and TSS. In this notice, EPA will discuss the new data, the modifications to the methodology, and the revised effluent limitations and standards.

#### A. New Data

EPA derived its proposed effluent limitations and standards from flow and concentration data from 75 textile mills (including three mills which provided flow data only). The 75 mills were chosen to establish the performance of extended aeration activated sludge biological treatment—a technology that is the first step in BCT, BAT and NSPS technology for all subcategories. After the close of the comment period, EPA reevaluated the technology installed at the 75 mills and determined that nine of the mills should be deleted from the data base because those mills do not have the appropriate technology as defined by EPA. Data from another nine mills with the appropriate biological treatment technologies have been added to the data base. An explanation of the reasons for the deletion or selection of each of the mills is included in the record. In addition, EPA reviewed the data from the new group of 75 mills and concluded that additional data should be collected from 10 of the 75 mills because those 10 mills had provided only limited data to the Agency during the initial data collection efforts. EPA determined that there was sufficient flow and concentration data from the other 65 mills.

EPA intended that its data request would provide additional daily monitoring data. EPA specifically requested results of treatment technology performance for the most recent full year of operation in the hope that more complete data now would be available. All 10 mills submitted new data. The new BOD, COD, TSS and total phenols data increase the number of data points submitted by these 10 mills from 115 to 2382.

Because of the change and increase in the size of the data base, EPA has decided to include these new data in the data base and recalculate proposed effluent limitations and standards. EPA is making these new data available for public review and invites comment on the data and the decision to recalculate proposed effluent limitations and standards based on these new data. The revised effluent limitations and standards are presented below.

#### B. Modification of the Methodology

In deriving BOD, COD, TSS, and total phenols effluent limitations and standards, three critical elements are used. First, the long term average of effluent measurements is calculated for each mill's biological treatment performance. Second, the variability of each mill's biological treatment performance is determined and

expressed as a variability factor. Third, an additional pollutant specific removal percentage is calculated for each technology selected for BCT, BAT, and NSPS. The proposed effluent limitations and standards are the product of the median long term average, median variability factor, and the removal percentage. Although this basic methodology remains unchanged, the calculation of each of these three elements has been altered.

##### (1) Long Term Average.

The long term average is the arithmetic average of all individual effluent data points from each mill in a subcategory. The pollutant specific median long term average of all mills in each subcategory is used to determine the effluent limitation or standard. EPA has changed the effluent limitation or standard. EPA has changed the calculated long term average by substituting the previously described nine new mills in the group of 75 mills and adding the new data collected from the 10 mills. The new data from the 10 mills resulted in revised long term averages for those 10 mills. In addition, long term averages were derived for the nine new mills.

The median long term averages which result from the new data are as follows:

Table 1.—Median long-term averages for biological treatment in mg/l

Subcategory	BOD	COD	TSS	Total phenols
1. Wool scouring.....	50	1,125	250	0.040
2. Wool finishing.....	25	215	60	.080
4a. Woven fabric finishing—simple processing.....	15	245	40	.035
4b. Woven fabric finishing—complex processing.....	20	300	40	.030
4c. Woven fabric finishing—desizing.....	25	255	55	.020
5a. Knit fabric finishing—simple processing.....	15	240	35	.040
5b. Knit fabric finishing—complex processing.....	20	280	50	.085
5c. Knit fabric finishing—hosiery products.....	15	240	35	.040
6. Carpet finishing.....	35	285	65	.100
7. Stock and yarn finishing.....	10	150	25	.050
8. Nonwoven manufacturing.....	35	285	65	.100
9. Felted fabric processing.....	25	215	60	.080

##### (2) Variability Factors.

The variability factor expresses the relationship between a value that would be exceeded rarely by a pollutant discharge for a single day or the average of 30 days and the average value of all effluent data points for a mill. The pollutant specific variability factors for each mill previously had been determined from the ratios of the maximum observed month (average of monthly data) to the average month (mean of monthly averages) and the maximum observed day to the average month. The new methodology relies on

the Agency's determination that pollutant measurements are a realization of a random variable with a lognormal probability distribution. The variability factors are defined as the ratio of the estimates of the 99th percentile of the daily or average 30 day distribution of effluent measurements to the estimated mean of the lognormal probability distribution. Therefore, the estimates of the 99th percentile and mean are derived from the theory of the lognormal distribution. A median variability factor for each pollutant is used to calculate the effluent limitations and standards for all subcategories.

In addition, the Agency has modified the list of mills used to calculate variability factors. In deriving the revised limitations and standards presented in this notice, only those mills used to calculate the long term average were considered for use in variability calculations. The Agency has determined that only the mills within this group which have provided individual data points for specific

pollutants, rather than monthly averages or unspecified aggregates of data points, can be used to calculate variability factors for those pollutants. Some mills provided individual data points for some pollutants but did not provide individual data points for other pollutants. Therefore, approximately 25 to 30 of the 75 mills are used for different pollutants in calculating variability factors.

The variability factors which result from the revised methodology and new data are as follows:

**Median Daily Variability Factors:**

BOD, 3.25—TSS, 3.64.

COD, 2.36—Total Phenols, 4.83.

**Median 30-Day Average Variability Factors:**

BOD, 1.30—TSS, 1.34.

COD, 1.19—Total Phenols, 1.49.

These variability factors are increased over those used previously with the exception of the 30 day factors for COD and total phenols. EPA is including a detailed discussion of the derivation of

the variability factors and complete statistical methodology in the public record. (See memorandum entitled "Revised Textile Industry Methodology" by EPA's Office of Analysis and Evaluation dated December, 1980).

**(3) Removal Percentage.**

The removal of BOD, COD, TSS, or total phenols (TP) after biological treatment provided by the technology identified as the basis for BCT, BAT, or NSPS previously was included in the calculation of limitations and standards as a single number for each technology and pollutant combination. As an example, multimedia filtration was estimated to remove 20% of COD. Upon reevaluating the data, EPA has concluded that separate removal factors should be used for the Wool Scouring Subcategory, Wool Finishing and Felted Fabric Processing Subcategories, and a third set of factors for the other five subcategories. The removals used in developing the revised limitations and standards are presented in Tables 2, 3, and 4.

**Table 2.—Removal Percentages Attainable by Application of Best Conventional Pollutant Control Technology (BCT)<sup>1</sup>**

Treatment technology	Wool scouring		Wool finishing and felted fabric		Other subcategories	
	BOD	TSS	BOD	TSS	BOD	TSS
Multimedia Filtration	35	45	55	60	25	45
Chemical coagulation and multimedia filtration			75	85	60	80

<sup>1</sup> For mills with production equal to or greater than production sizes listed in Table 6 of this notice, BCT for mills below these production limits would remain unchanged, i.e., equal to BPT limitations.

**Table 3.—Removal Percentages Attainable by Application of Best Available Technology Economically Achievable (BAT)**

Treatment technology	Wool scouring			Wool finishing and felted fabric			Other subcategories		
	TSS	COD	TP	TSS	COD	TP	TSS	COD	TP
Multimedia filtration	45	10	30	60	30	30	45	15	10
Chemical coagulation and multimedia filtration				85	75	40	80	55	35

**Table 4.—Removal Percentages Attainable by Application of New Source Performance Standards (NSPS)**

Treatment technology	Wool scouring				Wool finishing and felted fabric				Other categories			
	BOD	COD	TSS	TP	BOD	COD	TSS	TP	BOD	COD	TSS	TP
Multimedia filtration	35	10	45	30	55	30	60	30	25	15	45	10
Chemical coagulation and multimedia filtration					75	75	85	40	60	55	80	35

In Table 5 are the revised median wastewater discharge rates per mass

unit of production which facilitate the conversion of limitations and standards

from a concentration to a mass discharge rate.

Table 5—Median wastewater discharge rate per mass unit of production

Subcategory	1/kg	(gal/lb)
1. Wool scouring	11.7	(1.4)
2. Wool finishing	304.4	(36.5)
4. Woven fabric finishing:		
(a) Simple processing	76.7	(9.2)
(b) Complex processing	97.6	(11.7)
(c) Desizing	105.9	(12.7)
5. Knit fabric finishing:		
(a) Simple processing	117.6	(14.1)
(b) Complex processing	122.6	(14.7)
(c) Hosiery products	75.1	(9.0)
6. Carpet finishing	46.7	(5.6)
7. Stock and yarn finishing	96.7	(11.6)
8. Nonwoven manufacturing	40.0	(4.8)
9. Felted fabric processing	212.7	(25.5)

#### (4) Methodology for Hosiery Manufacturing, Nonwoven Manufacturing, and Felted Fabric Processing.

After reviewing the data collected to establish the performance of biological treatment for the Hosiery Manufacturing Subdivision of the Knit Fabric Finishing Subcategory, EPA determined that the data used in the proposed limitations and standards was inadequate. As part of the data collection described previously, additional analytical data were obtained for biological treatment at hosiery manufacturers. In EPA's engineering judgment, this data did not improve the Agency's data base because the data do not reflect the performance possible with normal extended aeration activated sludge biological treatment. Therefore, in computing the long term average for the Hosiery Manufacturing Subdivision, EPA is considering transferring the performance of biological treatment in the Simple Processing Subdivision of Knit Fabric Finishing with an adjustment for the difference in wastewater discharged per ton of production. This transfer is justified by the similarity in manufacturing operations, raw materials, and untreated wastewater characteristics between the two subdivisions. As a result of this change in performance, chemical coagulation will not be necessary prior to multimedia filtration in order to meet BCT and BAT limitations. The technology which EPA is considering for BCT for large mills (as described below) and BAT is biological treatment and multimedia filtration.

Adequate analytical data also were not available in order to determine the long term average performance of biological treatment for the Nonwoven Manufacturing and Felted Fabric Processing Subcategories. In the proposed effluent limitations and standards, EPA calculated this long term performance based on the adequate

analytical data available for untreated wastewater from these subcategories and the average removal of BOD, COD, TSS, and total phenols observed at biological treatment facilities in the other six textile industry subcategories (excluding Low Water Use Processing). Variability factors and removal percentages were calculated by the same procedure described above. EPA has reviewed the available data and is considering altering its approach. An engineering analysis of the manufacturing processes, combined with this analytical data, suggest that the performance of biological treatment in these two subcategories should be transferred from two specific subcategories in the textile industry instead of using the average removal observed in the entire industry.

For the Nonwoven Manufacturing Subcategory, the performance of biological treatment for BOD, COD and TSS would be based on the long term average performance in the Carpet Manufacturing Subcategory adjusted for the difference in wastewater discharge per ton of production. The use of these data is appropriate because of the similarity in untreated wastewater concentrations of these pollutants. The manufacturing operations generating the pollutants also are similar in that bonding agents such as latex and acrylics are present in both wastewaters. The untreated total phenols concentration of 30  $\mu\text{g}/\text{l}$  is used in place of the long term average because it is EPA's judgment that biological treatment will not reduce that concentration.

For the Felted Fabric Processing Subcategory, the BOD, COD, TSS and total phenols biological and advanced treatment performance observed in the Wool Finishing Subcategory is being considered for calculation of the long term average. The use of these performance data is justified by the similarity in untreated wastewater concentrations, processing operations (especially fulling), raw materials (wool and wool blends) and processing chemicals. The calculations include an adjustment for the difference in the wastewater discharge rate per ton of production.

#### C. Revised Effluent Limitations

EPA has calculated revised BCT and BAT limitations and NSPS using the expanded data base, the modified

statistical methodology and changed subcategories. These revised limitations and standards are presented in Tables 6, 7, and 8 below.

Table 6.—BCT Effluent Limitations

Wool Scouring Subcategory			
[Less than 1,600 kkg/yr total production]			
Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kkg (or lb/1,000 lb) of raw grease wool	
BOD	10.6	5.3	
TSS	32.2	16.1	
[1,600 kkg/yr total production or greater]			
Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kkg (or lb/1,000 lb) of raw grease wool	
BOD	1.2	0.5	
TSS	5.3	1.9	
Wool Finishing Subcategory			
[Less than 11,800 kkg/yr total production]			
Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kkg (or lb/1,000 lb) of product	
BOD	22.4	11.2	
TSS	35.2	17.6	
[11,800 kkg/yr total production or greater]			
Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kkg (or lb/1,000 lb) of product	
BOD	6.1	2.4	
TSS	9.7	3.7	
Low Water Use Processing Subcategory—General Processing			
Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kkg (or lb/1,000 lb) of product	
BOD	1.4	0.70	
TSS	1.4	.70	

*Low Water Use Processing Subcategory—  
Water Jet Weaving*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	1.4	0.70		
TSS	1.4	.70		

*Woven Fabric Finishing Subcategory—  
Desizing*

[Less than 15,200 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	6.6	3.3		
TSS	17.8	8.9		

[13,100 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	5.0	2.5		
TSS	12.1	4.4		

<sup>1</sup> This value is equal to BPT. While the value calculated from the current data base would be 5.9, it is the Agency's policy that BCT will not be less stringent than the BPT value promulgated in 1974. EPA solicits comment on this approach.

*Woven Fabric Finishing Subcategory—Simple Processing*

[Less than 9,900 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	6.6	3.3		
TSS	17.8	8.9		

[15,200 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	6.4	2.5		
TSS	11.5	4.1		

*Knit Fabric Finishing Subcategory—Hosiery Products*

[Less than 7,600 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	5.0	2.5		
TSS	21.8	10.9		

*Knit Fabric Finishing Subcategory—Simple Processing*

[9,900 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	2.8	1.2		
TSS	6.1	2.2		

[Less than 11,300 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	5.0	2.5		
TSS	21.8	10.9		

[7,600 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	2.7	1.1		
TSS	5.2	1.9		

*Woven Fabric Finishing Subcategory—Complex Processing*

[Less than 11,600 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	6.6	3.3		
TSS	17.8	8.9		

[11,300 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	4.2	1.8		
TSS	6.1	2.9		

*Carpet Finishing Subcategory*

[Less than 12,200 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	7.8	3.9		
TSS	11.0	5.5		

*Knit Fabric Finishing Subcategory—Complex Processing*

[11,600 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	4.7	2.0		
TSS	7.7	2.8		

[Less than 13,100 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	5.0	2.5		
TSS	21.8	10.9		

[12,200 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	Kg/kg (or lb/1,000 lb) of product	
BOD	3.9	1.6		
TSS	6.0	2.1		

**Stock & Yarn Finishing Subcategory**

[Less than 12,700 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
BOD	6.8	3.4
TSS	17.4	8.7

[12,700 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
BOD	2.3	1.0
TSS	4.8	1.7

**Nonwoven Manufacturing Subcategory**

[Less than 37,900 kkg/yr total production]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
BOD	4.5	1.8
TSS	9.4	3.4

[37,900 kkg/yr total production or greater]

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
BOD	3.4	1.4
TSS	5.2	1.8

**Felted Fabric Processing Subcategory**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
BOD	17.0	6.8
TSS	45.9	16.6

**Table 7—BAT Effluent Limitations**

**Wool Scouring Subcategory**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	28.4	14.2
TSS	5.3	1.9
Total Phenols	0.002	0.001

**Wool Finishing Subcategory**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	39.3	19.5
TSS	9.7	3.7
Total Phenols	0.070	0.021

**Woven Fabric Finishing Subcategory—Simply Processing**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	38.4	19.2
TSS	6.1	2.2
Total Phenols	0.012	0.004

**Woven Fabric Finishing Subcategory—Complex Processing**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	59.7	29.9
TSS	7.7	2.8
Total Phenols	0.013	0.004

**Woven Fabric Finishing Subcategory—Desizing**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	55.1	27.5
TSS	11.5	4.1
Total Phenols	0.010	0.003

**Knit Fabric Finishing Subcategory—Simple Processing**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	57.6	28.8
TSS	8.1	2.9
Total Phenols	0.020	0.006

**Knit Fabric Finishing Subcategory—Complex Processing**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	160.0	130.0
TSS	12.1	4.4
Total Phenols	0.045	0.015

<sup>1</sup> These values are equal to BPT. While the values calculated from the current data base would be 70.0 for a daily maximum and 35.1 for a 30 day average, it is the Agency's policy that BAT will not be less stringent than the BPT value promulgated in 1974. EPA solicits comment on this approach.

**Knit Fabric Finishing Subcategory—Hosiery Products**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	36.8	18.4
TSS	5.2	1.9
Total Phenols	0.013	0.004

**Carpet Finishing Subcategory**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	27.1	13.6
TSS	6.0	2.1
Total Phenols	0.020	0.007

**Stock & Yarn Finishing Subcategory**

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	29.6	14.8
TSS	4.8	1.7
Total Phenols	0.021	0.007

*Nonwoven Manufacturing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
COD	23.2	11.6	
TSS	5.2	1.8	
Total Phenols	0.017	0.006	

*Felted Fabric Processing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
COD	109.8	54.9	
TSS	45.9	16.6	
Total Phenols	0.081	0.026	

**Table 8—NSPS Effluent Limitations***Wool Scouring Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of raw grease wool	
BOD	1.2	0.5	
COD	26.4	14.2	
TSS	5.3	1.9	
Total Phenols	0.002	0.001	

*Wool Finishing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	6.1	2.4	
COD	39.3	19.5	
TSS	9.7	3.7	
Total Phenols	0.070	0.021	

*Low Water Use Processing Subcategory—General Processing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	0.40	0.16	
COD	12.8	1.4	
TSS	0.57	0.2	

<sup>1</sup> These values are equal to BPT. While the values calculated from the current data base would be 3.4 for a daily maximum and 1.7 for a 30 day average, it is the Agency's policy that NSPS will not be less stringent than the BPT value promulgated in 1974. EPA solicits comment on this approach.

*Low Water Use Processing Subcategory—Water Jet Weaving*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	6.9	2.8	
COD	18.8	9.4	
TSS	4.7	1.7	

*Woven Fabric Finishing Subcategory—Simple Processing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	1.5	0.6	
COD	20.3	10.1	
TSS	2.2	0.8	
Total Phenols	0.008	0.002	

*Woven Fabric Finishing Subcategory—Complex Processing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	2.5	1.0	
COD	31.6	15.8	
TSS	2.8	1.0	
Total Phenols	0.009	0.003	

*Woven Fabric Finishing Subcategory—Desizing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	3.4	1.4	
COD	29.1	14.6	
TSS	4.2	1.5	
Total Phenols	0.006	0.002	

*Knit Fabric Finishing Subcategory—Simple Processing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	2.2	0.9	
COD	30.5	15.3	
TSS	2.9	1.1	
Total Phenols	0.015	0.005	

*Knit Fabric Finishing Subcategory—Complex Processing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	3.2	1.2	
COD	37.5	18.5	
TSS	4.49	1.6	
Total Phenols	0.033	0.010	

*Knit Fabric Finishing Subcategory—Hosiery Products*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	1.4	0.6	
COD	19.5	9.8	
TSS	1.9	0.7	
Total Phenols	0.010	0.003	

*Carpet Finishing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	2.1	0.8	
COD	14.4	7.2	
TSS	2.2	0.8	
Total Phenols	0.014	0.005	

*Stock & Yarn Finishing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	1.3	0.5	
COD	15.7	7.8	
TSS	1.7	0.7	
Total Phenols	0.015	0.005	

*Nonwoven Manufacturing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days	
		Kg/kg (or lb/1,000 lb) of product	
BOD	1.8	0.7	
COD	12.3	6.2	
TSS	1.9	0.7	
Total Phenols	0.012	0.004	



## Felted Fabric Processing Subcategory

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
BOD	6.8	2.8
COD	27.4	13.6
TSS	6.6	2.6
Total Phenols	0.049	0.015

Extensive analyses performed on the data, before and after the recent data acquisition, demonstrated that the differences among the proposed and newly derived limitations and standards are primarily due to the expanded data base now available and changes in subcategorization, and not to the revised statistical methodology.

## IV. Toxic Metals Effluent Limitations

EPA proposed BAT effluent limitations, NSPS, PSES and PSNS for three toxic metals—copper, chromium and zinc. (See 45 FR 62230-62241). EPA based the proposed limitations and standards on performance data of chemical coagulation/flocculation and sedimentation (commonly referred to as chemical coagulation) from the electroplating industry. Since the proposal, the data base for calculating the toxic metals effluent limitations and standards has been greatly expanded. EPA is making these new data available for public inspection and comment. These new data will be the basis for calculating final toxic metals effluent limitations and standards. The final limitations and standards will change from the proposed limitations and standards. A detailed discussion of the new data, limitations, and standards follows below. The public is urged to review the new data, limitations, and standards and submit comments on EPA's proposal to base final toxic metals effluent limitations and standards on these new data.

## A. New Data Base

As explained above, the proposed toxic metals effluent limitations and standards were based upon the performance of chemical coagulation in the electroplating industry. Substantial additional data have become available from the BAT studies for metal finishing (which now includes electroplating), coil coating, porcelain enameling, battery manufacturing, and copper forming industries. These data show that

chemical coagulation will achieve the following concentrations:

Table 9

Pollutant	Concentrations, mg/l	
	30-day average	Daily maximum
Copper	0.8	2.0
Chromium	0.7	1.8
Zinc	0.7	1.5

Based upon these revised toxic metals data and comments submitted in response to the proposed regulation, the Agency is reexamining its proposed toxic metals effluent limitations and standards for textile mills. EPA intends to revise the limitations and standards for copper, chromium, and zinc in the final regulation based upon the performance of chemical coagulation in reducing toxic metals in the metal finishing, coil coating, porcelain enameling, battery manufacturing, and copper forming industries.

There are a number of reasons supporting EPA's use of chemical coagulation performance data in other industries as a basis for deriving effluent limitations and standards for the textile industry. First, the performance of chemical coagulation has been demonstrated as an effective treatment technology in the textile industry. Pilot plant data demonstrate that chemical coagulation can be effectively installed as a treatment technology for textile mill wastewater. In the proposal, EPA selected chemical coagulation (in conjunction with multimedia filtration at most existing woolen mills and all new sources) as the control option for meeting proposed NSPS, PSES and PSNS for all pollutants in eight subcategories and for meeting BAT limitations in the Wool Finishing Subcategory and the Hosiery Products Subdivision of the Knit Fabric Finishing Subcategory. Second, EPA is relying on treatment data from these industries for the same toxic metals—copper, chromium and zinc—as will be controlled in the textile industry. Third, the concentrations of the three metals in the untreated wastewater of the textile industry do not exceed 10 mg/l. This is within the range observed in the other industries. Finally, EPA does not believe that any differences in the characteristics of the wastewater from textile mills as compared to wastewater of the other industries will alter the performance of chemical coagulation in removing toxic metals. Taking the above factors into consideration, EPA believes, based upon its best engineering judgment, that the limitations are

achievable in the textile industry. These factors support reliance on the chemical coagulation performance data for deriving textile effluent limitations.

## B. Effluent Limitations and Standards

EPA has derived toxic metals for BAT effluent limitations, NSPS, PSES and PSNS based upon the performance of chemical coagulation in the above named industries. The limitations and standards were derived by converting the concentration performance data in Table 9 to production-based mass limitations and standards. This conversion uses the attainable concentrations in Table 9 multiplied by the median wastewater discharge rate per ton of production shown in Table 5.

In Table 10 are the BAT effluent limitations, NSPS, PSES and PSNS calculated from the performance data for chemical coagulation in the metal finishing, coil coating, porcelain enameling, battery manufacturing and copper forming industries.

Table 10—BAT, NSPS and Mass Limitations for PSES and PSNS

Wool Scouring Subcategory		
Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.02	0.009
Total chromium	0.02	0.008
Total zinc	0.02	0.008

Wool Finishing Subcategory		
Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.61	0.24
Total chromium	0.55	0.21
Total zinc	0.46	0.21

Woven Fabric Finishing Subcategory—Simple Processing		
Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.15	0.08
Total chromium	0.14	0.05
Total zinc	0.12	0.05

*Woven Fabric Finishing Subcategory—  
Complex Processing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.20	0.08
Total chromium	0.18	0.07
Total zinc	0.15	0.07

*Woven Fabric Finishing Subcategory—  
Desizing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.21	0.09
Total chromium	0.19	0.08
Total zinc	0.16	0.08

*Knit Fabric Finishing Subcategory—Simple  
Processing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.24	0.09
Total chromium	0.21	0.08
Total zinc	0.18	0.08

*Knit Fabric Finishing Subcategory—Complex  
Processing*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.25	0.10
Total chromium	0.22	0.09
Total zinc	0.18	0.09

*Knit Fabric Finishing Subcategory—Hosiery  
Products*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.15	0.06
Total chromium	0.14	0.05
Total zinc	0.11	0.05

*Carpet Finishing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.09	0.04
Total chromium	0.08	0.03
Total zinc	0.07	0.03

*Stock and Yarn Finishing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.19	0.08
Total chromium	0.17	0.07
Total zinc	0.15	0.07

*Nonwoven Manufacturing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.08	0.03
Total chromium	0.07	0.03
Total zinc	0.06	0.03

*Felted Fabric Processing Subcategory*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	0.43	0.17
Total chromium	0.29	0.15
Total zinc	0.32	0.15

*PS&S and PSNS—All Subcategories*

Pollutant	Maximum for any 1 day	Average of daily values for 30 consecutive days
Total copper	2.0	0.8
Total chromium	1.8	0.7
Total zinc	1.5	0.7

As explained above, EPA derived these effluent limitations and standards by assuming operation of chemical coagulation. EPA believes that existing textile pilot plant performance data (See Sections V and VII of the *Development Document*) and the performance data from the other industries support its decision that textile mills will be able to meet the above limitations and

standards with the proper operation of chemical coagulation.

EPA's decision also is supported by limited textile pilot plant data indicating that biological treatment, chemical coagulation and multimedia filtration can meet or exceed the metals removal performance in the other industries. EPA expects that many dischargers will install multimedia filtration to meet BAT limitations and NSPS for total suspended solids, chemical oxygen demand and total phenols and NSPS and BCT (at large plants) limitations for biochemical oxygen demand. EPA, however, presently plans to base the effluent limitations and standards for copper, chromium and zinc on the performance of chemical coagulation alone since the Agency does not have sufficient data from the textile industry to quantify the improvement in metals removal from multimedia filtration. Nor does EPA have sufficient data in other industries on which to judge the performance of multimedia filtration in removing toxic metals from textile wastewater.

**V. Estimate of Technology Costs**

In the process of reexamining effluent limitations and standards for toxic metals removal, EPA also is considering changes in certain assumptions in the estimate of the cost of the selected technologies. These changes are not expected to increase the economic impact projected for the proposed regulation. In fact, the new estimates of technology costs may reduce the impact of the final regulation. EPA is soliciting comments on each of these possible changes. The economic analysis of the proposed regulation was published in November 1979. Additional copies of this analysis are available from Ms. Mary Ives, EPA Office of Analysis and Evaluation, (WH-586), 401 M St., S.W., Washington, D.C. 20460, Telephone No. (202) 426-2617.

**A. DAF Technology for Wool Scouring**

In the proposal, EPA assumed the use of chemical coagulation (without sedimentation) and dissolved air flotation (DAF) for meeting BCT and BAT limitations and NSPS for the Wool Scouring Subcategory. EPA is considering changing this assumption so that the technology of choice for meeting the effluent limitations and standards (for all pollutants except toxic metals) in the Wool Scouring Subcategory would be multimedia filtration. This change would be made in response to comments questioning the capability of DAF to achieve the proposed wool scouring limitations and standards. Pilot plant studies have demonstrated the effective

performance of multimedia filtration following biological treatment (BPT). EPA's assumption that multimedia filtration rather than DAF would be installed will result in a decrease in costs for compliance with the regulation.

EPA had originally identified DAF as a preferable treatment technology when high concentrations of oil and grease were present. Facilities with substantial oil and grease in the effluent following biological treatment may find that DAF is a more effective method of attaining the BCT and BAT limitations and NSPS.

#### B. Substitution to Comply with BAT or NSPS

In assessing the economic impact of compliance with the BAT effluent limitations and NSPS for toxic metals, EPA assumed that mills in Subparts A and D through H (wool scouring and nonwoolen mills) would have to install multimedia filtration.

The Agency believes that most mills in the wool scouring and nonwoolen subcategories will be able to substitute dyes, functional finishes, and other raw materials with materials not containing copper, chromium or zinc, thereby achieving the effluent limitations and standards discussed above at no additional cost. Therefore, the Agency is considering, for purposes of the final economic analysis, adoption of the assumption that wool scouring and nonwoolen textile mills will be able to meet toxic metals effluent limitations and standards at no increased cost. This assumption is supported by wastewater data which show that the untreated wastewater at only seven of 48 wool scouring and nonwoolen mills exceeded the concentrations attainable by chemical coagulation. One mill was in the Wool Scouring Subcategory, five mills were in the Woven Fabric Finishing Subcategory-Desizing and one mill was in the Knit Fabric Finishing Subcategory-Complex Processing. However, other mills in these subcategories have demonstrated the feasibility of substitution for copper, chromium, and zinc. The untreated wastewater at two other Wool Scouring Subcategory mills and eight other mills in the Woven Fabric Finishing Subcategory-Desizing and two other mills in the Knit Fabric Finishing Subcategory-Complex Processing did not exceed the effluent limitations and standards discussed above.

While EPA would use the substitution option for the economic analysis, EPA recognizes that there may be a few mills that will choose not to substitute dyes, functional finishes, or other raw materials. Therefore, in establishing the effluent limitations and standards for

copper, chromium, and zinc, EPA presently intends to calculate those limitations and standards based upon installation of chemical coagulation and performance data discussed above. These limitations and standards would ensure reduction of toxic metals in those waste streams where they may be present. EPA invites comment on this approach.

#### C. Substitution to Comply With PSES and PSNS

While EPA derived PSES and PSNS based upon the performance of chemical coagulation, EPA will assume for purposes of the economic analysis that only indirect dischargers in the Wool Finishing and Felted Fabric Processing Subcategories will install the treatment technology. For other mills, as discussed above, EPA will assume that there will be no economic impact for PSES and PSNS. Replacement of dyes, functional finishes, and other raw materials containing copper, chromium and zinc will enable wool scouring and nonwoolen mills to meet these standards without installation of any treatment technology.

Although EPA will assume that Wool Finishing and Felted Fabric Processing Subcategory mills will install chemical coagulation, for the purposes of the economic analysis, EPA will assume new source indirect Wool Finishing and Felted Fabric Processing Subcategory discharges will attain compliance by segregating all wastewaters potentially containing toxic metals. This smaller flow of more concentrated wastewater could be treated with chemical coagulation at a cost less than chemical coagulation for the unsegregated wastewater flow. The cost of wastewater segregation at existing sources would make this option less economically attractive for existing facilities. EPA will assume reduced costs as a result of segregation only for new source Wool Finishing and Felted Fabric Processing Subcategory indirect dischargers.

#### Solicitation of Comments

EPA invites and encourages public participation in its rulemaking process. EPA is soliciting comment on each of the subjects addressed in this notice. Any comments not related to the specific information contained in this notice will not be appropriate. The Agency is allowing 45 days from the publication of this notice for submission of comments. Therefore, comments should be submitted to James R. Berlow at the above address no later than March 13, 1981.

Dated: January 16, 1981.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 81-2920 Filed 1-20-81; 8:45 am]

BILLING CODE 6560-29-M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 537

[General Order 18 Revised; Docket No. 81-4]

#### Exclusion of Certain Routine Rate Actions From Reporting Requirement

**AGENCY:** Federal Maritime Commission.  
**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Minutes of conference and rate agreement meetings pertain to certain "routine rate actions" would be exempt from the reporting requirements prescribed in 46 CFR 537.3. Experience has shown that such reporting is redundant and of little use as a surveillance tool. This exemption will lessen regulatory requirements.

**DATE:** Comments due by March 30, 1981.

**ADDRESSES:** Comments (original and 15 copies) to: Secretary, Federal Maritime Commission, 1100 L Street, N.W., Room 11101, Washington, D.C. 20573.

**FOR FURTHER INFORMATION CONTACT:** Francis C. Hurney, (202) 523-5735.

**SUPPLEMENTARY INFORMATION:** The Federal Maritime Commission is considering the revision of 46 C.F.R. 537.3 to exclude from the reporting requirement of that rule minutes of conference or rate agreement meetings dealing with certain routine rate actions.

Part 537 of the Commission's Rules (46 CFR Part 537, General Order 18) was adopted in order to provide the Commission with meaningful reports on the deliberations and activities of steamship conferences and other rate-fixing bodies in order to insure that the parties to such agreements are at all times complying with the terms of their approved agreements and the requirements of the Shipping Act, 1916, and that their actual operations are not being carried out in such a way as to be detrimental to the commerce of the United States or contrary to the public interest. Section 537.3 specifies that:

(a) Within 60 days of the effective date of this part, the parties to each approved conference agreement, agreement between or among conferences, or agreements whereby the parties are authorized to fix rates (except two-party rate-fixing agreements and except leases, licenses, assignments or other agreements of similar character for the use of marine terminal property or facilities) shall, through a designated official, file with the

Federal Maritime Commission a report of all meetings describing all matters within the scope of the agreement which are discussed or taken up at any such meeting, and shall specify the action taken with respect to each such matter. For the purpose of this part, the term 'meeting' shall include any meeting of parties to the agreement, including meetings of their agents, principals, owners, committees or subcommittees of the parties authorized to take final action in behalf of the parties. If the agreement authorizes final action by telephonic or personal polls of the membership, a report describing each matter so considered and the action taken with respect thereto shall be filed with the Commission. These reports need not disclose the identity of parties that propose actions, or the identity of parties that participated in the discussions of any particular matter.

Since these rules became effective in 1966, almost all the minutes filed involving decisions to adopt new or initial commodity rates or alter the level of or delete existing commodity rates contain no substantive discussion as to the basis for the proposals or the decisions reached. Because such rate actions are included in an appropriate FMC tariff filed with the Commission at least 30 days prior to receipt of the minutes,\* the minutes reporting those actions are redundant and of little use as a surveillance tool. In addition, they generate a considerable paper flow through the Commission at substantial expense to both the taxpayers and the steamship industry, without providing useful information as originally intended by the authors of the rule.

Consequently, it is proposed that § 537.3 be amended to exclude from the reporting requirement under that section, decisions by an approved ratemaking group to adopt a new or initial commodity rate or alter the level of or delete an existing commodity rate, to the extent said rate actions are filed as tariff matter pursuant to the statutory notice requirements of section 14(b) and 18(b) of the Act. At the same time, and in order to preserve the integrity of those reports required by § 537.3, it is proposed that those discussions and decisions relating to general rate policy, i.e., rule changes, general rate increases, surcharges, the opening of a rate or rates, etc., must continue to be reported under this section.

Commentators are requested to respond with specific examples, if any, as to how, in their view, the proposed exclusion will substantially impair effective regulation by the Federal Maritime Commission or significantly affect the overall design of regulation contemplated by the Shipping Act, 1916.

\*See 46 CFR Part 536 governing the publishing and filing of tariffs by common carriers in the foreign commerce of the United States.

Therefore, pursuant to sections 15, 21, and 43 of the Shipping Act, 1916, (46 U.S.C. 814, 820, and 841a), and 5 U.S.C. 553, the Commission proposes to amend Part 537 of Title 46 CFR by adding a new paragraph (d) to § 537.3 to read as follows:

§ 537.3 Filing of minutes.

(d) The reports subject to paragraph (a) of this section do not apply to decisions by an approved ratemaking group to adopt a new or initial commodity rate or alter the level of or delete an existing commodity rate, to the extent said rate actions are filed as tariff matter pursuant to the statutory notice requirements of sections 14(b) and 18(b) of the Act. Those discussions and decisions, relating to general rate policy, i.e., rule changes, general rate increases, surcharges, the opening of a rate or rates, etc., must continue to be included in the reports subject to paragraph (a) of this section.

By the Commission.

Francis C. Hurney,  
Secretary.

[FR Doc. 81-2925 Filed 1-26-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS  
COMMISSION

47 CFR Part 73

[BC Docket No. 80-75: RM-3298]

FM Broadcast in Columbia,  
Jamestown, and Smiths Grove, Ky.;  
Proposed Changes in Table of  
Assignments

AGENCY: Federal Communications  
Commission.

ACTION: Proposed rule (Report and  
Order).

SUMMARY: This action denies a petition filed by Charles M. Anderson and J. Barry Williams seeking the assignment of FM Channel 228A to Smiths Grove, Kentucky, and the substitution of Channel 285A for 228A in Columbia, Kentucky, and the substitution of Channel 228A for 285A in Jamestown, Kentucky. In order to assign Channel 228A to Smiths Grove, the stations currently operating in Columbia and Jamestown would be forced to relocate their transmitter sites. The Columbia licensee refused to consent to the necessary relocation. For that reason, the proposal was not adopted.

ADDRESS: Federal Communications  
Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Michael A. McGregor, Broadcast  
Bureau, (202) 632-7586.

SUPPLEMENTARY INFORMATION:

Report and Order (Proceeding  
Terminated)

Adopted: January 13, 1981

Released: January 16, 1981

In the Matter of Amendment of  
§ 73.202(b), Table of Assignments, FM  
Broadcast Stations, (Columbia,  
Jamestown and Smiths Grove,  
Kentucky)

By the Chief, Policy and Rules  
Division:

1. The Commission has under consideration the *Notice of Proposed Rule making*, 45 FR 14076, published March 4, 1980, proposing the assignment of FM Channel 228A to Smiths Grove, Kentucky, in response to a petition filed by Charles M. Anderson and J. Barry Williams ("petitioners"). The *Notice* also proposed the substitution of Channel 285A for Channel 228A (now occupied by Station WAIN-FM) in Columbia, Kentucky, and the substitution of Channel 228A for Channel 285A (now occupied by Station WJRS-FM), in Jamestown, Kentucky. The channel substitutions in Columbia and Jamestown are necessary to permit the assignment of Smiths Grove. Additionally, it was noted that the transmitter sites of Stations WAIN and WJRS would have to be moved to meet the minimum distance separation requirements of the Commission's rules. On the basis that both stations had agreed to site relocations with reimbursement, comments were sought on the proposal.

2. Petitioners filed comments in which they reaffirmed their commitment to apply for authorization to build and operate a station on the channel, if assigned. Petitioners also agree to reimburse the licensees of Stations WAIN and WJRS for the expenses necessary in changing frequencies and transmitter locations. Oppositions to the proposal were filed by Bud Wyler, Manager of Station WGBN in Bowling Green, Kentucky; Bowling Green Broadcasters, Inc., Licensee of WLBJ (AM) and (FM) in Bowling Green; and Tri County Broadcasting Corp. ("Tri County"), licensee of Station WAIN in Columbia. Tyler's main concern is that one of the petitioners, Charles M. Anderson, if granted a license to operate on the new channel, would have "operational control" of three radio stations in the immediate area. Tyler also states that it is his feeling that the proposal is merely an attempt to locate a sixth station in Bowling Green, Kentucky, by using the Smiths Grove

assignment as a "decoy." Bowling Green Broadcasters agrees with Tyler concerning the purpose of this proposal as a Bowling Green station. According to Bowling Green Broadcasters, a community of 765 persons (Smiths Grove) cannot generate the requisite advertising base to support the proposed facilities, particularly in light of the necessary reimbursement expenses that will accrue. Tri County, licensee of Station WAIN in Columbia, states that it no longer agrees to the proposed channel substitution and transmitter site relocation for its station in Columbia. Therefore, Tri County opposes the proposed assignments.

3. It is the Commission's policy to substitute FM channels, even when the channel is occupied and in use, where such substitution will permit a more efficient and fair allocation of broadcast frequencies. Such actions are taken when the impact upon the affected station and the public is found to be limited and the public gains to be realized are overriding. See, e.g., *Baxley, Georgia, et al.*, 42 RR 2d 249 (1978); *Blytheville, Arkansas, et al.*, 46 RR 2d 1267 (1980). However, the Commission will not sanction a new FM assignment requiring the relocation of an existing station in order to meet spacing requirements "... absent an unusually strong and compelling showing that the public gains achievable are sufficient to overcome concern with the ensuing impact upon the affected station and the public." *Ashville, North Carolina*, 36 RR 2d 810, 815 (1976). Such a showing has not been made by petitioners in this case. Smiths Grove is a community of 765 persons<sup>1</sup> which is located approximately 22 kilometers (14 miles) from Bowling Green, Kentucky. Although the community currently has no local aural service, Smiths Grove does receive a 1 mv/m (60 dbu) service from four FM stations.<sup>2</sup> Furthermore, allegations have been raised that petitioners' real intent in requesting the assignment is to serve Bowling Green instead of Smiths Grove. While we express no opinion on this point, suffice it to say that because of the small size of Smiths Grove, and the fact that four city-grade FM signals are already receivable there, we do not believe that the current proposal to assign Channel 228A to Smiths Grove justifies the disruption necessary to make such an assignment possible.

<sup>1</sup> Population figures are taken from the 1970 U.S. Census.

<sup>2</sup> Those stations are WKYV-FM, WLBJ-FM and WDNS(FM) Bowling Green, Kentucky, and WGCC(FM) Glasgow, Kentucky.

4. In view of the foregoing, IT IS ORDERED, That the petition of Charles M. Anderson and J. Barry Williams, proposing the assignment of Channel 228A to Smiths Grove, the substitution of Channel 285A for 228A in Columbia, and the substitution of Channel 228A for Channel 285A in Jamestown, Kentucky, IS HEREBY DENIED.

5. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-2818 Filed 1-26-81; 8:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1100

[Docket No. 37130 (Sub-1)]

#### Special Docket Proceedings—Waiver of Insignificant Amounts and Simplification of Procedures

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** In accordance with section 207(c) of the Staggers Rail Act of 1980 (Pub. L. 96-448), the Commission proposes to expand its Special Docket rules to establish standards and procedures whereby rail carriers can waive collection of insignificant amounts due from shippers in connection with rate increases which are suspended and later found to be reasonable. We are also proposing to simplify and streamline the Special Docket process itself to eliminate unnecessary delay and paperwork and to open up the process to public scrutiny.

**DATES:** Comments must be received on or before March 13, 1981.

**ADDRESS:** An original and 15 copies of any comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Martin E. Foley, (202) 275-7348; or Scott Walker, (202) 275-7458.

**SUPPLEMENTARY INFORMATION:** In instances where a rail rate increase is suspended by the Commission, but later found to be reasonable, carriers are now required by the Act to collect from the shipper the difference between the original rate and the suspended rate, plus interest. The Act also requires the Commission to establish standards and procedures permitting a rail carrier to

waive the collection of those amounts which are not significant.<sup>1</sup>

By this notice we are proposing to establish such standards and procedures within the Commission's Special Docket system, an informal process which has for years been used by rail carriers and their customers to settle agreed-upon reparations and waiver-of-undercharge cases. We are also proposing to simplify the entire Special Docket process. We seek comment on all of these changes.

#### The Present System

Special Docket applications are petitions filed by rail (and water) carriers requesting authority to make refunds to, or waive collection of undercharges from, their customers. Obtaining our authority is necessary because it is unlawful, under the Interstate Commerce Act, for carriers to refund any portion of rates collected under a lawfully filed tariff without an order of the Commission. Today, the applicants are required to use needlessly elaborate and legalistic forms first prescribed by the Commission in 1934, and still in use.

In many cases, the filing of the actual application is preceded by a "letter of registration" which contains the information necessary to toll the statute of limitations for the shipments involved. Once the application is submitted, it is reviewed by our staff for technical accuracy, compliance with the statute of limitations, and for conformity to precedent developed on the formal docket.<sup>2</sup>

The application is then submitted to the Special Docket Board for vote, and an order is issued by the Board either granting or denying the application.

<sup>1</sup> These requirements are codified at 49 U.S.C. 10707(d) (2) and (4) and read as follows:

(2) If a rate is suspended under subsection (c) of this section and any portion of such rate is later found to be reasonable under this title, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days, except that this paragraph shall not apply to general rate increases under section 10706 of this title.

(4) Notwithstanding the provisions of section 10741 or section 10761 of this title, the Commission shall, by rule, establish standards and procedures permitting a rail carrier to waive the collection of amounts due under this subsection if such amounts are not significant.

<sup>2</sup> The Act requires a complaint, an answer and a full hearing before any award of damages (or waiver of undercharges) can be authorized. Historically, however, the Commission has accepted the Special Docket application of the carrier (filed on behalf of the shipper) as the equivalent of a complaint and answer.

Although the Special Docket procedures themselves are informal—handled primarily by correspondence and telephone—the orders issued by the Board are formal and may be appealed to a division of the Commission.

There are several aspects of the present system which are unsatisfactory: (1) it is predicated upon a complicated, cumbersome and archaic form; (2) Commission staff must review and verify all information submitted which often results in unnecessary delays and paperwork; (3) the process is hidden from public scrutiny and possible objection until after the Board's decision has been made; and (4) it does not accommodate the waiver of insignificant amounts in connection with suspended rate increases which are later found to be reasonable, as now required by the Staggers Act.

#### The Proposed System

Our proposed revision meets these concerns. First, we will eliminate the present Special Docket application form in favor of a simple letter application system. Second, we will review the applications only for compliance with the statute of limitations. Third, we will substitute public scrutiny and protest for Commission review. Fourth, waiving the collection of insignificant amounts will be permitted.

Basically, the proposed system is a three-letter process:

(1) A Letter of Registration (if necessary to toll the Statute of Limitations);

(2) A Letter of Intent (to pay reparations, to waive the collection of undercharges, or to waive the collection of insignificant amounts); and

(3) A Letter of Disposition (advising the Commission of the action taken).

The registration process presently in use would be essentially unchanged. That is, carriers would still be able to toll the statute of limitations by filing a letter of registration setting forth the essential facts when they are unable to file an application within the statutory period and the claim is not already protected from the operation of the statute by informal complaint. The Commission would continue to assign a Special Docket number to the case at that time and acknowledge receipt of the letter. We would no longer continue the practice of tracing the carrier for submission of the application, but we would require that the letters of registration be followed by a Letter of Intent within one year or they will be dismissed for lack of prosecution (subject, of course, to the Six-Months' rule described at 49 CFR 1100.23(f)).

The Letter of Intent would describe the action intended: to Pay Reparations, to Waive Collection of Undercharges, or to Waive the Collection of Insignificant Amounts in connection with suspended rates which have been found reasonable. While we would not prescribe any particular format for these letters, they would be required to contain the following information:

#### Letters of Intent To Pay Reparations or to Waive Collection of Undercharges

1. The names and addresses of the complainants seeking damages.
2. The names of the defendants against which the claim is made.
3. The amount of the claim.
4. The tariff authority for both the assailed and the sought rate.
5. The dates when the shipments involved were delivered or tendered for delivery.
6. The points of origin and destination of the shipments and the routes of movement.
7. The commodity.
8. The date the charges were paid, by whom paid and by whom borne.
9. An admission by the carrier that the assailed rate was unreasonable, and a showing that it has been removed from the tariff.
10. A statement certifying that all defendants against whom the claim is lodged concur in the intent to pay reparations or waive undercharges.
11. Evidence to show compliance with the statute of limitations.
12. A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.

#### Letter of Intent To Waive Collection of Insignificant Amounts

1. The name and address of the customer for whom the carrier wishes to waive the collection of insignificant amounts.
2. The names and addresses of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the intention.
3. The amount intended to be waived.
4. The number of the Investigation and Suspension case involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.
5. The points of origin and destination of the shipments and the routes of movement, if relevant.
6. A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.

We seek comment as to whether these requirements are appropriate.

In order to avoid unnecessary paperwork burden on the Commission, as well as the carriers, we also believe that a threshold amount should be established, below which carriers would not need to file a letter of intent prior to waiving collection of insignificant amounts in connection with suspended rate increases. We propose to establish that amount at \$2,000.00, or, in the alternative, we could base the threshold upon the percentage waived as compared to the total charges. The figure of \$2,000.00 was intended to reflect the cost of recovering additional freight charges, particularly if instituting and pursuing litigation is necessary to effect that recovery. We invite comments on an appropriate threshold, however, as well as on all procedural and informational requirements contained in the proposed rules set forth in the appendix.

Carriers could waive collection of amounts below the threshold on their own volition and simply file a "Letter of Disposition" with the Commission informing us of the action taken. For all waivers of amounts over the threshold, it would first be necessary to file a Letter of Intent. This does not mean that amounts above the threshold level would necessarily be deemed "significant" amounts. That would depend, for example, on the relative sizes of the shipper and carrier, patterns of business, etc.—information which should be included as part of the justification statement in the Letter of Intent. Amounts below the threshold figure, however, would be presumed to be insignificant and could be waived without prior notice to the Commission.

Letters of intent will not be reviewed by our staff for technical accuracy or conformity to precedent established on the formal docket, but only for compliance with the statute of limitations.<sup>3</sup> If in compliance, they would be made available within five days of receipt for public inspection for 25 days in the Board of Suspension Public File, Room No. 4339, at our offices

<sup>3</sup> In most contexts the statute of limitations is a defense that the defendant may waive, but the rule is otherwise under the Interstate Commerce Act. The Supreme Court has consistently held that the Act's statute of limitations is jurisdictional, that the lapse of the limitations period not only bars the remedy but also destroys the liability. *A. J. Phillips Co. v. Grand Trunk Western Ry. Co.*, 236 U.S. 662 (1915); *United States ex rel. Louisville Cement Co. v. ICC*, 246 U.S. 638 (1918); *William Danzer & Co., Inc. v. Gulf & S.I.R. Co.*, 268 U.S. 633 (1925). These cases and others make it clear that there is an affirmative obligation on the Commission to review all shipper claims for damages—including those the carriers consent to—to determine whether the complaint was made within the limitations period.

at 12th and Constitution Avenue, N.W., Washington, DC 20423.

If no letters of objection are filed, carriers would be permitted, after the passage of 45 days (from the date of our receipt of the letter of intent) to take the intended action without further Commission order—subject only to the requirement that a Letter of Disposition (advising us of the action taken, the date of the action and the amount paid or waived) be filed with the Commission within 30 days after the expiration of the 45-day period.

If a letter of intent is contested, carriers would not be allowed to take any action until the case is reviewed by the Special Docket Board and an appropriate order either granting or denying the application is issued. No letter of disposition to the Commission would be required in cases decided by an order of the Board.

In proposing these changes, we have been guided by what appears to be a consistent theme of the Staggers Act, that regulatory impediments to direct shipper/carrier transactions and negotiations should be removed or reduced as much as possible. To this end, the proposed Special Docket system substitutes public scrutiny of applications for Commission review and invokes our intervention only when actual—as opposed to hypothetical—adverse effects are perceived and documented by third parties.

This Notice of Proposed Rulemaking is issued under 5 U.S.C. 553, 49 U.S.C. 10321, and 49 U.S.C. 10707.

#### REGULATORY FLEXIBILITY: CERTIFICATION OF NO ADVERSE IMPACT

5 U.S.C. 603 requires that the Commission examine the impact of the proposed rules on small businesses and small organizations. In this proceeding, we do not propose new reporting requirements; rather, we seek to modify the process by which existing requirements are met. Thus, we anticipate no adverse economic impact on small businesses or organizations. We do, however, invite comment on this issue.

It does not appear that this proposal will significantly affect the quality of the human environment or conservation of energy resources.

Dated: January 12, 1981.

By the Commission, Chairman Gaskins,  
Vice Chairman Gresham, Commissioners  
Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,  
Secretary.

#### Appendix

We propose to amend 49 CFR Part 1100, *General Rules of Practice*, as follows:

1. By revising § 1100.23(e) as follows:

#### § 1100.23 Informal Complaints seeking damages (Rule 23).

(e) *Special-Docket Proceedings.*

(1) *Petitions based on damages.*

Where the act provides for an award of damages for a violation, and a carrier is willing to pay them, or to waive collection of undercharges, petitions for appropriate authority should be filed by the carrier on the special docket by submitting either a Letter of Intent to Pay Reparations, a Letter of Intent to Pay Reparations and Waive Undercharges, or a Letter of Intent to Waive Undercharges. Such petitions, when not filed in connection with an Informal Complaint pending before the Commission, must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer admitting the matters stated in the petition. These petitions shall contain, as a minimum, the following information:

- (i) The names and addresses of the complainants seeking damages.
  - (ii) The names of the defendants against which the claim is filed.
  - (iii) The amount of the claim.
  - (iv) The tariff authority for both the assailed and the sought rate.
  - (v) The dates when the shipments involved were delivered or tendered for delivery.
  - (vi) The points of origin and destination of the shipments and the routes of movement.
  - (vii) The commodity.
  - (viii) The date the charges were paid, by whom paid and by whom borne.
  - (ix) An admission by the carrier that the assailed rate was unreasonable, and a showing that it has been removed from the tariff.
  - (x) A statement certifying that all defendants against which the claim is lodged concur in the intent to pay reparations or waive undercharges.
  - (xi) Evidence to show compliance with the statute of limitations.
  - (xii) A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.
- If a carrier is unable to file such petition within the statutory period and

the claim is not already protected from the operation of the statute by informal complaint, a Letter of Registration setting forth the facts may be submitted by the carrier within the statutory period. This letter will also be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute. However, an appropriate Letter of Intent must be filed within one year following receipt by the Commission of the Letter of Registration.

(2) *Petitions to waive collection of insignificant amounts.* If a rail carrier wishes to waive the collection of amounts due under 49 U.S.C. 10707(d)(2), when such amounts are more than (the threshold determined by the Commission), a petition for appropriate authority should be filed by the carrier on the special docket by submitting a Letter of Intent to Waive Insignificant Amounts. These petitions should contain the following information:

- (i) The name and addresses of the customer for whom the carrier wishes to waive collection.
- (ii) The name and address of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the action.
- (iii) The amount intended to be waived.
- (iv) The number of the investigation and suspension case involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.
- (v) The points of origin and destination of the shipments and the routes of movement, if relevant.
- (vi) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.

If the amount to be waived is below the threshold, no petition need be filed prior to waiver; however, a Letter of Disposition informing the Commission of the action taken, the date of the action, and the amount waived shall be submitted to the Special Docket Board, Interstate Commerce Commission, Washington, DC 20423, within 30 days of the waiver.

(3) *Public Notice and Protest.* Petitions on the special docket to pay reparations, waive the collection of undercharges or waive the collection of insignificant amounts shall be made available by the Commission for public inspection five (5) days after receipt, in the Board of Suspension Public File Room, Room 4339, 12th & Constitution Avenue, N.W., Washington, DC 20423 and remain available for 25 days. Any

interested person may protest the granting of a petition by filing a Letter of Objection with the Special Docket Board within 30 days of Commission receipt of the petition. Letters of Objection shall identify the Special Docket number, shall clearly state the reasons for the objection, and shall certify that a copy of the Letter of Objection has been served on all parties named in the petition. A period of 15 days will be allowed for reply.

(4) *Uncontested petitions.* A petition which is not contested will be considered an order of the Commission authorizing the action contemplated in the petition 45 days after Commission receipt of the petition. Within 30 days after the expiration of the 45-day period, the carrier filing the petition shall file a Letter of Disposition informing the Special Docket Board of the action taken, the date of the action, and the amount paid or waived.

2. By adding the word "contested" between the words "a" and "Special" in the first sentence of § 1100.23(f).

3. By adding the word "Contested" before the word "Special" at the beginning of the second sentence of § 1100.23(f).

[FR Doc. 81-2999 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

#### 49 CFR Part 1310

[Ex Parte No. MC-77 (Sub-3)]

#### Elimination of Certificates as the Measure of "Holding Out"

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to re-examine the duty imposed on motor common carriers of property to provide transportation coextensive with all points and services contained in their certificates of public convenience and necessity. We believe that under the Motor Carrier Act of 1980 these certificates are no longer a proper measure of the extent to which a carrier must hold its services out to the public. We would continue to require motor common carriers of property to provide service on reasonable request in a non-discriminatory fashion, but we would revise our regulations to allow these carriers to offer less than the carrier's full certificated authority.

**DATE:** Comments are due February 26, 1981.

**ADDRESS:** Send an original and 15 copies, if possible, of comments to: Ex Parte No. MC-77 (Sub-No. 3), Room 5416, Office of Proceedings, Interstate

Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Edward E. Guthrie, (202) 275-7691, or Dan Campbell, (202) 275-7426.

#### SUPPLEMENTARY INFORMATION:

##### The 1935 Act

The Interstate Commerce Act, 49 U.S.C. 11101, requires that a common carrier providing service subject to the Commission's jurisdiction shall provide such service on reasonable request. The offering of service "upon reasonable request" has been interpreted by the Commission to mean that service must be offered on a non-discriminatory basis to the full extent of the carrier's certificate authority but only up to the limit of the carrier's equipment. The term is not explicitly defined in the Act itself.

Common law has long recognized the principle that a common carrier owes a duty to the public to carry for all to the extent of its capacity at a reasonable charge and with substantial impartiality according to its holding out. See *Michigan Pub. Util. Comm'n v. Duke*, 266 U.S. 570, 577 (1925). This principle was incorporated into the Interstate Commerce Act when it was passed in 1887 and is the foundation of the requirement now contained in 49 U.S.C. 11101 that all regulated carriers provide service on reasonable request. See *American Trucking Associations, Inc. v. Atchison, Topeka, and Santa Fe Railway Co.*, 387 U.S. 367, 406 (1967).<sup>1</sup>

In *Bodmer Common Carrier Application*, 4 M.C.C. 240, 241 (1938), early in the history of motor carrier regulation, the Commission spoke broadly of the duty of the motor common carrier "to furnish service at his tariff rates, to the limit of his

<sup>1</sup> If the principle is readily recognized by legal scholars, it is no more an article of faith to the legal profession than is the proposition to the professional economist that discrimination is impossible in fully competitive markets. In the beginning, these two concepts may not have created any problems for one another, since the early English common carrier was typically a monopolist capable of using his monopoly power to restrict his efforts and to discriminate among his customers. While that characterization may be increasingly inapt for motor carriage, and while the theoretical need for a common carrier obligation applied to trucking may become less and less tenable as markets become more fully competitive, we are not concerned in this rulemaking with these issues. The Motor Carrier Act of 1980 preserves the obligation to provide service and we do not quarrel with that result. We do need to consider whether, by exercising our judgment and discretion so as to regard the scope of a carrier's holding out as coextensive with the scope of the authority in its certificate, we interfere with the competitive licensing process mandated by the Motor Carrier Act of 1980 and create the potential for carrier liability where none should exist. These latter issues are the only issues addressed here.

capacity to do so, upon reasonable demand." The Motor Carrier Act of 1935, however, generally made it illegal for any person to operate as a motor common carrier of property in interstate or foreign commerce absent a certificate authorizing that person to conduct such operation; historically, the grant of authority in certificates was confined to the limited service a carrier actually proposed to operate immediately, which was coextensive with that for which the Commission found a public need. As a result, the common law concept of the common carrier's holding out, as to motor common carriers conducting operations within the scope of the Motor Carrier Act of 1935, grew to be associated with the operations authorized in the certificates.

Right up into the last decade the common carrier obligation was still roughly equated with certificate responsibility. *Restrictions on Service by Motor Common Carriers*, 111 M.C.C. 151 (1970),<sup>2</sup> held, for example, that "discriminatory conduct of carriers—including failures to perform selected portions of their certificated operations, whether perpetrated through their published tariffs or by other means—is contrary to their statutory duties and is unlawful," *id.*, at 168.

The Commission, in fact, set forth new regulations, 49 CFR 1307.27(k), banning the publication in a carrier's tariff of any provision "which results in restricting service to less than the carrier's full operating authority", 111 M.C.C. at 198.<sup>3</sup> *Travenol Laboratories, Inc., Petition for Invest.*, 121 M.C.C. 588 (1975), cited the *Restrictions* case for the proposition that "carriers holding operating rights are duty bound fully and fairly to render the services authorized by their certificates. They cannot limit the duty by publication in their tariffs of provisions which restrict the availability of service." *id.*, at 614.

The mandate of the 1935 Act was not designed to promote broad competition in the motor carrier industry. Its objective was to promote orderly growth through regulated entry controls and price stability mechanisms. Not unnaturally, then, the old entry control standards inhibited competition. In return, the carriers were expected to provide reasonably continuous and adequate service. This was assumed to cover the entire range of services authorized by their certificates since the certificates were limited in scope.

<sup>2</sup> Clarified at 119 M.C.C. 691 (1974), and further clarified at 126 M.C.C. 303 (1977).

<sup>3</sup> Although this regulation remains on the books, see 49 CFR 1307.27(k), the relevant regulation for our purpose is 49 CFR 1310.6(a).



Moreover, the application process may have indirectly affected the scope of the common carrier obligation. A grant of authority was quite valuable. The cost of prosecuting an application in the face of opposition was substantial, however, and the prospect for successful prosecution by an applicant was limited. The Commission often granted only narrowly circumscribed authorities even where the applicants sought broader certificates. For their part, applicants, in an attempt to eliminate, or at least to minimize, opposition tended to apply for (or restrict applications down to) authorities narrowly tailored to the precise services that they actually intended to provide immediately. This practice reduced the expense of prosecuting the application, increased the prospects that the application would be granted, but also reinforced the impression that carriers were legally expected to render service coextensive with their certificates.

#### The 1980 Act

The Motor Carrier Act of 1980 has changed this regulatory framework. The traditional Commission responsibility for the careful administration of competitive relationships has been changed to place greater emphasis on competition and potential competition as a principal regulatory device. Section 6 of the new Act, for example, adding new subsection 49 U.S.C. 10922(h), states the Congressional intent that grants of motor carrier operating authority be broad in scope, and unencumbered by restrictions. The House Committee Report, Rep. No. 96-1069, 96th Cong., 2d Sess., which takes on increased importance because of the Senate's adoption of the legislation as discussed in that report, specifically recognizes the value of potential competition as a means of bringing about more efficient and economical delivery of transportation service. The new Policy Declaration section of the Act recognizes that market demands change rapidly and that the requirements of the shipping public are diverse.

Pursuant to this Congressional mandate, we have issued a policy statement, Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)*, 45 Fed. Reg. 86798, December 31, 1980, which will have the effect of broadening commodity and territorial descriptions in certificated authorities, and prohibiting many restrictions in certificated authorities. Under the framework of Ex Parte No. 55 (Sub-No. 43A) motor common carriers of property

will receive grants of authority generally broader in scope than those which have been issued in the past.

The new grants often will exceed the authority which the carrier actually needs to perform a particular transportation operation. It will clearly be much more common in the future than in the past to find carriers who lack the capacity to provide more than a portion of the services they are authorized to provide. This is the natural result of reliance on a policy of potential competition, eased entry, and broader grants of authority. In and of itself, the inability of a carrier in a competitive market to provide service to all potential customers is not a matter of concern.<sup>4</sup>

In fact, broad certificate authority should have several salutary effects which will benefit the carriers and the public. Carriers will have substantially greater flexibility in meeting new market conditions, they will often be able to plan their future growth with the certainty of authority already in hand, the time and expense associated with licensing can be materially reduced, and, importantly, their enhanced ability to enter new markets will continually pressure incumbents to provide the optimum balance of service and price.

Our concern here is with the interaction of broad certificate grants with the perception that a common carrier's holding out must inevitably be defined by the authority contained in the carrier's certificate. As mentioned above, Commission policy has required motor carriers to conduct operations reasonably responsive to the public within the full scope of their certificates. As we read the case, though, the Commission has never considered a holding out coextensive with the certificate authority as an end in itself, required by statute, although the cases are somewhat unclear in this regard; rather, this approach has been developed over the years for insuring that certificated carriers comply with their common law and statutory duty to offer service upon reasonable demand and on a non-discriminatory basis. If our approach were to remain unchanged, and if failure to provide service coextensive with certificate authority were still seen to give rise to a potential violation of the carrier's obligations,

<sup>4</sup> Even under the more restrictive licensing policy of the 1935 Act, when the certificate was considered coextensive with the holding out, the question of lack of capacity to serve (as opposed to discriminatory motive, etc.) was crucial to the Commission's reaction to unserved demand. Lack of good service typically gave rise to the licensing of a new competitor; it was only the rare and atypical situation that resulted in action against the incumbent's certificate on the grounds that it had failed to meet its obligations as a common carrier.

then the issuance of certificates intentionally broader in scope than immediately proposed operations would be a "Catch 22" of unusual proportions. We are certain, however, that Congress intended no such result in enacting section 10922(h) to broaden certificate grants. It remains then only to disconnect the issue of holding out from the issuance of certificate authority, which requires foremost the designation of an acceptable substitute for the certificate. In the next section we discuss several substitutes that we offer for comment.

#### Measuring the Holding Out

The basic purpose of the common carrier obligation is to ensure that a carrier's customers are treated on a non-discriminatory basis. This remains a legitimate concern for this Commission, given the requirement contained in 49 U.S.C. 11101. There is no statutory requirement, however, tying a common carrier's responsibility to its certificate. Certificate authority, rather, has simply been a mechanism for measuring the scope of the carrier's holding out—a convenient and not illogical one given past licensing policies. But other methods—which do not compromise the competitive initiatives of the Motor Carrier Act of 1980—are equally available.

There appear to be two basic approaches to measuring the holding out. On the one hand, we could establish a regulatory requirement that each carrier announce formally and explicitly what service it proposes to offer. On the other hand, we could simply allow carriers to hold out their service through informal means, such as advertising, and rely on the Commission's traditional enforcement remedies, in response to complaint, to insure compliance with the basic requirement that service be offered on a non-discriminatory basis.

One type of formal regulatory requirement would be to revise 49 CFR 1310.6(a), to allow motor common carriers of property to file tariffs restricting service to less than the carrier's full certificated authority. Paragraph (a) of this regulation now reads:

"(a) General requirements. Tariffs must contain only rates, charges, and related provisions that cover services in strict conformity with each carrier's operating authority. No provision may be published in tariff publications which results in restricting service to less than the carrier's full operating authority or which results in exceeding such authority. Tariff publications containing such provisions are subject to rejection or suspension for investigation. Original tariffs shall contain the provisions required by

paragraphs (b) through (n) of this section in the order named."

The first and second sentences of this paragraph would be amended to read:

"Tariffs must contain only rates, charges, and related provisions that cover services within the scope of the carrier's operating authority. No provision may be published in tariff publications which results in exceeding the carrier's operating authority."

We would continue to require carriers to provide reasonable service within the full scope of their tariffs; but we realize that, under this proposal, there would no doubt be instances of a wide gap between broad certificates and narrow tariffs.

A related alternative would use a declaration of markets to be served rather than a restricted tariff, perhaps published in the *Federal Register*. Common carriers would commit themselves to serving particular markets and, where appropriate, to providing particular transportation related services. An unrestricted tariff would accordingly be filed for each market then being served, and additional declarations would be filed as a carrier expands its market within the scope of its operating authority. Carriers would be required to provide service upon reasonable request, as is required now, but they would themselves in the first instance determine the markets they would service or specific commodities they would transport within their certificate authority.

The use of our enforcement resources would, if we employ that approach, rely on traditional Commission interpretations in a changed economic and regulatory atmosphere. This proposal also seeks to focus on the service failure-types of public harm that Congress intended to obviate in enacting the Motor Carrier Act of 1980. Specific provisions of the Act effectively shift the emphasis in administering the competitive relationships among carriers to marketplace competition and potential competition as principal regulatory devices, subject to continuing Commission jurisdiction. Since the policy proposed in Ex Parte No. 55 (Sub No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)*, has been adopted, carriers' authorities will shortly be couched as generic categories rather than as specific commodities. Coupled with the liberalized entry criteria set forth in the Act, and the national transportation policy sought to be achieved, market competition becomes a self-regulating system which ensures the shipping public of needed transportation services. Carriers would

have the ability to move in and out of markets with ease, while the shipping public would be assured of service by common carriers who do not necessarily have to provide all the service within the four corners of their authority. Upon complaint, the Commission would investigate and seek to rectify service failures caused by the absence of common carrier service, or by discrimination among shippers by carriers. This proposal would rely on the shipper's efforts to obtain satisfactory service, and market competitive conditions to maintain it. Under this proposal, a simple refusal to provide service would not carry a presumption of public harm. Instead, a complainant would have to demonstrate the absence of alternatives, the likelihood of a long-term failure of service, an intent by the carrier to harm by discrimination, or some other form of unfair practice before the Commission would challenge the carrier's allocation of its resources to other markets or customers.

We do not foreclose the adoption of other approaches. In fact, we specifically solicit public comment in this regard. We believe that the carrier and shipping public can be particularly helpful in developing alternatives which provide for reasonable public notice without unduly burdening carriers administratively.<sup>3</sup>

#### Statutory Powers

The Commissions's statutory powers to adopt Ex Parte No. 55 (Sub-No. 43A), (see 45 FR 86798), insofar as they pertain to motor common carriers of property, sustain the actions to be taken here. We are not unmindful that *Restrictions on Service by Motor Common Carriers*, 111 M.C.C. 151 (1970), our major case on the common carrier obligation of motor common carriers, was an exercise of our general rulemaking powers, see *id.*, at 163-67. In that case we spoke of "the duty of this Commission to determine if, and to what extent, [motor common carriers'] certificates should be limited under the statute." *id.*, at 170. We note also that 49 U.S.C. 11101(b) empowers us to prescribe requirements for continuous and adequate transportation and service provided by motor common carriers. We have, we believe, sufficient power to work a reasonable

modification of the historic use of motor carrier certificates as the measure of holding out.

#### Request for Comments

We seek the assistance of all concerned in this attempt to reconcile the new policy favoring broader grants of authority with a common carrier's duty to do what it holds out to do. That we may better inform our judgment in this matter, we solicit comments on the desirability of using a carrier's scope of operations tariff as the benchmark of its holding out, and we offer other alternatives as well. Additionally, we are receptive to comments proposing other methods which are both practicable and administratively feasible.

The action to be taken in this proceeding does not appear to affect significantly the quality of the human environment or conservation of energy resources. However, anyone may comment on this aspect of the proceeding.

#### Regulatory Flexibility; Certification of no adverse effect:

5 U.S.C. 603 requires that the Commission examine the impact of proposed rules on small businesses and small organizations. We anticipate no significant economic impact on small entities as a result of this rulemaking. To the contrary, we anticipate that the result of this proceeding will advantage small common carriers by facilitating their ability to obtain certificates which would permit their future expansion. We do, however, invite comment on this issue.

This notice of proposed rulemaking is issued under authority of 49 U.S.C. 10101, 10321, 10762, 10922, and 11101, and 5 U.S.C. 533.

Dated: January 14, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gillman.  
Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2700 Filed 1-26-81; 8:45am]

BILLING CODE 7035-01-M

<sup>3</sup>The purposes of this proceeding are to clarify the extent of a carrier's duty to serve and to provide each carrier with a simple method of declaring the scope of its own holding out. Regardless of the method(s) ultimately selected, we do not intend for carriers to agree collectively upon their scope of operations. Compacts to restrict markets would frustrate fatally the process of self-regulation which we believe will be activated by the increased actual and potential competition flowing from the policy of broad grants of authority, and remain unlawful.

## Notices

Federal Register

Vol. 46, No. 17

Tuesday, January 27, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

##### Hop Marketing Advisory Board; Renewal

Notice is hereby given that the Hop Marketing Advisory Board is being renewed for an additional period of 2 years under provisions of the Federal Advisory Committee Act (86 Stat. 770).

The purpose of the Board is to advise the Hop Administrative Committee under Federal Marketing Order No. 991 concerning marketing policy and other operational matters as the Committee requests.

This Board represents handlers of hops. Representation for most is based on the quantities of hops handled; and one representative is for extractors.

Information about this Board may be obtained from Joseph C. Perrin, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Boise Cascade Building, Suite 805, 1600 S.W. Fourth Avenue, Portland, Oregon 97201. Telephone: 503-221-2724.

Authority for this Board will expire January 19, 1983 unless it is determined that continuance is in the public interest.

Dated: December 22, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-3000 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-02-M

#### Animal and Plant Health Inspection Service

##### Construction of a Greenhouse at the Biological Control Satellite Facility, Niles, Michigan

AGENCY: Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability of Environmental Assessment and Negative Declaration.

**SUMMARY:** This gives notice that the Animal and Plant Health Inspection Service is not preparing an environmental impact statement concerning the construction of a new greenhouse at the Agency's Biological Control Satellite Facility located at 2543 South 11th Street, Niles, Michigan.

The environmental assessment of this proposed action indicates that the present facility at Niles has not caused significant adverse local, regional, or national impacts on the environment in the past. There are no adverse environmental impacts anticipated in the future for this proposed greenhouse. No significant controversy has been associated with this project. As a result of these findings, it has been determined that the preparation and review of an environmental impact statement is not needed for this action.

**FOR FURTHER INFORMATION CONTACT:** Copies of the environmental assessment are available upon request from Mr. Frank M. Kotulak, Head, Energy and Environmental Staff, Administrative Services Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301-436-8344).

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant."

The Animal and Plant Health Inspection Service is responsible for controlling both diseases and pests of plants and animals. One major activity of this Agency is controlling insect and other pests which are harmful to animals and agricultural crops. Up to now the main methods of controlling these pests have been by use of chemical pesticides.

The demonstrated past and present successes of biocontrol projects have been shown to be a more economically and environmentally prudent alternative to chemical control of agriculturally harmful insect pests. The proposed greenhouse will be used to augment the Agency's biocontrol projects. The greenhouse will be especially designed and engineered to meet the specific

growing requirements of biological agents used to control insect pests.

The present Biological Control Satellite Facility at Niles is using all available space to rear insects (hosts and biological control agents) as part of the Agency's biological control program. The rapidly expanding biological control program against alfalfa weevil (*Hypera postica*) and other crop insect pests necessitates the need to expand the facility at Niles by the construction of the proposed greenhouse. The greenhouse would be used to grow susceptible crops (e.g. alfalfa) to feed host insects (e.g. alfalfa weevil), which in turn are used to rear biological control agents such as other insects which are parasitic to the host insect. The greenhouse facility will have three segregated areas for rearing up to three different biological agents in confinement in order to avoid cross contamination. The greenhouse facility will augment this growing and important program with a facility specifically designed for the purpose and incorporating updated technology. No administrative action will be taken until 15 days after date of this publication (February 11, 1981).

Done at Washington, D.C., this 13th day of January 1981.

James O. Lee, Jr.,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 81-2868 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-34-M

#### Agricultural Stabilization and Conservation Service

##### Feed Grain Donations for Devils Lake Sioux Tribe of Fort Totten Reservation and the Chippewa Tribe of Turtle Mountain Reservation in North Dakota

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Devils Lake Sioux Tribe of the Fort Totten Reservation and the Chippewa Tribe of the Turtle Mountain Reservation in North Dakota has been materially increased and become acute because of severe and prolonged drought substantially reducing range forage and hay production, thereby creating a

serious shortage of feed and causing increased economic distress. These reservations are designated for Indian use and are utilized by members of the Devils Lake Sioux and Turtle Mountain Chippewa Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribes will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare these reservations and the grazing lands of these tribes to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of 2—Feed Grain Donations for the Devils Lake Sioux Tribe of the Fort Totten Reservation and the Chippewa Tribe of the Turtle Mountain Reservation in North Dakota. the tribes utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1981, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on January 15, 1981.

Weldon B. Denny,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 81-2995 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-05-M

### Farmers Home Administration

#### Moratorium on Transfers and Assumptions of Certain Section 502 Rural Housing Loans

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** Effective after close of business January 30, 1981, no assumptions of Section 502 Rural Housing loans on new or same rates and terms will be approved for eligible low- or moderate-income applicants. This suspension will remain in effect until May 1, 1981. Assumptions may be approved for above-moderate income and ineligible applicants. This action is needed to enable the FmHA Finance Office to process the backlog of assumptions on hand. Catalog of Federal Domestic Assistance Program Number 10.410—Low to Moderate Income

Housing Loans (Rural Housing Loans—Section 502—Insured). This instruction does not directly affect any FmHA programs or projects which are subject to A-95 clearinghouse review.

**EFFECTIVE DATE:** Effective after close of business January 30, 1981.

**FOR FURTHER INFORMATION:**

Mr. Wesley Harris, Director, Servicing and Property Management Division, Single Family Housing—202-447-3766.

Dated: January 16, 1981.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 81-2994 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-07-M

### Fiscal Year 1981 Allocation

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** The Farmers Home Administration is publishing a notice concerning the amounts and methods of determining the allocation, by State and program, of appropriated funds for Fiscal Year 1981.

**SUPPLEMENTARY INFORMATION:** The Farmers Home Administration is publishing its "Administrative Notice" regarding "Fiscal Year 1981 Allocations" as a part of its ongoing attempt to keep the public informed of its actions. This notice provides the amount of funds which the Agency has available for farm and rural development in various programs and outlines the methods used in determining how the funds are to be allocated. The Agency is attempting to support, within its limited resources, local development efforts and provide the residents of small towns and rural areas an equitable share of the public and private resources. The Farmers Home Administration normally makes minor changes to this notice in the course of the year to maximize the use of its resources. Any amendments to the funding levels during the fiscal year may be obtained from any FmHA State Office. The funds available and the formula used for their distribution within the five major program areas of Community Programs, Business and Industrial Program, Housing Programs, Farmer Programs, and Biomass Energy Program are as prescribed in the following Administrative Notice No. 488(1940) dated January 9, 1981.

*C.F.D.A. No. and Program Title*

- 10.404—Emergency Loans
- 10.405—Farm Labor Housing Loans and Grants
- 10.406—Farm Operating Loans

- 10.407—Farm Ownership Loans
- 10.408—Grazing Association Loans
- 10.409—Irrigation, Drainage, and Other Soil and Water Conservation Loans
- 10.410—Low to Moderate Income Housing Loans (Rural Housing Loans—Section 502—Insured)
- 10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
- 10.413—Recreation Facility Loans
- 10.414—Resource Conservation and Development Loans
- 10.415—Rural Rental Housing Loans
- 10.416—Soil and Water Loans (SW Loans)
- 10.417—Very Low-Income Housing Repair Loans and Grants
- 10.418—Water and Waste Disposal Systems For Rural Communities
- 10.419—Watershed Protection and Flood Prevention Loans
- 10.420—Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
- 10.421—Indian Tribes and Tribal Corporation Loans
- 10.422—Business and Industrial Loans
- 10.423—Community Facilities Loans
- 10.424—Industrial Development Grants
- 10.426—Area Development Assistance Planning Grants (Section 111)
- 10.427—Rural Rental Assistance Payments
- 10.428—Economic Emergency Loans
- 10.429—Above Moderate Income Housing Loans (Guaranteed Rural Housing Loans)
- 10.431—Technical and Supervisory Assistance Grants
- 10.432—Biomass Energy and Alcohol Fuels Loans and Loan Guarantees

The programs and projects which are affected by this Notice are subject to state and local clearinghouse review in the manner delineated in FmHA Instruction 1901-H.

The state allocations for low to moderate income housing loans (Section 502) are based on the same formula as the one used in FY 1980. This formula is presently being reviewed for possible revision.

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been determined to be exempt from those requirements. James C. Anderson, Acting Director, Budget Division made this determination because this action does not reflect a change in policy and involves only agency management in the administrative allocation of funds.

Dated: January 19, 1981.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FmHA AN No. 488(1940)]

January 9, 1981.

Subject: Fiscal Year 1981 Allocation.  
To: All State Directors, FmHA.

The Appropriation Act for fiscal year 1981 has been approved. Your programs will be

monitored to determine that full consideration is given to the equal opportunity objectives of this Agency. FmHA targeting policies are to support local development efforts and provide to the residents of small towns and rural areas an equitable share of public and private resources.

The allocation formulas have been designed to target funds to States in relation to rural population, households in poverty, per capita income, etc. Every effort should be made to target funds to distressed communities and rural areas which have significant populations of poor and disadvantaged persons in accordance with regulations and this AN.

Funds are allocated to States in accordance with the following attachments.

Attachment A—Community Programs

Attachment B—Business and Industrial Loan Program

Attachment C—Single Family Housing Programs

Attachment D—Multiple Family Housing Programs

Attachment E—Farmer Programs

Attachment F—Biomass Energy

Gordon Cavanaugh,

Administrator.

Expiration Date: September 30, 1981.

FmHA AN No. — (1940) Attachment A

#### Community Programs

The Community Programs allocation formula has been designed to target funds to States in relation to rural population and households in poverty.

State Directors will make every effort to target funds to those communities with the greatest financial need having a large portion of their population with low incomes. Due consideration will be given to State development strategies and plans of substate planning districts in selecting projects for funding.

Attachment A-1 shows allocations of loan and grant authority for fiscal year 1981 for community programs. In order that funds may be obligated as they become available, you should plan to have obligating documents for all projects in the Finance Office as soon as orderly work schedules will permit. You may submit obligating documents for community facility and water and waste disposal projects in excess of your allocation. However, requests above your allocation will be honored only if they can be absorbed within the total amount of funds available later in the fiscal year. In accordance with our targeting objectives, requests for obligations in excess of your allocation should contain the items in paragraph IV of Attachment A of this AN and be submitted to the National Office.

If the allocation shown on Attachment A-1 exceeds the demand in your State, please advise the National Office immediately so that any funds not needed can be transferred to another State with an immediate need. The formula for distribution of funds has not changed for fiscal year 1981. The National Office reserve for all funds is approximately 10 percent for both loan and grant funds. In addition, the National Office has retained

control of \$25 million in CF loan funds for Community Health Center (CHC) projects approved under the Memorandum of Understanding between HHS and USDA. These CHC funds will be allocated on a case by case basis upon request by the State Director. For additional information on the method of allocation see Attachment A-2.

#### 1981 Budget

The budget for fiscal year 1981 is based on the following levels of authority:

Water and Waste Disposal Loans—\$750 million

Community Facility Loans—\$260 million

Water and Waste Disposal Development Grants—\$200 million

Industrial Development Grants—\$5 million

Watershed Loans—\$25.8 million

Flood Prevention Loans—\$0.4 million

Resource Conservation and Development Loans—\$4 million

I. *Water and Waste Disposal Loans and Development Grants, Community Facility Loans and Industrial Development Grants.*

The allocations are shown in Attachment A-1.

II. *Watershed Protection Loans (PL 566), Resource Conservation and Development Loans.* State allocations will not be made. Obligating documents may be submitted to the Finance Office when the loan is approved. RC&D funds will be used in preference to association funds in designated RC&D areas for loan purposes included in FmHA Instruction 1942-I.

III. *Flood Prevention Loans (PL 534).* States that are authorized to process PL 534, Flood Prevention Loans, may submit obligating documents to the Finance Office when the loan is approved.

IV. *Requests for National Office Controlled Funds.* Water and Waste Disposal Loan and Grant, Community Facility Loan, and Industrial Development Grant Funds under control of the National Office will be allocated to the States for projects which best meet the agency's priorities. Requests for these funds may be made by forwarding a completed copy of Attachment A to FMHA AN No. 455 (1940) dated October 14, 1980, to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan and/or grant requested and the docket is developed to the point that the letter of conditions has been or can be issued and the loan and/or grant can be approved upon notification that funds are available. Loan funds from the set aside for health centers under the USDA/HHS Memorandum of Understanding may be requested by telephone after approval of the project by the National Office of HHS.

V. *Pooling of Unobligated Funds.* Tentative Plans for pooling are as follows:

1. On March 31, 1981, all funds from the first half of your fiscal year 1981 allocation that are not obligated will be pooled. You should plan to have obligating documents in the Finance Office for at least one-half (you may send more) of your fiscal year 1981 allocation by March 31, 1981.

You will not lose fiscal year 1981 funds provided you have obligating documents in the Finance Office for at least one-half of

your annual allocation by the end of the second quarter. Pooled funds will revert to National Office control.

2. On August 7, 1981, all funds remaining unobligated on that date will be pooled. Pooled funds will revert to National Office control.

Allocations for the programs to which Attachment A pertains are on an annual basis; however, FmHA receives its apportionment of loan and grant funds quarterly for community programs. Therefore, funds will continue to be allotted to the Finance Office on a quarterly basis to continue total obligations. Obligations will be made in the order of requests. If States collectively request obligations greater than the amount apportioned for that quarter of the National allocations, there may not be sufficient funds to honor all obligating documents submitted in a particular quarter. In such cases, funds will be obligated when available, ordinarily soon after the start of the next quarter.

#### Community Programs—Allocations for Fiscal 1981

[In thousands]

State	Water and waste disposal		Community facility loans	Industrial development grants
	Loans	Grants		
Alabama	22,600	6,015	7,020	130
Alaska	1,110	310	360	25
Arizona	3,940	1,060	1,235	45
Arkansas	17,230	4,590	5,355	100
California	22,200	5,905	6,895	110
Colorado	5,700	1,530	1,780	50
Delaware	1,555	425	495	25
Maryland	7,805	2,085	2,435	55
Florida	20,895	5,560	6,490	100
Georgia	24,720	6,575	7,675	145
Hawaii	935	265	305	30
Guam	815	230	265	25
Pac. Trust Terr.	2,340	635	740	30
Am. Samoa	480	140	165	25
Idaho	3,735	1,005	1,170	45
Illinois	21,205	5,645	6,590	120
Indiana	16,875	4,495	5,245	110
Iowa	14,335	3,820	4,460	95
Kansas	9,535	2,545	2,970	75
Kentucky	23,525	6,260	7,305	135
Louisiana	20,420	5,435	6,345	120
Maine	5,695	1,525	1,780	96
Massachusetts	6,760	1,810	2,110	55
Connecticut	4,440	1,195	1,390	45
Rhode Island	955	270	310	25
Michigan	20,875	5,555	6,485	115
Minnesota	14,250	3,800	4,430	100
Mississippi	21,475	5,715	6,670	130
Missouri	20,740	5,520	6,445	110
Montana	3,660	985	1,150	45
Nebraska	7,215	1,930	2,250	60
New Jersey	9,295	1,685	1,985	45
New Mexico	4,310	1,160	1,350	55
New York	23,235	6,185	7,215	120
Virgin Islands	760	215	250	25
North Carolina	32,885	8,745	10,210	190
North Dakota	3,545	955	1,115	45
Ohio	23,135	6,155	7,185	187
Oklahoma	14,295	3,810	4,445	85
Oregon	7,465	1,995	2,330	60
Pennsylvania	32,315	8,590	10,025	175
Puerto Rico	24,925	6,630	7,740	155
South Carolina	18,210	4,850	5,660	250
South Dakota	4,570	1,225	1,430	50
Tennessee	23,620	6,285	7,335	140
Texas	39,040	10,380	12,110	190
Utah	2,210	600	700	35
Nevada	890	250	290	25
Vermont	2,970	805	935	40
New Hampshire	2,960	800	930	40
Virginia	19,435	5,175	6,040	125
Washington	8,975	2,395	2,795	60
West Virginia	14,350	3,820	4,460	95
Wisconsin	14,960	3,985	4,650	110
Wyoming	1,815	445	515	35

**Community Programs—Allocations for  
Fiscal 1981—Continued**

(In thousands)

State	Water and waste disposal		Communi-ty facility loans	Indus-trial devel-opment grants
	Loans	Grants		
Subtotal	674,980	179,975	210,000	4,713
Reserve	75,020	20,025	25,000	287
HHS Set Aside			25,000	
Grand Total	750,000	200,000	260,000	5,000

**FmHA AN No. — (1940) Attachment A-2**
**Explanation of Allocation**

Loan funds for community facilities and water and waste disposal facilities, funds for water and waste disposal development grants and industrial development grants have been allocated among the 50 States, Puerto Rico, Guam, American Samoa, Trust Territories of the Pacific and the Virgin Islands.

1. The Administrator has withheld in reserve a portion of the funds appropriated or authorized to allow for subsequent allocations or adjustments, emergencies and otherwise as he may deem appropriate.

2. For each appropriation or authorization, \$20,000 has been allocated to each State as a base.

3. The National Office has retained control of \$25 million in CF loan funds for projects approved under the Memorandum of Understanding between HHS and USDA.

4. The remainder has been allocated by formula.

a. The formula for allocating industrial development grants considers (1) each State's portion of the Nation's nonmetropolitan population outside cities of 25,000 or more, plus half of the population of cities more than 25,000 located outside metropolitan areas, and (2) the rural per capita income of the State as compared to the rural per capita income of the Nation. The two elements, rural population and per capita income, are weighted two to one respectively.

b. Grants for water and waste disposal and loans for water and waste disposal and community facilities have been allocated in accordance with a formula which considers each State's proportion of the U.S. population in open country and towns of less than 10,000 outside urban areas and the number of households in poverty in rural areas and cities located outside urban areas with populations of 2,500 to 10,000 persons. The two elements, rural population and households in poverty, were weighted one to two respectively.

**Factors Used in Allocating Funds—Community Programs**

State	Water and waste disposal loans and grants and community facility loans		Industrial development grants
Alabama	0.03351		0.0325
Alaska	.00162		.0019

**Factors Used in Allocating Funds—Community Programs—Continued**

State	Water and waste disposal loans and grants and community facility loans		Industrial development grants
Arizona	.00582		.0072
Arkansas	.02554		.0239
California	.03291		.0271
Colorado	.00843		.0083
Delaware	.00228		.0020
Maryland	.01155		.0095
Florida	.03098		.0236
Georgia	.03665		.0375
Hawaii	.00136		.0027
Guam	.00118		.0017
Pacific Trust Terr.	.00344		.0036
American Samoa	.00068		.0009
Idaho	.00551		.0075
Illinois	.03144		.0294
Indiana	.02501		.0257
Iowa	.02124		.0226
Kansas	.01412		.0166
Kentucky	.03488		.0345
Louisiana	.03027		.0295
Maine	.00842		.0104
Massachusetts	.01000		.0098
Connecticut	.00656		.0067
Rhode Island	.00139		.0012
Michigan	.03095		.0283
Minnesota	.02112		.0242
Mississippi	.03184		.0334
Missouri	.03075		.0272
Montana	.00540		.0069
Nebraska	.01068		.0122
New Jersey	.00931		.0077
New Mexico	.00637		.0085
New York	.03445		.0300
Virgin Islands	.00110		.0009
North Carolina	.04877		.0506
North Dakota	.00523		.0074
Ohio	.03430		.0074
Oklahoma	.02118		.0192
Oregon	.01105		.0113
Pennsylvania	.04792		.0456
Puerto Rico	.03696		.0396
South Carolina	.02699		.0288
South Dakota	.00675		.0084
Tennessee	.03502		.0348
Texas	.05790		.0499
Utah	.00325		.0043
Nevada	.00129		.0012
Vermont	.00438		.0055
New Hampshire	.00436		.0051
Virginia	.02881		.0305
Washington	.01329		.0123
West Virginia	.02125		.0220
Wisconsin	.02217		.0265
Wyoming	.00237		.0038
Total	1.00000		1.0000

**FmHA AN No. — (1940) Attachment A-3**
**Section 111 Area Development Assistance Planning Grants**

\$5 million has been appropriated for Section 111 in FY 81. The Rural Development Policy Act of 1980 recently was passed which expands the authorities under the Section 111 program and increases the funding authorization to \$15 million. However, new regulations will not be published until the transition of the new administration is completed.

Initially, approval of grants will be made in the National Office but the proposed decentralization is expected to take place during the second quarter of FY 81.

**FmHA AN No. — (1940) Attachment B**
**Business and Industrial Loan Program**

The 1981 Fiscal Year Budget for Business and Industrial Loan Program is \$741 million,

which has been allocated as shown on pages 1 and 2 of Attachment B-1. Loans for Guam, American Samoa and Trust Territories of the Pacific will be allocated as needed from the National Office Reserve.

There is no authorization this fiscal year for insured loans.

At the beginning of the 1981 Fiscal Year, we had an unusual situation develop where a number of requests were pending to obligate B&I and Energy-guaranteed loans. Since we were operating under a continuous resolution, this required us to utilize the National Office Reserve for funding these projects. Adjustments to the regular allocations were made in order to fund the projects during the first quarter rather than hold-up obligations until the next quarterly allotment. Additional adjustments to the allocations were made after taking into consideration factors such as the State's original allocations, distributions from the reserve and funding for energy projects.

Funding has been allocated in the following manner:

1. The Administrator, FmHA, \$267,666,700 guaranteed authority held in reserve to allow for subsequent allocations, emergencies, funding of backlog of Energy loan applications, and for other uses as the Administrator may deem appropriate.

2. For each appropriation or authorization, \$20,000 has been allocated to each State as a base.

3. The remainder has been allocated by formula:

a. Population (weight 66.7%): Each State's population of the Nation's nonmetropolitan population outside urbanized areas, plus half of the population of cities more than 25,000 located outside metropolitan areas. (Data source: 1970 Census of Population—General Population and Characteristic Report)

b. Rural Income (weight 33.3%): Each State's population of rural per capita income which is below the National rural per capita income. (Data source: 1970 Census of Population—General Social and Economic Characteristics Table 68 and 105; 1970 Census of Population—General Population and Characteristic Report Table 20)

4. The factors are applied to the remaining fund and the result is then rounded to the nearest \$5,000. Since this year's appropriation is considerably less than last year's, the State Director should make every effort to leverage the allocations by offering lower percentages of guarantee to the lender. In addition, it is expected that every effort will be made to meet established target goals for fiscal year 1981. Additional guidance will be provided to other memorandums on goals and policies for funding B&I projects.

Our tentative plans for pooling are: On March 31, 1981, all funds from the first half of your Fiscal Year 1981 allocations that are not obligated will be pooled. You should plan to have obligating documents in the Finance Office for at least one-half (you may send more) of your fiscal year 1981 allocation by March 31, 1981. Pooled funds will revert to National Office control.

You should keep in mind that the allocations are on an annual basis; however, we have apportioned the guarantee authority for the first quarter at \$320 million; the

second quarter at \$141 million; the third quarter at \$140 million, and the fourth quarter at \$140 million. If States collectively obligate more than the quarterly allotment, it follows that there may not be sufficient guarantee authority to honor all obligating documents in that quarter. In this instance, the Finance Office holds the obligating documents until the start of the next quarter.

On August 7, 1981, all funds remaining unobligated on that date will be pooled. Pooled funds will revert to National Office control.

#### FmHA AN No. — (1940) Attachment B-1

##### Business and Industrial Loan Allocations for Fiscal Year 1981

State	Initial allocations	Final adjusted net allocations
Alabama	\$16,794,000	\$15,939,000
Alaska	991,000	991,000
Arizona	3,749,000	3,749,000
Arkansas	12,326,000	10,326,000
California	14,020,000	12,020,000
Colorado	4,314,000	4,314,000
Delaware	1,027,000	1,027,000
Maryland	4,879,000	4,879,000
Florida	12,326,000	12,326,000
Georgia	19,310,000	16,410,000
Hawaii	1,387,000	1,387,000
Guam		
American Samoa		
Commonwealth of the Northern Mariana Islands		
Trust Territories of the Pacific Islands		
Idaho	3,852,000	3,852,000
Illinois	15,099,000	15,099,000
Indiana	13,353,000	13,353,000
Iowa	11,812,000	11,812,000
Kansas	8,731,000	8,731,000
Kentucky	17,975,000	15,975,000
Louisiana	15,202,000	13,640,500
Maine	5,649,000	5,649,000
Massachusetts	5,084,000	5,084,000
Connecticut	3,441,000	3,441,000
Rhode Island	616,000	616,000
Michigan	14,380,000	14,380,000
Minnesota	12,326,000	12,326,000
Mississippi	17,461,000	15,301,000
Missouri	13,866,000	13,866,000
Montana	3,595,000	3,595,000
Nebraska	6,163,000	6,163,000
New Jersey	3,955,000	3,955,000
New Mexico	4,879,000	4,879,000
New York	15,407,000	13,607,000
Virgin Islands	462,000	462,000
North Carolina	26,192,000	21,304,600
North Dakota	3,800,000	3,800,000
Ohio	19,002,000	13,297,500
Oklahoma	9,758,000	9,758,000
Oregon	5,649,000	5,649,000
Pennsylvania	23,624,000	19,824,000
Puerto Rico	20,491,000	20,491,000
South Carolina	14,893,000	11,518,000
South Dakota	4,314,000	4,314,000
Tennessee	19,975,000	16,975,000
Texas	25,678,000	22,678,000
Utah	2,208,000	2,208,000
Nevada	616,000	616,000
Vermont	2,825,000	2,154,500
New Hampshire	2,671,000	2,671,000
Virginia	15,921,000	15,921,000
Washington	6,163,000	6,163,000
West Virginia	11,298,000	11,298,000
Wisconsin	13,861,000	11,786,200
Wyoming	1,952,000	1,952,000
National Reserve	225,878,000	267,866,700
Total	741,000,000	741,000,000

#### FmHA AN No. — (1940) Attachment C

##### Single Family Housing Programs—FY 1981

Rural housing loan and grant making will be continued for fiscal year 1981 in strict

compliance with applicable procedures and the following:

#### I. General

A. The interest rate for all rural housing loan programs for FY 1981 will be as shown in Exhibit B of FmHA Instruction 440.1.

B. State Directors are to carry out balanced loanmaking and servicing programs. In some States more emphasis *must* be placed on loanservicing of single family housing accounts.

C. Dockets should not be processed for any program unless funds will likely be available for the loan or grant. The National Office will maintain little reserve, therefore, requests for additional funds will be considered only on an extreme hardship basis. To assure that funds are utilized, all funds available but not obligated will be pooled as of COB August 7, 1981. Dockets received by the Finance Office after COB August 7, 1981, may be considered for funding from pooled funds. One-half of unobligated 504 loan funds will be pooled on April 3, 1981.

D. The cumulative amounts to be submitted in each category for obligation for all single family programs will not exceed 25 percent the first quarter, 50 percent the second quarter, 75 percent the third quarter and 100 percent the fourth quarter, of the State's annual allocation. State Directors will take actions as necessary to insure these allocations are not exceeded.

E. To the extent practicable, 30 percent of RH funds must be used to benefit families of very low income.

#### II. Section 502 Insured RH Loans

A. To facilitate targeting and to plan the use of funds to the extent possible to help those most in need, State Directors will allocate Section 502 funds to County Office areas on a need basis. However, prior to the date RH funds were allocated within the States on a need basis, FmHA, in some areas, had approved conditional commitments and/or subdivisions with large numbers of lots that likely would have been financed with Section 502 RH funds. Many developers, because of a shortage of funds and high interest rates through other sources, are unable to build or sell the property and are experiencing financial difficulty because of the large investment required to buy and develop the property to FmHA standards. In those areas where the approved subdivisions were developed because of FmHA encouragement, a 4-year transition adjustment will be followed in order to make an orderly de-emphasis of the housing program from the areas with less need. Three years now remain in this transition period. In all other areas, priority will be given to providing assistance to serve areas having the greatest housing need and to reach lower-income applicants.

B. Conditional commitments must be honored within the funds available for each State and will not be issued unless the county office can reasonably expect to approve *and fund* loans for those conditional commitments within 3 months after the dwellings are completed. New commitments must be restricted in areas that will receive a low allocation level.

C. Action should be taken to ensure that funds will be available for loans for hardship cases and to those participating in self-help projects to prevent delays in the construction of homes. Priority processing will be provided for self-help housing applications.

D. State Directors may not switch funds between subsidized and nonsubsidized categories. Also, State Directors serving more than one State may not shift allocations between States within their jurisdiction.

E. Weatherization loans made by public utilities will be obligated from the National Office reserve established for this purpose and not from the State's allocation.

#### III. Section 502 Guaranteed Above Moderate RH Loans

A 1981 appropriation of \$25 Million is available for guaranteed above moderate loans. All applicants who appear to be eligible for a guaranteed loan should be referred to lenders willing to participate in the program. Because of the limited funds available, every effort will be made to continue with lenders active in the program. Loan guarantees may be made in accordance with FmHA Instruction 1980-D, but funds will not be allocated to the States at this time. You will be notified if the dockets submitted for obligation exceed the amount available for each quarter.

#### IV. Section 504 RH Loans and Grants

Overall use of Section 504 loan and grant funds increased significantly last fiscal year. However, some States are still not showing enough activity in this program area. FmHA offices should especially strive to cooperate with organizations operating federally financed rehabilitation projects.

#### FmHA AN No. — (1940) Attachment C-1

##### Allocation of RH Program Funds—FY 1981

The following criteria identifies essential elements that are considered necessary to allocate rural housing funds to various States on the basis of housing needs.

Factor A: State's percentage of national rural population

Factor B: State's percentage of national rural population living in dwelling which lack complete plumbing and/or are crowded (substandard)

Factor C: State's percentage of national rural population below poverty level.

Factor D: Cost indicator (average cost of new dwelling and site factor by population)

Factor E: State's percentage of national rural population 62 years of age and over

Basic Formula Allocation—Section 502 rural housing loans.

$$(A \times .30 + B \times .30 + C \times .30 + D \times .10) \times \text{funds available} = \text{State allocation.}$$

Section 504 loans:

$$(B \times .50 + C \times .50) \times \text{funds available} = \text{State allocation.}$$

Section 504 grants:

$$(B \times .33 + C \times .33 + E \times .33) \times \text{funds available} = \text{State allocation.}$$

Transition adjustment is necessary for the 502 insured loan program to temper large differences between previous program levels and basic formula allocation. This is the last year of a 4-year transition period to allow

States to adjust programs. The transition is complete for 504 funds.

The first quarter allocation is 25 percent of last year's allocation for 502 and 504 loans and 20 percent for 504 grants. The allocation for the remainder of the year is based on the same formula as last year. The formula is presently being reviewed for possible revision.

Funds available for the second third, and fourth quarters of the year are adjusted in accordance with AN 444 (1951) dated August 28, 1980, by an amount equal to the sum of the percentage each state is above the National average in both total and over three months delinquencies.

Transition for insured 502 loans =  $b \pm \frac{1}{4} (a - b)$

Where:

a = FY 78 funds obligated factored by FY 81 funds available.

b = Basic formula allocation.

Minimum allocations have been established for each loan and grant category.

FmHA AN No. — (1940) Attachment C-2

### Section 502 RH Loan Authorizations (Insured) for Fiscal Year 1981

[In millions]

State	Delinquent percentage adjustment	Subsidized low income	Other	Total
Alabama	0.0	\$62.6	\$24.0	\$86.6
Alaska	-4.9	9.1	4.2	13.3
Arizona	-13.0	18.3	5.9	24.2
Arkansas	-2.7	55.9	18.7	74.6
California	+2.6	66.9	21.8	98.7
Colorado	+0.6	21.5	8.3	29.8
Connecticut	+1.9	14.2	4.8	19.0
Delaware	-26.3	6.0	3.0	9.0
Florida	+8.9	62.4	18.1	89.5
Georgia	+4.6	82.2	31.6	113.8
Hawaii and Am. Samoa	+6.9	9.8	3.6	13.4
Idaho	+1.6	23.2	6.6	29.8
Illinois	-2.5	58.7	20.5	79.2
Indiana	-8.7	54.6	17.9	72.5
Iowa	+6.6	48.5	19.9	68.4
Kansas	+4.1	29.9	14.5	44.4
Kentucky	+4.5	78.5	27.7	106.2
Louisiana	+2.4	73.9	23.6	97.5
Maine	+2.8	33.3	7.9	41.2
Maryland	-5.2	24.6	9.0	33.6
Massachusetts	+3.0	23.7	6.1	29.8
Michigan	-5.5	61.6	24.5	86.1
Minnesota	+7.9	47.9	18.9	66.6
Mississippi	-0.4	74.3	24.7	99.0
Missouri	+4.4	63.7	21.7	85.4
Montana	+6.5	16.1	5.5	21.6
Nebraska	+0.9	23.5	7.8	31.3
Nevada	+2.9	6.0	3.0	9.0
New Hampshire	+8.0	14.1	6.4	20.5
New Jersey	-7.6	25.6	7.7	33.3
New Mexico	-5.2	18.2	6.6	24.8
New York	-6.7	67.9	23.1	91.0
North Carolina	+10.3	125.7	48.5	174.2
North Dakota	+10.5	17.9	5.6	23.5
Ohio	+1.4	63.1	22.9	86.0
Oklahoma	+1.7	47.7	16.1	63.8
Oregon	+1.0	36.5	10.2	46.7
Pennsylvania	-3.3	71.1	28.1	99.2
Rhode Island	+5.6	6.0	3.0	9.0
South Carolina	+3.2	59.4	22.3	81.7
South Dakota	+0.4	19.9	6.0	25.9
Tennessee	-0.3	70.1	28.8	98.9
Texas	+1.6	94.4	34.8	129.2
Utah	-0.8	16.1	4.5	20.6
Vermont	+6.7	18.7	4.5	23.2
Virginia	-13.4	57.0	19.2	76.2
Washington	+2.6	25.6	9.3	34.9
West Virginia	+3.1	39.5	14.8	54.3
Wisconsin	-1.2	50.7	16.3	67.0
Wyoming	+6.7	7.4	3.2	10.6

### Section 502 RH Loan Authorizations (Insured) for Fiscal Year 1981—Continued

[In millions]

State	Delinquent percentage adjustment	Subsidized low income	Other	Total
Guam and Trust Terr.	+6.1	15.6	5.3	20.9
Puerto Rico	-20.0	94.1	22.3	116.4
Virgin Islands	-19.2	6.0	3.0	9.0
Subtotal		2,219.2	778.3	2,995.5
HUD-USDA Demo		10.0	0	10.0
Reserve		70.8	48.7	119.5
Total		2,300.0	825.0	3,125.0

FmHA AN No. — (1940) Attachment C-3

### Section 504 Loan & 504 RH Grant Authorizations for fiscal year 1981

[In thousands]

State	504 RH loans	504 RH grants
Alabama	\$870	\$775
Alaska	100	100
Arizona	205	205
Arkansas	675	625
California	590	725
Colorado	150	200
Connecticut	100	140
Delaware	100	100
Florida	595	725
Georgia	1,075	1,015
Hawaii and Am. Samoa	155	100
Idaho	115	130
Illinois	455	685
Indiana	430	550
Iowa	310	435
Kansas	190	290
Kentucky	1,025	925
Louisiana	820	750
Maine	275	265
Maryland	210	315
Massachusetts	115	205
Michigan	545	670
Minnesota	395	500
Mississippi	1,050	885
Missouri	635	745
Montana	125	135
Nebraska	150	225
Nevada	100	100
New Hampshire	100	115
New Jersey	140	220
New Mexico	275	180
New York	435	675
North Carolina	1,235	1,195
North Dakota	120	155
Ohio	665	795
Oklahoma	360	450
Oregon	205	260
Pennsylvania	790	1,025
Rhode Island	100	100
South Carolina	730	680
South Dakota	140	185
Tennessee	755	770
Texas	1,280	1,350
Utah	100	100
Vermont	100	115
Virginia	625	660
Washington	185	250
West Virginia	475	480
Wisconsin	400	535
Wyoming	100	100
Guam and Trust Terr.	370	175
Puerto Rico	1,665	1,265
Virgin Islands	100	100
Subtotal	23,010	24,435
HUD-USDA Demo	790	337
Reserve	210	228
Total	24,000	25,000

FmHA AN No. — (1940) Attachment D

### Multiple Family Housing Programs

This Attachment to this An supercedes FmHA Anm No. 461 (1940) dated October 28, 1980. Rural housing loan and grant making will be continued for the fiscal year beginning October 1, 1980, in strict compliance with the following:

#### I. General

A. The interest rate for all rural housing loan programs for FY 1981 will be as shown in Exhibit B of FmHA Instruction 440.1.

B. Funds are allocated to each State on the basis of housing needs. The criteria considered and the formulas by which allocations were determined are outlined in Attachment D-1 to this AN. Formulas for allocations are being reviewed for improvement however, no changes have been made for FY 81. Funds available for each program are indicated in the following paragraphs and attachments.

C. Priority will be given to providing assistance to serve Districts having the greatest housing needs and to reach lower-income tenants and applicants. Each State Director was provided with information by county on population, substandard housing, and income. This information was intended to assist in identifying those Districts where increased emphasis must be placed on assisting lower-income families.

D. State Directors are to carry out balanced loan making and servicing programs. In some States more emphasis should be placed on borrower records and accounting procedures for RRH and LH loans especially where rent increases, interest credit or rental assistance is involved.

E. State Directors may not switch funds between subsidized and non-subsidized categories. Also, State Directors serving more than one State may not shift allocations between States within their jurisdiction.

F. State Directors are responsible for administering the Multiple Family Housing programs within their State in strict compliance with applicable procedures and this AN. Dockets should not be processed for any program unless funds will likely be available for the loan or grant. The National Office will maintain a small reserve of funds for the Section 515 program; therefore the Administrator will consider requests for additional funds only on a hardship case basis. To assure that funds are utilized, all funds available but not obligated during FY 1981 will be pooled as of COB August 7, 1981.

G. State Directors will not obligate in excess of 50 percent of their funds for Section 515 as shown in Attachment D-2 prior to March 31, 1981, without prior written approval of the National Office.

H. The Section 523 and 524 RHS programs should be used to provide subdivisions so that housing sites can be developed at lower cost for use in the Section 502 RH loan program or for self-help housing programs. With the proper use of this program a portion of the problem of acquiring housing sites could be eliminated in many areas of the U.S.

I. The Section 525 Technical Assistance program can be used to counsel with families that are having problems with their present



housing loans and can be a tool to reduce delinquencies and foreclosures in the areas that have large incidents of unemployment and poverty.

J. The Section 514 and 516 Labor Housing loans and grants programs should be used in those areas of intensified agricultural production to meet the domestic farm labor housing needs. During FY 1981 each State Director should emphasize *seasonal farm labor housing* (projects planned for less than 6 months occupancy) and ask the District Directors to contact those public bodies and nonprofit groups that can utilize this type of housing in their areas.

#### II. Section 515 RRH Loans

A. Attachment D-2 of this AN indicates the annual allocation of subsidized and nonsubsidized RRH funds for fiscal year 1981.

B. *Targeting Policy.* 1. FmHA Instruction 1944-E was published on October 27, 1980. It provides authority to target RRH funds to areas having the greatest need through a priority system. However, you are authorized to honor only firm commitments on a first-come, first-served basis. A firm commitment is where an AD 822 has been issued with blocks 1A and 2A checked. After honoring these commitments the State must prioritize the other applications on hand and fund those projects having the greatest number of points. If there is more than one application in a funding area and the applications are tied in the number of points, priority will first go to public and nonprofit organizations, and then the application with the earliest submission date will be selected. As outlined in FmHA Instruction 1944-E, the selection process should occur on or around October 1 (or as soon as possible after the annual allocation is provided) and April 1.

You may authorize the processing of more applications than you may have funds so that a pipeline can be established; however, you may not exceed 150 percent of the allocation available for that particular evaluation period. Applicants may file preapplications at any time during the year, with the understanding they will be evaluated and processed under the priority system as noted above.

2. Honoring commitments on previously issued AD 822 will be for FY 1981 only. For FY 1982 all RRH funding will be on the priority system.

3. State Directors should be certain all steps are taken to ensure that all interested parties in the State are aware of the priority criteria and have equal opportunity to compete for these funds. The use of newspaper notices, letters to State associations, meetings with State groups and other methods should be used to fully inform the public of the priority criteria.

C. The objective of the RRH program is to provide rental housing to persons with low and moderate incomes and for senior citizens. In recent years, an extremely large percentage of RRH projects have been developed to meet the housing needs of senior citizens and very small families. Most are comprised of one- and two-bedroom units. In many areas there is also a need for family-type units which is not being met. In the past very little effort has been made to serve the

housing needs of large families although market data indicated such a need. Therefore, as outlined in FmHA Instruction 1944-E, a priority will be extended to projects containing units for large families, particularly those serving very low income people. *State Directors shall see that this policy is implemented.*

D. Any RRH project that will receive interest credit or rental assistance from FmHA, shall be identified as a subsidized loan. This includes single track and dual track loans involving Section 8 deep subsidy when an interest reduction is given in accordance with Exhibit H to FmHA Instruction 1944-E. You should be sure that Form FmHA 444-5, "Multiple Housing Fund Analysis," is properly completed to assure correct identification of funds by type and, until the form is revised, indicate the approval date on the bottom of the form. Also, show the following at the bottom of the form for projects involving Section 8:

Number of Section 8 Units \_\_\_\_\_  
From HUD Set-Aside For FY \_\_\_\_\_  
Single Track \_\_\_\_\_  
Dual Track \_\_\_\_\_

#### III. Units for the HUD Section 8 Set-Aside Program

A. We anticipate receiving a set-aside from HUD of 10,000 Section 8 units for use in FY 1981 under the single track processing. Attachment D-3 of this AN is a *tentative* distribution of Section 8 units by Region and State. As of the date of this AN, we have not received written approval of the distribution from HUD; therefore, it is subject to change.

B. The National Office is continuing to negotiate with HUD to obtain more flexibility in the type of units and location of projects obtaining Section 8 assistance. You should, to the extent possible, assist HUD in meeting the objective of utilizing the Section 8 program to provide more family units.

#### IV. Rental Assistance (RA) Units for RRH and LH Programs

A. Requests for the obligation of rental assistance units for 5-year contracts which were submitted to the Finance Office prior to October 1, 1980, but not obligated from each State's RA allocation or from the pool of RA units were funded from the National Office FY 1981 allocation. Requests for 20-year units which were in the Finance Office were funded from each State's FY 1981 20-year RA allocation.

B. FmHA has been allocated 17,655 units for rental assistance for FY 1981. Attachment D-4 is the distribution of RA units for 5-year and 20-year units by State for FY 1981. The distribution of RA units has been made in accordance with the same formula used in allocating Section 515 funds to the States. A National Office reserve of 6,603 5-year and 500 20-year RA units have been maintained. States that have obligated all of their 20-year units may request additional units from the National reserves only on a hardship case basis. Requests for additional 5-year RA units will be considered on a first-come, first-served basis when the State has committed all of its allocation and the requests are to serve existing units or for a hardship case.

C. A National Office reserve of 1,000 5-year RA units has been maintained for farm labor

housing projects. Units to be allocated to LH projects are to be requested from the National Office reserve. If 20-year units are desired, the State must provide them from their respective allocation for this type of unit.

D. State Directors may neither switch RA units between States under their jurisdiction nor switch 5- and 20-year RA units without the written consent of the National Office. In addition, State Directors must give first priority on the use of 5-year RA units to existing projects. This need must be determined before committing the State's units so that this need can be met within the State's RA allocation.

#### V. Section 514 Labor Housing Loans

A total of \$25.6 million is available. Each State Director should use the labor housing authority to its fullest extent. Funds will not be allocated to individual States at this time, and loans within your approval authority may be submitted to the Finance Office for funding.

#### VI. Section 516 LH Grants

A. Grant making activities may be initiated in accordance with revised FmHA Instruction 1944-D. A total of \$28.6 million is available for LH grants nationally. State Directors should examine the need for this type of assistance within their States and utilize these funds to complement the farm areas with adequate housing for domestic farm labor. Greater emphasis should be placed on areas with seasonal labor housing needs in FY 81. County Supervisors and District Directors should be advised of this increased emphasis and requested to promote this type of assistance by contacting applicants and prospective applicants.

B. Labor housing grant funds will be divided up this FY 81 into two separate funds. These will be:

- (1) Projects planned for more than 6 months occupancy—\$18,600,000.
- (2) Projects planned for less than 6 months occupancy—\$10,000,000.

C. The National Office has authorized 50 percent of the funds from requests submitted through November 1, 1980, and will authorize the remaining grant funds from requests submitted through March 1, 1981.

D. State Directors should review each application and make a preliminary determination as to eligibility. Priority for funding shall be determined by each State Director in accordance with § 1944.164(b). Attachment D-5 of this AN should be completed for each loan or grant application determined to be eligible to assist the National Office in determining the priority for funding. The completed exhibits should be submitted to the National Office along with a list showing the order in which funding is recommended prior to authorization dates indicated above. In addition, we will require those states with multiply LH grant applicants to indicate what priorities were established for evaluating the applications and the justification for your final ranking of the applications recommended. Applications meeting all applicable eligibility requirements contained in FmHA Instruction 1944-D should be submitted to assure consideration for

FY 81 funding. In addition, State Directors must indicate the ability of developing and obligating any grant funds awarded by the National Office within 120 days after receiving authority to develop the grant. Requests received after November 1, 1980, will be considered for the March 1, 1981 funding.

E. To avoid oversubscription by any one State, the National Office will reserve the right to delay authorization from a State that exceeds 10 percent of any of the two funds established in part C of this section prior to March 1, 1981.

F. Funds not obligated or set-aside in either of the two funds after considering the March 1, 1981, requests will be combined into one fund. All pending and new grant requests will be evaluated against targeting objectives and authorization until funds are exhausted.

G. When a grant allocation is authorized the State Director will be advised not to obligate the project until a complete AD-825 is secured, the applicant obtains a suitable site with the necessary public hearing and/or zoning changes completed, and the State Office architectural review of the plans and specifications is complete. If this cannot be achieved within 120 days, the National Office must be advised of the status of the project in order to retain the allocation.

H. Before telephone obligation of the project is made, the State Director will contact the Multiple Family Housing Loan Division (Tel. 447-7207), confirm that the requirements in part G of this section have been met, and that quarterly allocations are sufficient to obligate the grant.

#### VII. Section 523 TA Grants

A total of \$15 million is available for self-help TA grants nationally. You may continue processing and approving Section 523 TA grants in accordance with FmHA Instruction 1933L. We request that State Directors ask the District Directors to contact nonprofit groups, both public and private, and discuss with them the need to provide assistance for mutual and self-help housing in rural areas and small towns. State Directors should emphasize the self help TA program, and encourage the submission of grant applications. This program can provide new housing at a lower cost than by contract methods and should be utilized to reduce loan costs to low-income families.

#### VIII. Section 523 Land Development Funds.

The Section 523 Land Development funds are established as a revolving account for the acquisition and development of land as building sites. Due to limited funding, it will be necessary for the National Office to retain complete control of all funds. This fiscal year a maximum of \$2 million is available through the revolving fund. This includes \$1 million of appropriated funds and \$1 million from anticipated sales of developed sites. Prior to loan approval, the State Director should request funding authority from the National Office.

#### IX. Section 524 Rural Housing Site Loans.

Due to limited funding, it will be necessary for the National Office to retain complete control of all funds. This fiscal year \$7 million has been made available. Prior to loan approval the State Director should request funding authority from the National Office.

#### X. Section 525 Technical Supervisory Assistance Grants.

During FY 81 \$1.5 million will be available. \$1.2 million of the Section 525 TSA funds will be limited to preoccupation and delinquency counselling programs. \$300,000 will be made available for combined outreach and counselling programs.

State Directors should contact nonprofit groups or public bodies and solicit applications from those organizations which serve rural communities. State Directors are reminded that all potential applicants are to be advised of the State's need to serve those areas with a high delinquency rate and those areas with a concentration of low-income and low-income minority families needing housing assistance.

The term of the TSA grants is 2 years with the grant request not to exceed \$75,000 (\$37,500 per year) for counselling only programs and \$100,000 (\$50,000 per year) for combined counselling and outreach programs.

Deadline for submission of preapplications to the appropriate FmHA District Office is March 13, 1981. Only one preapplication per State will be accepted by the National Office for review and consideration for funding. Attachment D-6, "TSA Project Selection Criteria Review Sheet," of this AN is provided for use by State Directors in evaluating proposals. A completed Attachment D-6 for each preapplication reviewed is to be forwarded to the National Office. State Directors are to forward their selected preapplication to the National Office by April 13, 1981.

#### FmHA An No. — (1940) Attachment D-1

##### Allocation Formula for RRH Program Funds, Fiscal Year 1981

The following criteria identifies essential elements that are considered necessary to allocate rural rental housing Section 515 funds to various States on the basis of housing needs.

Factor A: State's percentage of national rural population.

Factor B: State's percentage of national rural population living in dwellings which lack complete plumbing and/or are crowded (substandard).

Factor C: State's percentage of national rural population below poverty level.

Factor D: Cost indicator (average cost of new dwelling and site, factored by population).

##### Allocation Formula

$$(A \times .30 + B \times .30 + C \times .30 + D \times .10) \times \text{funds available} = \text{State Allocation}$$

#### FmHA AN No. — (1940) Attachment D-2

##### Section 515—Rural Rental Housing Fiscal Year 1981 Allocations

(In thousands of dollars)

State	Unsubsidized	Subsidized	Total
Alabama	1,360	25,295	26,655
Alaska	150	2,765	2,935
Arizona	389	6,710	9,099
Arkansas	988	18,384	19,372
California	1,236	24,851	26,187
Colorado	345	6,417	6,762
Delaware	89	1,660	1,749

##### Section 515—Rural Rental Housing Fiscal Year 1981 Allocations—Continued

(In thousands of dollars)

State	Unsubsidized	Subsidized	Total
Maryland	539	10,021	10,560
Florida	1,201	22,352	23,553
Georgia	1,897	35,294	37,191
Hawaii	121	2,253	2,374
American Samoa	42	777	819
Guam, Trust	267	4,974	5,241
Idaho	262	4,870	5,132
Illinois	1,175	21,855	23,030
Indiana	1,054	19,601	20,655
Iowa	744	13,849	14,593
Kansas	512	9,534	10,046
Kentucky	1,601	29,782	31,383
Louisiana	1,345	25,026	26,371
Maine	434	8,073	8,507
Massachusetts	363	6,782	7,145
Connecticut	292	5,429	5,721
Rhode Island	59	1,096	1,155
Michigan	1,340	24,937	26,277
Minnesota	914	17,004	17,918
Mississippi	1,394	25,937	27,331
Missouri	1,181	21,970	23,151
Montana	268	4,990	5,258
Nebraska	366	6,807	7,173
New Jersey	434	8,066	8,500
New Mexico	411	7,642	8,053
New York	1,266	23,561	24,827
Virgin Islands	62	1,158	1,220
North Carolina	2,285	42,510	44,795
North Dakota	255	4,746	5,001
Ohio	1,574	29,285	30,859
Oklahoma	689	12,811	13,500
Oregon	487	9,051	9,538
Pennsylvania	1,912	35,566	37,478
Puerto Rico	2,155	20,129	22,284
South Carolina	1,293	24,054	25,347
South Dakota	290	5,395	5,685
Tennessee	1,394	25,930	27,324
Texas	2,203	40,992	43,195
Utah	162	3,008	3,170
Nevada	74	1,376	1,450
Vermont	210	3,903	4,113
New Hampshire	213	3,970	4,183
Virginia	1,175	21,853	23,028
Washington	505	9,404	9,909
West Virginia	839	15,614	16,453
Wisconsin	963	17,912	18,875
Wyoming	121	2,244	2,365
HUD/FmHA Demo		10,000	10,000
National Office Reserve	5,000	78,525	83,525
Total	48,000	870,000	918,000

#### FmHA AN No. — (1940) Attachment D-3

##### Tentative Section 8/515 Allocations for the Farmers Home Administration (FmHA) for Fiscal Year 1981

Region I (Boston)		
Massachusetts		85
Connecticut		68
Rhode Island		14
New Hampshire		50
Vermont		49
Maine		101
Total		367
Region II (New York)		
New Jersey		101
New York		295
Puerto Rico		502
Virgin Islands		14
Total		912
Region III (Philadelphia)		
Delaware		21
Maryland		125
Pennsylvania		445
Virginia		273
West Virginia		195
Total		1,059
Region IV (Atlanta)		
Alabama		316

**Tentative Section 8/515 Allocations for the Farmers Home Administration (FmHA) for Fiscal Year 1981—Continued**

Florida	279
Georgia	441
South Carolina	301
North Carolina	530
Kentucky	372
Tennessee	324
<b>Total</b>	<b>2,887</b>
<b>Region V (Chicago)</b>	
Illinois	273
Indiana	245
Michigan	312
Minnesota	213
Ohio	366
Wisconsin	224
<b>Total</b>	<b>1,633</b>
<b>Region VI (Dallas)</b>	
Arkansas	230
Louisiana	313
New Mexico	96
Oklahoma	160
Texas	512
<b>Total</b>	<b>1,311</b>
<b>Region VII (Kansas City)</b>	
Iowa	173
Kansas	119
Missouri	275
Nebraska	85
<b>Total</b>	<b>652</b>
<b>Region VIII (Denver)</b>	
Colorado	80
Montana	62
North Dakota	59
South Dakota	67
Utah	38
Wyoming	28
<b>Total</b>	<b>334</b>
<b>Region IX (San Francisco)</b>	
Arizona	90
California	311
Hawaii and Samoa	38
Guam and Trust Territory	62
Nevada	17
<b>Total</b>	<b>518</b>
<b>Region X (Seattle)</b>	
Idaho	61
Alaska	35
Oregon	113
Washington	118
<b>Total</b>	<b>327</b>

**Rental Assistance (RA) Unit Allocation for Fiscal Year 1981—Continued**

State	5-yr units	20-yr units
Rhode Island	8	6
Michigan	193	136
Minnesota	132	93
Mississippi	201	141
Missouri	170	120
Montana	39	27
Nebraska	53	37
New Jersey	63	44
New Mexico	59	42
New York	183	128
Virgin Islands	9	6
North Carolina	330	231
North Dakota	37	26
Ohio	227	159
Oklahoma	99	70
Oregon	70	49
Pennsylvania	276	193
Puerto Rico	309	218
South Carolina	186	131
South Dakota	42	29
Tennessee	201	141
Texas	318	223
Utah	23	16
Nevada	11	8
Vermont	30	21
New Hampshire	31	22
Virginia	169	119
Washington	73	51
West Virginia	121	85
Wisconsin	139	97
Wyoming	17	12
Used for FY 80 backlog	1,893	0
LH reserve	1,000	0
National office reserve	3,710	500
<b>Total</b>	<b>12,803</b>	<b>4,852</b>

**BILLING CODE 3410-07-M**

**FmHA An No. — (1940) Attachment D-4**

**Rental Assistance (RA) Unit Allocation for Fiscal Year 1981**

State	5-yr units	20-yr units
Alabama	196	138
Alaska	22	15
Arizona	56	39
Arkansas	142	100
California	193	135
Colorado	50	35
Delaware	13	9
Maryland	78	55
Florida	173	122
Georgia	274	192
Hawaii	17	12
American Samoa	6	4
Guam, Trust Territory	39	27
Idaho	38	26
Illinois	169	119
Indiana	152	107
Iowa	107	75
Kansas	74	52
Kentucky	231	162
Louisiana	194	136
Maine	63	44
Massachusetts	52	37
Connecticut	42	30

FmHA AN No. (1940)  
Attachment D-5

TO BE COMPLETED FOR ALL  
LH APPLICANTS DETERMINED ELIGIBLE

State: \_\_\_\_\_ Date application received: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_ Type of applicant: \_\_\_\_\_

County or Area to be served: \_\_\_\_\_

Amount of loan requested \$ \_\_\_\_\_ % of total \_\_\_\_\_

Amount of grant requested \$ \_\_\_\_\_ % of total \_\_\_\_\_

Amount Loan Recommended by S/O \$ \_\_\_\_\_ % of total \_\_\_\_\_

Amount of Grant recommended by S/O \$ \_\_\_\_\_ % of total \_\_\_\_\_

Total No. of units to be built: \_\_\_\_\_ Cost per unit: \_\_\_\_\_

Estimated rental rates: \_\_\_\_\_

Comparable rents in the area: \_\_\_\_\_

Number of months the project will be occupied: \_\_\_\_\_

Estimated No. of farmworkers in the area: \_\_\_\_\_

Income level of farmworkers in the area: \_\_\_\_\_

If authorized can this proposal be developed in 120 days? \_\_\_\_\_

What priority do you place on this project compared to others previously submitted and not yet authorized? \_\_\_\_\_

Comments regarding condition and availability of labor housing in the area: \_\_\_\_\_

Comments and documentation regarding long-term need for the proposed project: \_\_\_\_\_

Comments regarding management experience of the applicant: \_\_\_\_\_

Does this applicant have an LH loan or grant that is obligated but not closed? If yes, indicate status on the reverse of this sheet.

Other comments and S/O recommendations: \_\_\_\_\_

Note: If proposal involves rehabilitation of existing units, provide a general description of the rehabilitation planned along with an estimated cost breakdown.

FHA An No. \_\_\_\_\_ (1980)  
Attachment D-5TEA PROJECT SELECTION CRITERIA REVIEW SHEET

SERGE: \_\_\_\_\_ APPLICANT: \_\_\_\_\_ REVIEWER: \_\_\_\_\_ SCORE: \_\_\_\_\_

TYPE OF PROPOSAL: COUNSELING \_\_\_\_\_ COMBINED \_\_\_\_\_ WILL APPLICANT ACCEPT COUNSELING ONLY? YES/NO

GRANT REQUEST: \$ \_\_\_\_\_ APPLICANT IS: \_\_\_\_\_ PUBLIC BODY; \_\_\_\_\_ PRIVATE NONPROFIT

Eligibility Criteria:

- (1) Will the project provide a program of supervisory assistance as defined in 1944.506(h), and YES \_\_\_ NO \_\_\_
- (2) Serve areas with a concentration of sub-standard housing and low-income and low-income minority households? YES \_\_\_ NO \_\_\_

Selection Criteria:Circle One\*

- (1) The extent to which the project serves areas with concentrations of FHA single family housing loan borrowers who are delinquent in their housing loan payments and/or threatened with foreclosure. 1 2 3 4 5
- (2) The capability and past performance demonstrated by the applicant in administering its programs. 1 2 3 4 5
- (3) The effectiveness of the current efforts by the applicant to assist low-income families in obtaining adequate housing. 1 2 3 4 5
- (4) The extent to which the project will provide or increase the delivery of housing resources to low-income and low-income minority families in the area who are not currently occupying adequate housing. 1 2 3 4 5
- (5) The services the applicant will provide that are not presently available to assist low-income families in obtaining or maintaining occupancy of adequate housing and the extent of duplication of technical and supervisory assistance activities currently provided for low-income families. 1 2 3 4 5
- (6) The extent of citizen and local government participation and involvement in the development of the preapplication and project. 1 2 3 4 5
- (7) The extent of planned coordination with other Federal, State or local technical and/or supervisory assistance programs. 1 2 3 4 5
- (8) The extent to which the project will make use of other financial and contributions-in-kind resources for both technical and supervisory assistance and housing development & supporting facilities. 1 2 3 4 5
- (9) The extent to which the project will be cost effective, including but not limited to the ratio of personnel to be hired by the applicant to the cost of the project, the cost, both direct and indirect, per person benefiting from the project, and the expected benefits to low-income families from the project. 1 2 3 4 5
- (10) The extent to which the proposed staff and salary ranges, including qualifications, experience, proposed hiring schedule and availability of any prospective employees, will meet the objectives of the proposed TEA program. 1 2 3 4 5
- (11) The anticipated capacity of the applicant to implement the proposed time schedule for starting and completing the TEA program and each phase thereof. 1 2 3 4 5
- (12) The adequacy of the records and practices, including personnel procedures and practices that will be established and maintained by the applicant during the term of the agreement. 1 2 3 4 5

SCORE TOTAL \_\_\_\_\_

Sponsored Applicant: Yes No (Circle)

\*Refer to scoring plan on reverse.

BILLING CODE 2410-07-C

## Scoring Plan

## TSA Preapplication Review

The ranking of the TSA proposals will be accomplished through the rating of each preapplication on the basis of the project selection criteria contained in the instructions. Each criteria has a range from one to five and, in order for the review to have some consistency in their ratings, the following interpretation of this range should be used:

Value	Descriptive statement
0 (no score)	Not addressed in preapplication or supporting documents.
1	Addressed, but totally deficient.
2	Deficient, but appears to be able to be improved to adequate or better without adopting new approach.
3	Adequate, overall it meets the intent of the program.
4	Good, with some superior features.
5	Generally superior in most features.

**Farmer Programs.—Based Upon the Appropriation Act for Fiscal Year 1981, Farmer Program Loan Levels Are as Follows.**

(In thousands of dollars)

Program	Quarters				
	Total	First	Second	Third	Fourth
OL insured	\$850,000	\$200,000	\$425,000	\$175,000	\$50,000
OL guaranteed	25,000	25,000	0	0	0
FO insured	870,000	330,000	210,000	210,000	120,000
FO guaranteed	50,000	20,000	15,000	15,000	0
SW insured	47,100	19,000	13,000	10,000	5,100
SW guaranteed	6,000	2,000	2,000	1,000	1,000
Recreation	2,400	1,000	1,000	400	0
Grazing	4,800	4,800	0	0	0
Indian land acquisition	11,900	5,500	3,400	2,000	1,000
Irrigation and drainage	7,400	4,400	3,000	0	0

(Loan funds cannot be transferred between insured and guaranteed.)

State allocations are based on factors which reflect the needs for credit in the State. The factors include:

- Number of Farms
- Number of Small Farms
- Farm Tenancy
- Farm Population
- Net Farm Income
- Participation Credit (FO loan allocations)

## Control of Funds

The quarterly State allocations for insured and guaranteed OL and FO loans are attached. State Directors are responsible for developing fund controls, utilizing loan funds in accordance with their State Management Plans and maintaining a reserve for hardship cases. *FO and OL insured and guaranteed loans will not be approved in excess of each quarterly allocation.* States will not request insured funds from the National Office reserve until all insured funds allocated to the State for the quarter have been obligated. The Finance Office will continue to control State fund obligations on a quarterly basis.

In order that States maintain adequate control and an accurate record of fund allocations *all obligating documents for FO and OL loans will be routed through the State Office before forwarding to the Finance Office.* Farmer Program staffs

will be expected to maintain a current record of all loans obligated in the State.

Twenty-five (25) percent of each State's OL and 25 percent of each State's FO allocation will be used for limited resource loans (compute 25 percent of total allocation including guaranteed loans). This percentage may not be exceeded without prior approval of the National Office. All States are expected to meet their limited resource goal on a quarterly basis in both the OL and FO loan programs.

The guaranteed loan amounts cannot be exceeded and guaranteed loan funds cannot be utilized for insured loans. In the past some States have not participated in the guaranteed loan programs. All State Directors will be expected to develop a guaranteed loan program in each District in their State(s) in FY 1981. We are establishing a goal to make a least one guaranteed EE, FO or OL loan in each District during FY 1981.

We plan to continuously monitor State program administration through data analysis, assessment team visits, program reviews and through discussions with State personnel. The reallocation of funds will be considered, as necessary, to accomplish overall program objectives and to make full use of the guaranteed and limited resource programs.

We expect to pool unobligated OL and FO funds approximately August 14, 1981; therefore, we suggest that States

plan to pool funds prior to August, if necessary.

## Priorities on Loan Funding

Major emphasis will be given to assisting beginning and young farmers, minorities, women, limited resource and low-income farm families. Continuous emphasis is to be given in assisting farmers in applying energy efficient measures on farms and establishing feasible energy producing facilities. Biomass Energy (BE) loans should be utilized where possible to conserve OL and FO funds.

States with Small Farm Assistance Projects (SFAP) will need to consider FO and OL funding needs for these projects during the 1981 fiscal year.

## Farm Operating Loans

The obligational authority for operating loans in FY 81 is the same as for FY 80—\$850 million for insured and \$25 million for guaranteed loans.

It is essential that all loan approval officials thoroughly analyze loans to assure that only those applicants who meet the requirements receive the limited resource funds available.

## FmHA AN — (1940) Attachment E

A National Office reserve of \$25 million insured OL funds has been established to assist States with extreme hardship cases when their quarterly allotments are exhausted. To receive funds from the reserve it must be established that the applicants will definitely not be able to farm without the FmHA loan. States are responsible for assuring that sufficient insured OL funds are available to meet subsequent loan needs. AN OL guaranteed loan reserve is not being established. States will be authorized to exceed their guaranteed loan allocation at the expense of States who fail to use their guaranteed loan fund allocation.

Strong emphasis must be given to initial and subsequent operating loan applicants obtaining a portion of their credit from other sources, especially annual operating expenses. The goal is to obtain participation credit in an amount at least 50 percent of the OL funds used. The use of emergency loan subordinations and operating loan authorizations of chattel security will be used to the fullest extent possible to assist borrowers in this effort. Refinancing will be done only when other arrangements cannot be made and when inclusion of depreciation and interest in the loan will not enable the applicant to continue operating. Without the full implementation of this policy there will be a substantial reduction in the number of applicants assisted. The amount of available funds is the same as last year and we fully expect the average loan size to increase

again this year, following a long established trend.

#### Farm Ownership Loans

Insured and guaranteed farm ownership loans may be obligated in accordance with the quarterly allocations indicated.

State Directors are responsible to maintain a reserve for hardship cases as well as funds targeted in State Management Plans. A National Office reserve of \$10 million for insured loans and \$6 million for guaranteed loans has been established. Hardship loan funds will be requested only when the applicant will be unable to farm without the loan and provided all the States' quarterly allocations have been used. Guaranteed loan funds may be requested from the National Office when a State has obligated its allocation.

Continued emphasis will be placed on participation with other lenders and with other FmHA loan programs in developing insured loans. Our goal is that each State obtain at least one dollar of other lender's funds for each dollar of FO funds obligated.

#### Soil and Water and Recreation Loans

SW and RL funds are not allocated on a State basis. Obligated documents may be submitted to the Finance Office as loans are approved. Priority will be given to making guaranteed SW loans rather than insured SW. SW loan authority will be used whenever such use will conserve FO funds.

#### Irrigation and Drainage Association Loans, Grazing Associations and Indian Land Acquisition Loans

Control of funds for Irrigation and Drainage, Grazing Associations and Indian Land Acquisition loans is retained in the National Office and will be allocated on an individual case basis. Funds for these loan types may be requested when it is determined the loan can be approved.

#### Emergency and Economic Emergency Loans

State allocations for EM loans will not be made. Public Law 96-22D extended the economic emergency (EE) program to September 30, 1981, and increased the amount of loan principal that can be outstanding from \$4 billion to \$6 billion. The heavy use of EE loan funds during FY 80 has caused the need for allocation in order to achieve some equity between States in the use of the remaining balance of appropriated funds and anticipated income. The quarterly allocation of EE funds is attached.

At the present time \$1.2 billion is available to be loaned during FY 81 without exceeding the \$6 billion limitation. The allocation is based on each States historical use of EE loan funds with adjustment for counties designated as natural disaster areas. Seventy-five percent of the allocation is on historical use and 25 percent is related to EM designations; i.e., a State with all counties designated as disaster areas will receive an allocation equal to only 75 percent of the States percentage of all States historical use for the years 1978, 1979 and 1980. A State with no counties designated as disaster areas will have an allocation equal to 75 percent of all States historical use plus an amount

related to their percentage of all counties in the United States not designated. In addition, some adjustment has been made to the States of Alaska, Connecticut, Massachusetts, Nevada, New Hampshire, New Jersey, Rhode

Island, Utah, Wyoming and Puerto Rico due to the fact that the very small percentage of counties designated for EM loans in these States causes the allocation formula to allocate excessive EE funds to those States.

#### Operating Loan Allocation; Fiscal Year 1981

[In thousands of dollars]

State	Total	1st quarter		2d quarter	3d quarter	4th quarter
		Guaranteed	Insurance			
Alabama	20,000	590	3,612	13,944	1,647	207
Alaska	300	30	85	133	72	0
Arizona	4,100	120	870	2,098	872	140
Arkansas	23,000	680	3,671	15,073	3,012	564
California	12,000	350	2,278	5,964	2,849	759
Colorado	9,000	260	1,464	5,151	2,125	0
Connecticut	1,850	50	472	472	641	215
Delaware	1,200	40	222	557	312	89
Florida	13,100	390	3,917	6,367	481	1,935
Georgia	30,000	880	11,489	16,948	683	0
Hawaii	700	30	157	267	94	152
Idaho	19,900	590	4,112	9,791	4,644	763
Illinois	26,000	820	5,138	13,978	6,904	1,160
Indiana	21,000	620	3,157	9,585	6,556	1,082
Iowa	37,300	1,100	8,060	18,387	8,138	1,615
Kansas	23,000	680	4,421	10,091	6,163	1,645
Kentucky	32,000	680	5,076	9,049	5,556	2,637
Louisiana	37,000	1,090	7,172	25,272	3,466	0
Maine	11,500	340	1,601	2,897	6,205	457
Maryland	5,300	160	947	2,231	1,529	433
Massachusetts	2,600	80	406	677	764	673
Michigan	20,600	610	4,228	7,295	6,680	1,787
Minnesota	31,300	920	5,922	13,582	9,142	1,734
Mississippi	29,900	680	4,824	17,158	5,767	1,271
Missouri	34,000	1,000	6,007	18,511	7,649	833
Montana	9,500	280	1,931	5,210	2,061	18
Nebraska	23,000	680	3,294	13,230	5,796	0
Nevada	1,000	30	135	579	149	7
New Hampshire	1,250	40	338	330	306	236
New Jersey	4,300	130	690	2,284	1,139	57
New Mexico	5,900	170	1,032	3,655	939	104
New York	19,900	590	4,625	5,829	5,957	2,899
North Carolina	40,000	1,180	16,952	18,557	1,963	1,348
North Dakota	22,800	670	4,799	9,903	6,554	874
Ohio	12,500	370	2,328	4,133	4,558	1,111
Oklahoma	28,000	820	7,339	11,279	4,888	3,674
Oregon	9,000	260	2,386	4,501	1,600	253
Pennsylvania	19,800	580	4,007	6,085	6,551	2,577
Puerto Rico	6,000	180	1,279	1,853	1,621	1,067
Rhode Island	450	30	50	253	117	0
South Carolina	17,000	500	3,802	11,419	928	351
South Dakota	24,500	720	5,368	11,055	5,972	1,385
Tennessee	20,000	590	3,432	10,728	4,199	1,051
Texas	70,000	1,950	18,105	39,924	5,179	4,842
Utah	4,500	130	1,174	1,226	993	241
Vermont	4,750	140	1,161	1,226	1,460	763
Virginia	14,000	410	2,950	6,733	3,225	682
Virgin Islands	200	30	51	16	96	7
Washington	10,000	290	1,968	5,682	1,785	275
West Virginia	6,500	190	1,656	2,259	1,802	793
Wisconsin	30,500	900	8,067	10,350	7,499	3,684
Wyoming	5,000	150	1,264	2,927	859	0
Reserve	25,000		10,529	7,560	4,910	2,001
United States	875,000	25,000	200,000	425,000	175,000	50,000

#### Farm Ownership Allocation; Fiscal Year 1981—Insured

[In thousands of dollars]

State	Total	1st quarter	2d quarter	3d quarter	4th quarter
Alabama	18,300	6,936	4,415	4,415	2,534
Alaska	1,900	720	458	264	2,534
Arizona	6,600	2,501	1,592	1,592	915
Arkansas	24,500	9,287	5,911	5,911	3,391
California	12,500	4,738	3,015	3,015	1,732
Colorado	12,800	4,852	3,088	3,088	1,772
Connecticut	2,300	871	554	554	321
Delaware	3,000	1,137	723	723	417
Florida	10,100	3,828	2,436	2,436	1,600
Georgia	19,200	7,278	4,632	4,632	2,656
Hawaii	3,000	1,137	723	723	417
Idaho	21,000	7,960	5,066	5,066	2,906
Illinois	33,500	12,698	8,082	8,082	4,838
Indiana	23,200	9,794	5,597	5,597	3,212
Iowa	39,500	14,972	9,530	9,530	5,468
Kansas	32,800	12,433	7,913	7,913	4,541
Kentucky	27,200	10,310	6,562	6,562	3,766

## Farm Ownership Allocation; Fiscal Year 1981—Insured—Continued

[In thousands of dollars]

State	Total	1st quarter	2d quarter	3d quarter	4th quarter
Louisiana	14,300	5,420	3,450	3,450	1,980
Maine	8,600	3,259	2,074	2,074	1,193
Maryland	7,400	2,805	1,785	1,785	1,025
Massachusetts	4,900	1,857	1,182	1,182	679
Michigan	18,800	7,126	4,535	4,535	2,604
Minnesota	34,000	12,888	8,203	8,203	4,706
Mississippi	23,600	8,945	5,694	5,694	3,267
Missouri	39,500	14,972	9,530	9,530	5,468
Montana	14,000	5,306	3,377	3,377	1,940
Nebraska	32,200	12,205	7,769	7,769	4,457
Nevada	2,200	833	530	530	307
New Hampshire	1,800	682	434	434	250
New Jersey	4,000	1,516	965	965	554
New Mexico	8,100	3,070	1,954	1,954	1,122
New York	16,100	6,102	3,884	3,884	2,230
North Carolina	26,000	9,855	6,273	6,273	3,599
North Dakota	29,500	11,182	7,117	7,117	4,084
Ohio	18,200	6,898	4,391	4,391	2,520
Oklahoma	34,000	12,888	8,203	8,203	4,706
Oregon	11,200	4,245	2,702	2,702	1,551
Pennsylvania	14,800	5,610	3,570	3,570	2,050
Puerto Rico	10,200	3,866	2,461	2,461	1,412
Rhode Island	1,100	416	265	265	154
South Carolina	13,000	4,927	3,136	3,136	1,801
South Dakota	30,000	11,371	7,238	7,238	4,153
Tennessee	23,800	9,021	5,742	5,742	3,295
Texas	39,000	14,783	9,409	8,409	5,399
Utah	6,600	2,501	1,592	1,592	915
Vermont	7,500	2,842	1,809	1,809	1,040
Virginia	13,500	5,117	3,257	3,257	1,869
Virgin Islands	400	151	96	96	57
Washington	12,900	4,889	3,112	3,112	1,787
West Virginia	7,600	2,880	1,833	1,833	1,054
Wisconsin	32,500	12,319	7,841	7,841	4,499
Wyoming	7,000	2,653	1,688	1,688	971
West Pacific Territory	300	120	75	75	30
Reserve	10,000	4,028	2,527	2,527	918
United States	870,000	330,000	210,000	210,000	120,000

## Farm Ownership Allocation; Fiscal Year 1981—Guaranteed

[In thousands of dollars]

State	Total	1st quarter	2d quarter	3d quarter	4th quarter
Alabama	600	231	184	185	0
Alaska	300	115	92	93	0
Arizona	300	115	92	93	0
Arkansas	1,400	539	430	431	0
California	300	115	92	93	0
Colorado	600	231	184	185	0
Connecticut	600	231	184	185	0
Delaware	300	115	92	93	0
Florida	600	231	184	185	0
Georgia	600	231	184	185	0
Hawaii	600	231	184	185	0
Idaho	300	115	92	93	0
Illinois	3,000	1,156	921	923	0
Indiana	600	231	184	185	0
Iowa	300	115	92	93	0
Kansas	300	115	92	93	0
Kentucky	600	231	184	185	0
Louisiana	1,700	655	522	523	0
Maine	300	115	92	93	0
Maryland	600	231	184	185	0
Massachusetts	600	231	184	185	0
Michigan	2,000	771	614	615	0
Minnesota	1,800	694	552	554	0
Mississippi	90	347	276	277	0
Missouri	2,800	1,079	860	861	0
Montana	300	115	92	93	0
Nebraska	1,800	694	552	554	0
Nevada	300	115	92	93	0
New Hampshire	300	115	92	93	0
New Jersey	600	231	184	185	0
New Mexico	600	231	184	185	0
New York	900	347	276	277	0
North Carolina	2,000	771	614	615	0
North Dakota	2,600	1,002	798	800	0
Ohio	600	231	184	185	0
Oklahoma	1,200	462	368	370	0
Oregon	600	231	184	185	0
Pennsylvania	600	231	184	185	0
Puerto Rico	300	115	92	93	0
Rhode Island	300	115	92	93	0
South Carolina	600	231	184	185	0
South Dakota	1,800	694	552	554	0
Tennessee	300	115	92	93	0
Texas	300	115	92	93	0



## Farm Ownership Allocation; Fiscal Year 1981—Guaranteed—Continued

(In thousands of dollars)

State	Total	1st quarter	2d quarter	3d quarter	4th quarter
Utah	300	115	92	93	0
Vermont	600	231	184	185	0
Virgin	300	115	92	93	0
Virgin Islands	300	115	92	93	0
Washington	300	115	92	93	0
West Virginia	600	231	184	185	0
Wisconsin	3,000	1,156	921	923	0
Wyoming	300	115	92	93	0
West Pacific Territory	300	150	75	75	0
Reserve	6,000	3,025	1,517	1,458	0
United States	50,000	20,000	15,000	15,000	0

## Economic Emergency Allocation; Fiscal Year 1981

(In thousands of dollars)

State	Total	1st quarter	2d quarter	3d quarter	4th quarter
Alabama	8,530	2,575	5,151	1,804	0
Alaska	0	0	0	0	0
Arizona	8,624	2,330	4,661	1,633	0
Arkansas	33,050	8,932	17,864	6,254	0
California	27,704	7,487	14,975	5,242	0
Colorado	26,105	7,055	14,110	4,940	0
Connecticut	2,346	634	1,268	444	0
Delaware	1,086	293	587	206	0
Florida	19,989	5,402	10,804	3,783	0
Georgia	32,468	8,504	17,009	5,955	0
Hawaii	519	140	280	99	0
Idaho	45,099	12,188	24,377	8,534	0
Illinois	38,873	10,506	21,012	7,355	0
Indiana	46,478	12,561	25,123	8,794	0
Iowa	54,254	14,663	29,326	10,265	0
Kansas	28,730	7,764	15,529	5,437	0
Kentucky	26,609	7,191	14,383	5,035	0
Louisiana	22,962	6,205	12,411	4,346	0
Maine	6,113	1,852	3,304	1,157	0
Maryland	13,606	3,677	7,354	2,575	0
Massachusetts	2,184	590	1,180	414	0
Michigan	32,936	8,901	17,803	6,232	0
Minnesota	47,156	12,744	25,489	8,923	0
Mississippi	17,134	4,830	9,261	3,243	0
Missouri	35,081	9,481	18,962	6,638	0
Montana	18,845	5,093	10,186	3,566	0
Nebraska	50,083	13,535	27,071	9,477	0
Nevada	3,059	826	1,653	580	0
New Hampshire	241	65	130	46	0
New Jersey	1,091	294	589	208	0
New Mexico	19,469	5,261	10,523	3,685	0
New York	38,574	10,425	20,850	7,299	0
North Carolina	35,200	9,513	19,027	6,660	0
North Dakota	24,861	6,719	13,438	4,704	0
Ohio	19,184	5,184	10,369	3,631	0
Oklahoma	50,385	13,617	27,235	9,533	0
Oregon	20,225	5,466	10,932	3,827	0
Pennsylvania	21,484	5,806	11,612	4,066	0
Puerto Rico	5,833	1,576	3,152	1,105	0
Rhode Island	172	46	92	34	0
South Carolina	7,084	1,914	3,829	1,341	0
South Dakota	39,567	10,893	21,387	7,487	0
Tennessee	24,985	6,752	13,505	4,728	0
Texas	37,918	10,248	20,496	7,174	0
Utah	4,312	1,165	2,330	817	0
Vermont	3,139	848	1,696	595	0
Virginia	13,216	3,571	7,143	2,502	0
Virgin Islands	0	0	0	0	0
Washington	21,214	5,733	11,467	4,014	0
West Virginia	7,538	2,037	4,074	1,427	0
Wisconsin	48,599	13,134	26,269	9,196	0
Wyoming	6,086	1,644	3,289	1,153	0
Reserve	100,000	27,054	54,062	18,864	0
United States	1,200,000	324,324	648,649	227,027	0

## FmHA AN — (1940) Attachment F

## Biomass Energy

Allocations of insured funds are being made to each State based on the following:

## Basis of Allocations

1. The total amount available to the Department of Agriculture is \$525 million for the Biomass Energy and Alcohol Fuels Program and will be utilized as follows:

(Dollars in millions)

Guarantee authority	390
Insured loans	125
Administrative costs—FmHA	4.25
Administrative costs—Department of Agriculture	5.75
Total	525

2. An insured loan may not exceed \$1 million any may be used for small-scale plants only (1 million gallons or less ethanol or its energy equivalent per year capacity).

3. Guarantee authority may be used to finance both small-scale and intermediate size (up to 15 million gal./yr.) Larger projects may be eligible if wood is used as feedstock or if owned by a farmer cooperative.

4. No more than \$150 million of the total available nationally may be used for small-scale plants.

5. A recent amendment to the Energy Security Act would permit leveraging of the guaranteed authority on a three-to-one basis. At this time, however, the method and level of implementation is still under review at the policy levels within the Department. We will provide additional guidance to you in the near future.

6. A flat allocation to all States is being made because we have not yet been able to develop an allocation formula which might be based on need, available resources for feedstocks and fuel, or the demand for biomass energy projects. Funds allocated may be used for either insured or guaranteed loans within the State Director's approval authority.

## Allocations

Two million dollars is allocated to each State and Puerto Rico with the balance retained in the National Office reserve. The State Directors for New York and Hawaii should contact the Biomass Energy Division in the National Office for guidance and additional funds if applications are received from the islands under their respective jurisdictions.

## Priorities

Section 1990.5(a) of the regulations outlines priority considerations with regard to primary fuel, feedstocks, and technology.

1. Projects which use fuel other than petroleum or natural gas are encouraged. Those which use oil or natural gas require

prior concurrence of the National Office before approval.

2. New technologies which will expand the possible feedstocks, produce new forms of biomass energy or different biomass fuels receive priority. Examples of alternate feedstocks include fruits, sugar cane or cellulosic material. Other fuels to be considered are wood, hog fuel, and agricultural residue such as rice hulls, corn stover, and cotton gin trash.

3. You should take advantage of the application receipt dates to make comparative evaluations of guaranteed loan applications. The National Office, in making comparative evaluations, will consider strongly the items mentioned above with a goal of funding projects using a wide range of feedstocks, fuels, and technologies. We will also be looking for biomass energy projects other than alcohol production such as direct burning of biomass, methane gas production, and biogas utilization. This will enable us to build a portfolio of loans, the majority of which fall into a range of \$1 to \$10 million.

4. Plant location with regard to feedstocks, fuels, markets, and the proximity to similar plants must also be considered.

[FR Doc. 81-2993 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-07-M

## Food and Nutrition Service

### Determining Eligibility for Free and Reduced Price Meals and Free Milk in Centers Under the Child Care Food Program and in the Summer Food Service Program for Children; New Income Poverty Guidelines

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Department announces new Income Poverty Guidelines for centers in the Child Care Food Program as well as for sponsors under the Summer Program. These guidelines shall be used to determine eligibility for free and reduced price meals and free milk. The new guidelines differ from previous guidelines in three important ways: (1) they are based on Office of Management and Budget guidelines that are *not* adjusted by the Department; (2) they remove the hardship provisions; and (3) in place of the hardship provisions, they include a standard deduction. The Department is required by the Omnibus Reconciliation Act of 1980 to make these changes in the guidelines. These

changes will affect the eligibility of some children for free and reduced price meals and free milk. This notice also announces procedures to be used in implementing the new guidelines.

These changes in the income poverty guidelines will expire on September 30, 1981.

This notice does not apply to day care homes participating in the Child Care Food Program.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6509. A copy of the Impact Analysis Statement can be obtained from this address.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant."

## Definition of Income.

There is no change in the definition of income. "Income," as the term is used in this notice, is similar to that defined in the Bureau of the Census report, "Characteristics of the Low-Income Population: 1971," Current Population Reports, series P-60, No. 86, December 1972. "Income" means income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. It includes the following:

(1) monetary compensation for services, including wages, salary, commissions, or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds, income from estates or trusts, or net rental income; (6) public assistance or welfare payments; (7) unemployment compensations; (8) Government civilian employee, or military retirement, or pensions or veterans' payments; (9) private pensions or annuities; (10) alimony or child support payments; (11) regular contributions from persons not living in the household; (12) net royalties; and (13) other cash income. Other cash income would include cash

amounts received or withdrawn from any source including savings, investments, trust accounts, and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this notice, does not include any income or benefits received under any Federal program which are excluded from consideration as income by any legislative prohibition, for example, income received by volunteers for services performed in the National Older Americans Volunteer Program as stipulated in the Domestic Volunteer Service Acts of 1973, Pub. L. 93-113, Title IV, c 418 (87 Stat. 413, 42 U.S.C. 5058). Furthermore, the value of assistance to children or their families shall not be considered as income if prohibited by the authorizing legislation, e.g., the National School Lunch Act, the Child Nutrition Act of 1966, and the Food Stamp Act of 1977.

In applying guidelines, an independent center, sponsoring organization of centers, or Summer Program sponsor may consider both the income of the family during the past 12 months and the family's current rate of income to determine which is the better indicator of the need for free and reduced price meals and free milk. However, if one or more of a child's parents or guardians become unemployed and the family's income drops due to this unemployment so that the child should be eligible for free or reduced price meals or free milk during the period of unemployment, that child shall be provided with the type of meal for which the child is eligible.

#### *Elimination of Secretary's Adjustment of Office of Management and Budget Guidelines*

In the past, to arrive at the Secretary's guidelines, the Department adjusted the nonfarm income poverty guidelines issued by the Office of Management and Budget (OMB) to reflect changes in the Consumer Price Index between the previous calendar year and March of the calendar year in which the Secretary's guidelines would become effective. The Department generally issues the guidelines to be effective July 1. Thus, the guidelines, when effective, are only three months behind changes in prices. Section 203 of Pub. L. 96-499, which became law on December 5, 1980, deletes this adjustment for the remainder of fiscal year 1981. Therefore, these guidelines reflect the average of the Consumer Price Index for 1980 without the adjustment described above.

#### *Replacement of Hardship Provisions with Standard Deduction*

In the past, the Department allowed a family to deduct from its stated income the cost of certain "hardship" conditions that could not be reasonably anticipated or controlled by the household. The hardship conditions were: (1) unusually high medical expenses; (2) shelter costs in excess of 30 percent of income; (3) special education expenses due to the mental or physical condition of a child; and (4) disaster or casualty losses.

Section 203 of Pub. L. 96-499 deletes these hardship conditions for the remainder of fiscal year 1981. In their place, the law establishes a standard deduction for all families. The standard deduction is the same amount for all States except Hawaii, Alaska, and Guam. The standard deduction is adjusted to reflect the higher cost of living in those States and in Guam. The Department has included all appropriate standard deductions in the attached guidelines.

#### *Child Care Food Program Procedures:*

##### *1. General Requirements.*

Within 30 days of the date of publication of this notice, State agencies must make the new guidelines contained in this notice available to all independent centers and sponsoring organizations of centers. Upon receipt, these guidelines must be applied to all subsequent eligibility decisions. The Department is requiring that redeterminations of eligibility of children currently enrolled based on the new guidelines be made in all centers, except in instances where such recertification would not potentially (1) change Program payment rates or (2) affect food service charges to families of participating children. These procedures are intended to minimize the workload of States and certain centers where application of the new guidelines would not have an effect on the benefits delivered to the center or its recipients.

##### *2. Centers Which Must Totally Recertify Eligibility of All Enrollees Using the New Guidelines.*

All institutions which have elected to be reimbursed on the basis of claiming percentages, blended rates, or the number of meals of each type served to children in each need category are required to redetermine eligibility of children currently enrolled using the new guidelines because resultant changes in the need categories of enrolled children will affect the Program earnings of such institutions.

Centers which charge separately for meal service shall also redetermine eligibility of all enrolled children based on the new guidelines and ensure that resultant shifts in children's need categories are reflected in the meal service charge to their families.

Nonpricing independent centers and sponsors of centers reimbursed under the tiering method are also required to make redeterminations of eligibility of all enrolled children based on new guidelines where between 66% and 70% percent or between 33% and 37% percent of their enrolled children have been reported to the State agency as eligible for free or reduced price meals. A statistical analysis by FNS indicates that such independent centers and sponsors of centers would represent virtually all institutions whose tier might be lowered by the new guidelines. Requiring all other nonpricing centers under the tiering method to take the administrative procedures to recertify all enrolled children would increase paperwork unnecessarily and would increase administrative expenses while having no impact on Federal reimbursement payment factors, on children's payments, or on any other aspect of their Program operations in such centers.

The Department's calculations of the percentage ranges of those nonpricing independent centers and sponsors of centers reimbursed under the tiering method that potentially could change to a lower tier are based on information collected by the Department's Office of the Inspector General during a recent audit of the National School Lunch Program, which utilizes the same income poverty guidelines as the Child Care Food Program and the Summer Food Service Program for Children. This information includes family size/income data on children in the free and reduced price categories for a national sample of 765 households. Based on these data, the Department estimates that 1.5 percent of children currently eligible for reduced price meals will shift to the paid category as a result of the new guidelines. The percentage was increased to 4 percent before being incorporated into the percentage ranges to ensure that the ranges will encompass all affected independent centers and sponsors of centers whose tier might be lowered by the new guidelines. The ranges exclude the estimated shift from the free to the reduced price category

because this shift would have no effect on an institution's reimbursement tier.

**Procedures and Timeframes for Implementation:**

**1. Independent Centers and Sponsors of Centers Which Need Not Recertify All Enrolled Children Under New Guidelines.**

Within 30 days after the date of publication of this Notice in the **Federal Register**, the State agency shall send written notification of these income guidelines and instructions requiring the use of these guidelines for subsequent eligibility determinations to such independent centers and sponsors of centers.

**2. All Other Independent Centers and Sponsors of Centers.**

The State agency, within 30 days after the date of **Federal Register** publication, shall also send to all other independent centers and sponsors of centers written notification of these income guidelines. In addition, the State agency shall set forth directions to provide for implementation within the following timeframes.

Within 15 days of receipt of the new guidelines, all institutions which charge separately for meal service shall issue a public release to announce the new family size/income standards. Such institutions shall issue a new family size/income application to parents or guardians of participating children who express interest in submitting a new application as a result of publicity concerning the revised guidelines.

Because the guidelines have been changed in the middle of the year, institutions may either (1) use applications currently on file to make new eligibility determinations, or (2) distribute new family size/income applications with the new guidelines and base redeterminations on them. In either event, these institutions shall redetermine each child's need category and report to the State agency the number of children enrolled in each category within 45 days after the date on which the State agency mailed the guidelines.

The claim for the first calendar month that commences after 45 days have elapsed from the date on which the new guidelines were mailed to institutions reimbursed according to tier, claiming percentages, or blended rates shall be paid by the State agency on the basis of updated need category information submitted by the institutions. This timeframe will provide the State agency with a minimum of 75 days (the 30 days in the month covered by the claim plus the 45 days in which the State agency must pay valid claims) to implement

necessary adjustments in its payment system.

Institutions which are required to take these actions but do not submit the updated need category data on schedule shall not receive further advances or be paid for the first calendar month which commences after 45 days have elapsed from the date on which the State agency mailed the new guidelines, or for subsequent months, until after they have submitted the updated information.

Institutions reimbursed on the basis of the number of meals served to children in each need category shall commence meal counts according to children's redetermined eligibility on the first day of the first calendar month which begins after 45 days have elapsed from the date on which the State agency mailed the new guidelines.

On this same date, institutions which charge separately for meal service shall implement adjusted meal charges based on children's redetermined eligibility. Not less than 10 days prior to this date, such pricing institutions shall notify parents or guardians of any charge in the meal service charge for their children.

*Summer Food Service Program for Children:*

Eligibility for the 1981 Summer Program shall be based on the guidelines announced in this notice.

*New Guidelines*

The following are the new income poverty guidelines to be effective for the remainder of fiscal year 1981. These guidelines include the standard deduction which replaces all hardship deductions.

BILLING CODE 3410-30-M

## INCOME POVERTY GUIDELINES

## 48 States, District of Columbia, Territories Excluding Guam

Family Size	Poverty Level			125% of Poverty			195% of Poverty		
	Year	Month	Week	Year	Month	Week	Year	Month	Year
1	4750	396	91	5700	475	110	8350	696	161
2	5970	498	115	7220	602	139	10730	894	206
3	7190	599	138	8750	729	168	13110	1093	252
4	8410	701	162	10270	856	198	15490	1291	298
5	9630	803	185	11800	983	227	17870	1489	344
6	10850	904	209	13320	1110	256	20250	1688	389
7	12070	1006	232	14850	1238	286	22620	1885	435
8	13290	1108	256	16370	1364	315	25000	2083	481
For each Additional Family Member Add	1220	102	23	1530	128	29	2380	198	46

## ALASKA

Family Size	Poverty Level			125% of Poverty			195% of Poverty		
	Year	Month	Week	Year	Month	Week	Year	Month	Year
1	5960	497	115	7150	596	138	10480	873	202
2	7480	623	144	9050	754	174	13450	1121	259
3	9000	750	173	10950	913	211	16410	1368	316
4	10520	877	202	12850	1071	247	19370	1614	373
5	12040	1003	232	14750	1229	284	22340	1862	430
6	13560	1130	261	16650	1388	320	25300	2108	487
7	15080	1257	290	18550	1546	357	28270	2356	544
8	16600	1383	319	20450	1704	393	31230	2603	601
For Each Additional Family Member Add	1520	127	29	1900	158	37	2960	247	57

## HAWAII and GUAM

Family Size	Poverty Level			125% of Poverty			195% of Poverty		
	Year	Month	Week	Year	Month	Week	Year	Month	Year
1	5450	454	105	6540	545	126	9600	800	185
2	6850	571	132	8290	691	159	12330	1028	237
3	8250	688	159	10040	837	193	15060	1255	290
4	9650	804	186	11790	983	227	17790	1483	342
5	11050	921	213	13540	1128	260	20520	1710	395
6	12450	1038	239	15290	1274	294	23250	1938	447
7	13850	1154	266	17040	1420	328	25980	2165	500
8	15250	1271	293	18790	1566	361	28710	2393	552
For Each Additional Family Member Add	1400	117	27	1750	146	34	2730	228	53

NOTE: Do not allow hardship deductions from the above income poverty guidelines. The standard deduction has been included in all of the above income levels.

(Catalog of Federal Domestic Assistance Programs Nos. 10.558 and 10.559)

Authority: Sec. 203(a)-(c), Pub. L. 96-499, 94 Stat. 2599.

Dated: January 13, 1981.

Bob Greenstein,

Administrator, Food and Nutrition Service.

[FR Doc. 81-2545 Filed 1-20-81; 8:45 am]

BILLING CODE 3410-30-M

## Forest Service

### Spruce Budworm Management Program; Northern Maine, 1981; Correction

AGENCY: USDA, Forest Service.

ACTION: Correction.

**SUMMARY:** This corrects a notice that was published in the *Federal Register* of October 15, 1980 (45 FR 68415) FR Doc. 80-32053. The Notice of Intent of October 15 should have read as follows:

Pursuant to Section 102(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare a site specific environmental assessment for suppression of the spruce budworm population in Northern Maine for the protection of spruce and fir. Activities will take place in late spring and the summer of 1981.

The various elements of the general spruce budworm management program have been addressed in a Programmatic Environmental Impact Statement. A Scoping Session was held in connection with that statement. The scope of the 1981 project will be determined by consultation with land managers and State and Federal agencies.

Alternatives for suppression of budworm populations include silvicultural, biological and chemical methods, as outlined in the Programmatic Statement. Allen J. Schacht, Director of the Northeastern Area, is the responsible Federal Official, and Peter W. Orr is the Team Leader for the environmental assessment. A Temple Bowen of the Department of Conservation (Augusta) will represent the State of Maine. The environmental assessment will require about one month. The Programmatic Draft Environmental Statement was issued on October 8, 1980. This will be followed by a review period. The Final Programmatic Environmental Impact Statement is scheduled for filing on or about January 30, 1981.

Questions about the Notice of Intent or on the project should be sent to Allen J. Schacht, Director, Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008.

**SUPPLEMENTARY INFORMATION:** USDA issued a notice that was published in the *Federal Register* of October 15, 1980 (45 FR 68415) that the agency intended to prepare a site specific environmental impact statement for suppression of the Spruce Budworm population in Northern Maine for the protection of spruce and fir. This was in error. It should have read: An environmental assessment will be conducted after the Programmatic Environmental Statement process is completed.

Allen J. Schacht,

Director, Northeastern Area, State and Private Forestry.

[FR Doc. 81-1469 Filed 1-20-81; 8:45 am]

BILLING CODE 3410-11-M

### Fremont National Forest Grazing Advisory Board; Meeting

The Fremont National Forest Grazing Advisory Board will meet at 10:00 a.m. on Friday, March 6, 1981 at the Forest Supervisor's Office, 34 North D Street, Lakeview, Oregon 97630. The Purpose of this meeting is:

1. Update members on Land Management Planning progress.
2. Discuss use of range betterment funds.
3. Review range allotment management planning.

The meeting will be open to the public. Persons who wish to attend should notify Ralph B. Roberts, 34 North D Street, Lakeview, Oregon 97630, phone 947-2151. Written statements may be filed with the Board before or after the meeting.

The committee has established the following rules for public participation:

1. Must have pre-notice and placed on agenda.
2. Time limit will be announced at meeting.
3. May be oral or written.
4. Aggrieved grazing permittee must contact:
  - a. District Ranger regarding decision or recommendations.
  - b. Forest Supervisor regarding proposed action.
  - c. Advisory Board member.
  - d. Forest Supervisor/Board President in emergency.
5. General Public:
  - a. same steps as aggrieved grazing permittee.
  - b. Open input on agenda items permitted.
  - c. May present topics or concerns if prearranged.

Dated: January 16, 1981.

John W. Chambers,  
Forest Supervisor.

[FR Doc. 81-3410 Filed 1-20-81; 8:45 am]

BILLING CODE 3410-11-M

### Land and Resource Management Plan, Francis Marion National Forest, Berkeley and Charleston Counties, South Carolina; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91-190), the Forest Service, Department of Agriculture, will prepare an environmental impact statement on the Land and Resource Management Plan for the Francis Marion National Forest in South Carolina.

The Land and Resource Management Plan is being prepared in accordance with requirements of the Secretary's regulations promulgated pursuant to the National Forest Management Act of 1976. The resulting plan will provide for multiple-use and sustained yield of goods and services from the Francis Marion National Forest.

The planning process will integrate all resource planning—timber, lands, fish and wildlife, soil and water, wilderness and recreation—together with resource protection and resource use activities. The process will be issue-oriented, i.e., public issues, management concerns, and development opportunities will be analyzed continually throughout the process.

A reasonable range of alternatives will be formulated by an interdisciplinary team to provide different ways to address and respond to the major public issues, management concerns, and resource opportunities identified during this planning process.

Alternatives will reflect a range of resource output and expenditure levels. In formulating these alternatives, the following criteria will be met:

- (1) Each alternative will be capable of being achieved;
- (2) A no-action alternative will be formulated, that is the most likely condition expected to exist in the future if current management direction would continue unchanged;
- (3) Each alternative will provide for orderly elimination of backlogs of needed treatment for the restoration of renewable resources as necessary to achieve the multiple-use objectives of that alternative;
- (4) Each identified major public issue and management concern will be addressed in one or more alternatives; and

(5) Each alternative will represent to the extent practicable the most cost efficient combination of management practices examined that can meet the objectives established in the alternative. Each alternative will state at least:

(a) The condition and uses that will result from long-term application;

(b) The goods and services to be produced, and the timing and flow of these outputs;

(c) Resource management standards and guidelines; and

(d) The purposes of the management direction proposed.

As an early step in the planning process, Federal, State, and local agencies, organizations, and individuals who may be interested in, or be affected by the decision will be invited to participate in a scoping process which includes: (a) identification of those issues to be addressed; (b) identification of those issues to be analysed in depth; and (c) elimination from detailed study those issues which are not significant, or which have been covered by prior environmental review.

To accomplish this scoping effort, the Francis Marion National Forest will send letters to interested publics inviting them to assist and provide input into the analysis of the issues. Key individuals and groups may be contacted directly for their input.

Written comments and/or suggestions concerning this Notice of Intent or the proposal should be sent to Donald W. Eng, Forest Supervisor, Francis Marion National Forest, 1835 Strom Thurmond Federal Bldg., P.O. Box 2227, Columbia, South Carolina 29201.

The draft environmental impact statement is scheduled for completion by May 1983, with a 3-month review period, and the final environmental impact statement is scheduled for filing in December 1983.

Lawrence M. Whitfield, Regional Forester, Southern Region of the Forest Service, is the responsible official for the environmental impact statement and plan.

For further information about the planning process or the environmental impact statement, contact: David V. Rosdal, Forest Planner, Francis Marion & Sumter National Forests, 1835 Strom Thurmond Federal Bldg., P.O. Box 2227, Columbia, South Carolina 29202, (803-765-5222).

Dated: January 16, 1981.

Lawrence M. Whitfield,  
Regional Forester.

[FR Doc. 81-2734 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-11-M

### Soil Conservation Service

#### Big Creek Watershed, Arkansas; Intent to Prepare an Environmental Impact Statement

**AGENCY:** Soil Conservation Service, Department of Agriculture.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Max A. Mull, Acting State Conservationist, Soil Conservation Service, 700 West Capitol Avenue, Little Rock, Arkansas 72205, telephone number 501-378-5445.

**NOTICE:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Big Creek Watershed, Columbia County, Arkansas.

The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Max A. Mull, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention, municipal and industrial water supply and recreation. Alternatives under consideration to reach these objectives include systems of conservation land treatment, nonstructural measures, and multiple-purpose reservoirs.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites the participation and consultation of all agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Max A. Mull, Acting State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: January 16, 1981.

Joseph W. Haas,  
Deputy Chief for Natural Resource Projects.  
[FR Doc. 81-2885 Filed 1-26-81; 8:45 am]  
BILLING CODE 3410-16-M

#### Central Sonoma Watershed Project, Spring Creek Subwatershed, California; Availability of Record of Decision

**AGENCY:** Soil Conservation Service, Department of Agriculture.

**ACTION:** Notice of Availability of a Record of Decision.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Francis C. H. Lum, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 95616, telephone 916-758-2200.

**NOTICE:** Francis C. H. Lum, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of California, is hereby providing notification that a record of decision is available for the Central Sonoma Watershed Project, Spring Creek Subwatershed. Single copies of this record of decision may be obtained from Francis C. H. Lum at the above address.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: January 16, 1981.

Joseph W. Haas,  
Deputy Chief for Natural Resource Projects.  
[FR Doc. 81-2886 Filed 1-26-81; 8:45 am]  
BILLING CODE 3410-16-M

#### Eugene Covered Bridge Critical Area Treatment RC&D Measure, Indiana; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, U.S. Department of Agriculture.

**ACTION:** Notice of a Finding of No Significant Impact.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Robert L. Eddleman, State Conservationist, Soil Conservation Service, 5610 Crawfordsville Road, Indianapolis, Indiana 46224, telephone 317-269-6515.

**NOTICE:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil

Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Eugene Covered Bridge Critical Area Treatment RC&D Measure, Vermillion County, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include gravel bedding and riprap placed on an eroding stream bank near the bridge abutment. Conservation practices include ¼ acre of seeding and mulching.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert L. Eddleman. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until February 26, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Office of Management and Budget Circular No. A-95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: January 15, 1981.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 81-2887 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-16-

**Scioto Vocational School Critical Area Treatment RC&D Measure, Ohio; Finding of No Significant Impact**

**AGENCY:** Soil Conservation Service, U.S. Department of Agriculture.

**ACTION:** Notice of a Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert R. Shaw, State Conservationist, Soil Conservation Service Room 522, 200 North High Street, Columbus, Ohio 43215, telephone 614-469-6962.

**NOTICE:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Scioto Vocational School Critical Area Treatment RC&D Measure, Scioto County, Ohio.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert R. Shaw, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for stabilization of critically eroding areas on the school property. The planned works of improvement include the installation of 1500 feet of diversion, a grade stabilization structure, and 7 acres of critical area seeding.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert R. Shaw. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until February 26, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Office of Management and Budget Circular No. A-95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

Dated: January 16, 1981.

[FR Doc. 81-2888 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-16-M

**Spruce Street Flood Prevention RC&D Measure, Ohio; Finding of No Significant Impact**

**AGENCY:** Soil Conservation Service, U.S. Department of Agriculture.

**ACTION:** Notice of a Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. Shaw, State Conservationist, Soil Conservation Service, Room 522, 200 North High Street, Columbus, Ohio 43215, telephone 614-469-6962.

**NOTICE:** pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Spruce Street Flood Prevention RC&D Measure, Defiance County, Ohio.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert R. Shaw, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood prevention. The planned works of improvement include improvement of 2800 feet of open drainage, installation of 90 feet of concrete pipe, and the use of riprap to stabilize curves along the open drain. Approximately 2.3 acres of critical area planting will be applied to the areas disturbed during construction.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert R. Shaw. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until February 26, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Office of Management and Budget Circular No. A-95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: January 16, 1981.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 81-2889 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-16-M



**Village of Clarksburg Flood Prevention RC&D Measure, Ohio; Finding of No Significant Impact**

**AGENCY:** Soil Conservation Service, U.S. Department of Agriculture.

**ACTION:** Notice of a finding of no significant impact.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert R. Shaw, State Conservationist, Soil Conservation Service, Room 522, 200 North High Street, Columbus, Ohio 43215, telephone 614-469-6962.

**NOTICE:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Village of Clarksburg Flood Prevention RC&D Measure, Ross County, Ohio.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert R. Shaw, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood prevention. The planned works of improvement include construction of 1,200 feet of diversion, 1,200 feet of subsurface drains, 1 grade stabilization structure, and 2 acres of critical area planting. Critical area planting will be applied to all areas disturbed during construction.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert R. Shaw. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Resource Conservation and Development Program, Office of Management and Budget Circular A-95 regarding State and local clearinghouse

review of Federal and federally assisted programs and projects is applicable.)

Dated: January 16, 1981.

**Joseph W. Haas,**

*Deputy Chief of Natural Resource Projects.*

[FR Doc. 81-2800 Filed 1-26-81; 8:45 am]

**BILLING CODE 3410-16-M**

**CIVIL AERONAUTICS BOARD**

[Order 81-1-94; Docket 39166]

**American Airlines, Inc.; Application and Order Granting Exemption**

Issued Under Delegated Authority: January 19, 1981.

By application filed January 19, 1981, American Airlines requests an exemption from Section 403 of the Federal Aviation Act and Parts 221 and 223 of the Board's Economic Regulations to the extent necessary to permit it to provide free round-trip transportation to any hostage family member between any point on its system and the port of entry of those Americans who have been held hostage in Iran.

We find that this request is consistent with the public interest, and therefore we will approve the exemption. We will also extend this exemption to all other U.S. air carriers.

Accordingly, acting under authority delegated by the Board in the Board's Regulations, 14 CFR 385.16,

1. We exempt all U.S. air carriers from the provisions of Section 403 of the Federal Aviation Act of 1958, and Parts 221 and 223 of the Board's Economic Regulations, insofar as the enforcement of Section 403 and Parts 221 and 223 would prevent them from providing the free round-trip transportation as described herein.

2. We will serve a copy of this order on American Airlines and on all other U.S. air carriers.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of this service.

This order shall be effective immediately and the filing of a petition for review shall not preclude its effectiveness.

This order will be published in the Federal Register.

**Phyllis T. Kaylor,**

*Secretary.*

[FR Doc. 81-2726 Filed 1-26-81; 8:45 am]

**BILLING CODE 6320-01-M**

[Docket 33789, Order 81-1-105]

**Show-Cause Proceeding To Award Marathon Authority to Air Florida, Inc.**

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of Order to Show Cause, Docket 33789, Order 81-1-105.

**SUMMARY:** The Board is issuing an order in which it tentatively finds and concludes that it is consistent with the public convenience and necessity to amend the certificate of Air Florida, Inc. so as to authorize it to engage in unrestricted operations at Marathon, Florida.

**DATES:** All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file by February 23, 1981, a statement of objections together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

**ADDRESSES:** Objections to issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 33789, Petition of Air Florida, Inc.

In addition, copies of such filings should be served on Air Florida, Inc., the Greater Marathon Chamber of Commerce, the County of Monroe, Florida, the Florida Public Service Commission, the Managers of Miami International Airport, Tampa International Airport, Key West International Airport and Marathon Airport and the Mayors of Miami, Tampa, Key West and Marathon, Florida.

**FOR FURTHER INFORMATION CONTACT:**

Sherry L. Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5333.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 81-1-105 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81-1-105 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: January 21, 1981.

**Phyllis T. Kaylor,**

*Secretary.*

[FR Doc. 81-2729 Filed 1-26-81; 8:45 am]

**BILLING CODE 6320-01-M**

[Dockets 39174 and 38999; Order 80-1-111]

**Application of Guy-America Airways, Inc.**

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause and Instituting Investigation; Dockets 39174 and 38999, Order 80-1-111.

**SUMMARY:** The board proposes to issue a certificate of public convenience and necessity to Guy-America Airways, Inc. for New York-Georgetown, Guyana scheduled nonstop service subject to the outcome of the *Guy-America Airways, Inc. Fitness Investigation*.

**Objections:** All interested persons having objections to the Board's tentative findings and conclusions that this action be taken, as described in the order cited above, shall, NO LATER THAN February 13, 1981, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 38999, Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to Guy-America Airways, Inc., the Departments of State and Transportation and the Ambassador of Guyana in Washington, D.C.

A statement of objections must cite the Docket number and must include a summary of testimony, statistical data or other such supporting evidence.

To Get a Copy of the Complete Order, request it from the Civil Aeronautics Board, Distribution Section, Room 516, 1825 Connecticut Ave. NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

**FOR FURTHER INFORMATION CONTACT:** Christina R. Pfirman, 202-673-5203, Legal Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board, January 21, 1981.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 81-3010 Filed 1-26-81; 8:45 am]  
BILLING CODE 6320-01-M

[CAB-R-403; 81-3]

**Applications and/or Amendments Thereo Filed With the Civil Aeronautics Board During the Week Ending January 16, 1981**

**Subpart Q Applications**

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by

expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
1-14-81	39155	Laker Airways Limited, c/o Robert Beckman, 1001 Connecticut Avenue, N.W., Suite 235, Washington, D.C. 20036. Application of Laker Airways Limited pursuant to Section 402 of the Act, and Subpart Q of the Board's Procedural Regulations, requests the amendment of its foreign air carrier permit to authorize the transportation of persons, property and mail in scheduled service between (a) Manchester, England, and New York, New York, and (b) between London, England, and Tampa, Florida. Conforming Applications, motions to modify scope, and Answers may be filed by February 10, 1981.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 81-3011 Filed 1-26-81; 8:45 am]  
BILLING CODE 6320-01-M

[Order 81-1-107]

**Free and Reduced-Rate Transportation; Resale of Bartered Items**

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 81-1-107 dismissing applications for exemptions.

**SUMMARY:** The CAB finds that resale of airline-bartered items that are not point-to-point tickets, but are based on value to be exchanged for tickets, is not prohibited by the Federal Aviation Act or CAB regulations. This order responded to a number of exemption applications.

DATES: Adopted: January 21, 1981.

**FOR FURTHER INFORMATION CONTACT:** David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5442.

**SUPPLEMENTARY INFORMATION:** A full discussion of the issues involved is contained in Board Order 81-1-107, issued today. The complete texts of this order is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington area may send a postcard request for Order 81-1-107 to the Distribution Section.

By the Civil Aeronautics Board, January 21, 1981.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 81-2909 Filed 1-26-81; 8:45 am]  
BILLING CODE 6320-01-M

[Order 81-1-110; Docket No. 38983]

**Munz Northern Airlines, Inc.; Petition for the Establishment of Fair and Reasonable Service Mail Rates; Order**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of January 1981.

By this order, we institute an investigation to determine the fair and reasonable final service mail rates to be paid Munz Northern Airlines, Inc., by the Postmaster General, for the transportation of mail by aircraft in its certificated services and establish temporary service mail rates pending conclusion of the investigation.

On November 20, 1980, Munz filed a petition requesting us to institute such investigation and to fix as temporary service mail rates for Munz, subject to retroactive adjustment by an order establishing final rates, the service mail rates established for Wien Air Alaska by Orders 80-4-53 and 80-11-81. The Postal Service filed an answer on December 10, 1980, asking us to incorporate into our decision in this case a rate equalization provision under which Munz is authorized to agree that, in the event that its final rates for the open rate period exceed Wien's final rates for that period, the rates paid to Munz for the open rate period shall be Wien's rates. As stated by the Postal Service, the purpose of the proposed provision would be to minimize the risk of having to make a large retroactive lump sum adjustment of the rates paid to Munz for the open rate period.

By Order 80-10-175, we amended the certificate of public convenience and necessity of Munz authorizing it to engage in air transportation of persons, property, and mail over Route 173. Mail has been and is currently being transported in the same general area by Wien Air Alaska under final mail rates established by Order 80-12-116, for 1980 and temporary mail rates established by Order 80-12-152, on and after January 1, 1981. Since Munz will be providing substantially the same mail service as Wien is now providing, we see no reason why these rates should not apply as temporary rates for Munz's certificated mail operations as well. We will therefore establish Wien's service mail rates as temporary rates for Munz.

We will make these rates subject to the customary provisions that allow for

rate equalization, as modified in response to the answer filed by the Postal Service. The modified equalization provisions set forth in this order are the same as those prescribed for Peninsula Airways and Sea Airmotive in an order issued contemporaneously and permit the equalization of Munz's rate and the lowest final rate of any other carrier serving the same general area.

Ordinarily, mail rates are established after notice and opportunity for comment by the Postal Service (14 CFR 302.310). Here, however, we are dealing with rates that went through the full notice and comment procedures when they were originally established for Wien, and that are currently being paid by the Postal Service for substantially the same services that Munz will perform over the new segment added to its certificated route. We conclude, therefore, that the institution of show-cause procedures on these rates is unnecessary and that they should be made effective on and after November 20, 1980, the date on which Munz filed its mail rate petition. Based on the foregoing we waive the procedural requirements of Rule 310.<sup>1</sup>

Accordingly, under the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302:

1. We institute an investigation to determine the fair and reasonable final service mail rates to be paid by the Postmaster General to Munz Northern Airlines, Inc., for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith over Route 173, on and after November 20, 1980;

2. We set the fair and reasonable temporary rates of compensation to be paid by the Postmaster General to Munz Northern Airlines, Inc., on and after November 20, 1980, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, for operations between points on Route 173 at the rates established for Wien Air Alaska, Inc., by Orders 80-12-116 and 80-12-152;

3. The temporary service mail rates established in this order shall be paid in their entirety by the Postmaster General

<sup>1</sup> We also waive the Rule 303 requirement that Munz specify a fair and reasonable final rate in its petition. In the absence of operating experience over its new route, it would be difficult for Munz at this time accurately to determine the cost of carrying mail in scheduled operations; and therefore state what it believes to be a fair and reasonable final rate. However, Munz will be expected to specify the rate prior to the conclusion of this investigation.

and shall be subject to retroactive adjustment to November 20, 1980, as may be required by the order establishing final service mail rates in the investigation instituted by this order.

4. Munz Northern Airlines, Inc., by notice, may elect to transport mail between points for which rates here established are applicable at a reduced rate equal to the rate then in effect for such service between such points by any other carrier or carriers. If such rate is a temporary rate, the rate paid to Munz will be adjusted retroactively to the lowest final rate determined for such service between such points.

(a) An original and three copies of each notice of election and agreement shall be filed with the Board and a copy thereof shall be served upon the Postmaster General and each carrier providing service between the stated points. Such notice shall contain a complete description of the reduced charge being established, the routing over which it applies, how it is constructed, and shall similarly describe the charge with which it is being equalized.

(b) Any rate established shall be effective for the electing carrier or carriers on the date of filing of the notice, or such later date as may be specified in the notice, until such election is terminated. Elections may be terminated by any electing carrier upon ten days' notice filed with the Board and served upon the Postmaster General and each carrier providing service between the stated points; and

5. We will serve this order upon the Postmaster General and Munz Northern Airlines, Inc.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board,<sup>2</sup>

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-3012 Filed 1-26-81; 8:45 am]

BILLING CODE 6320-01-M

{Dockets 38770 and 38180; Order 81-1-109}

**Peninsula Airways, Inc. and Sea Airmotive, Inc.; Petitions for Fair and Reasonable Service Mail Rates; Order on Reconsideration**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of January 1981.

Order 80-10-158 set the Peninsula Airways, Inc. temporary service mail rate at the same level as the temporary rate set for Kodiak-Western Alaska

Airlines and instituted an investigation to set Peninsula's final rate.<sup>1</sup> In Order 80-10-159, we established Sea Airmotive's temporary service mail rates as the rates paid to Wien Air Alaska, and, as with Peninsula, instituted a proceeding to set final rates for the carrier.

The Postal Service has filed petitions for reconsideration of Orders 80-10-159 and 80-10-158, asking for modification of the equalization clauses applied to the carriers. The clauses in question state that Peninsula and Sear may equalize their rates to the "rates then in effect" by any competing carrier. The Postal Service contends that where, as here, the rates in effect are temporary rates, this language leaves open the possibility of a retroactive upward adjustment of the charges to the Postal Service if Peninsula's and Sear's final rates are set at a level higher than the final rates for Kodiak and Wien, respectively. The Postal Service requests that the clause be modified to set the rates payable to Peninsula and Sear at the current final rates for the carriers to which their temporary rates are linked. Under these clauses, once the carrier had filed a notice to equalize to the lowest rate in effect in a particular market, that rate would become the lawful final rate for that carrier irrespective of any further rate actions by us. The Postal Service asserts that this will give it the assurance it need concerning Peninsula's and Sea Airmotive's final rates for the open period necessary for the planning of economical mail services.

Sear has not responded to the Postal Service's objections. Peninsula filed an answer on November 28, 1980, stating that it agrees that some modification of the equalization provision is appropriate. It points out, however, that the Postal Service suggestion would essentially freeze its mail rate at the current temporary levels and not permit modification upward if the final rates for both carriers are higher than Kodiak's temporary rate. Peninsula suggests an equalization clause under which it is authorized to agree that, in the event that its final rate for the open rate period exceeds Kodiak's final rates, the rate paid shall be Kodiak's final rate. Peninsula asserts that this will leave open the possibility of an increase in mail pay if both final rates are above the temporary rates.<sup>2</sup>

Out of a concern for clarity and for the carriers who are apparently

<sup>1</sup> Kodiak's temporary rates have been set by Orders 80-1-96 and 80-1-185.

<sup>2</sup> The Postal Service has not responded to this proposal.

<sup>3</sup> All Members concurred.

concerned about the Postal Service's intentions if their existing equalization authority is not modified, we have modified this authority to comport in principle with Peninsula's suggestion. We assume that because the Postal Service did not respond to this suggestion, it is satisfied that the equalization authority permitted will be adequately responsive to the concerns expressed in its petitions for reconsideration.<sup>3</sup>

We have not, as Peninsula proposed, limited this authority to Kodiak's and Wien's rates, respectively. Should new carriers enter Peninsula's and Sea Airmotive's markets, or should they be awarded new competitive authority, Peninsula and Sea Airmotive would presumably want the flexibility to adjust their rates to remain competitive. A clause authorizing equalization of their rates with the lowest rates of any other carrier serving the same general area preserves this option.

Inasmuch as the amended equalization clauses appear to be satisfactory in principle to both carriers and to the Postal Service, we find that further procedures on them will be unnecessary. We will therefore waive the procedural requirements in Rule 310 of our regulations and make these changes effective immediately.

Accordingly, under the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302;

(1) We amend ordering paragraph 4 of Order 80-10-158 to read as follows:

4. Peninsula Airways, Inc., by notice, may elect to transport mail between points for which rates here established are applicable at a reduced rate equal to the rate then in effect for such service between such points by any other carrier or carriers. If such rate is a temporary rate, the rate paid to Peninsula will be adjusted retroactively to the lowest final rate established for such service between such points.

(2) We amend ordering paragraph 4 of Order 80-10-159 to read as follows:

4. Sea Airmotive, Inc. by notice, may elect to transport mail between points for which rates here established are applicable at a reduced rate equal to the rate then in effect for such service between such points by any other carrier or carriers. If such rate is a temporary rate, the rate paid to Sea Airmotive will be adjusted retroactively to the lowest final rate established for such service between such points.

<sup>3</sup> We note that if Peninsula's final rates turned out to be lower than Kodiak's final rate the Postal Service would have ended up paying higher rates retroactively for mail service unless Kodiak's equalization clause was amended to allow it to match Peninsula's rate.

(3) We will serve this order on Peninsula Airways, Inc., Sea Airmotive, Inc., and the Postmaster General.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board. \*  
Phyllis T. Kaylor,  
Secretary.

[FR Doc. 81-3013 Filed 1-26-81; 8:45 am]

BILLING CODE 6320-01-M

## CIVIL RIGHTS COMMISSION

### Connecticut Advisory Committee; Amendment

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Connecticut Advisory Committee of the Commission originally scheduled for February 5, 1981, (FR Doc. 81-1102 on page 3038) has been changed.

The meeting now will be held on January 29, 1981, beginning at 7:00 p.m., and will end at 9:00 p.m., at the Lord Cromwell Inn, Route 72, Cromwell, Connecticut.

Dated at Washington, D.C., January 14, 1981.

Thomas L. Neumann,  
Advisory Committee Management Officer.

[FR Doc. 81-2730 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

### Inter-Regional Committees; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the following regions: Midwestern, New England, Central, Rocky Mountain, Southwestern and Northwestern Regions of the Commission will convene at 9:00a and will end at 5:00p, on February 12-13, 1981, at the Radisson Hotel Downtown, 45 South Seventh Street, Danish Room, Minneapolis, Minnesota. The purpose of the meeting is to plan for future Commission involvement in programs and project regarding Indian problems.

Persons desiring additional information or planning a presentation to the Regions, should contact the Regional Offices, Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago IL 60604, (312) 353-7371; New England Regional Office, 55 Summer Street, 8th Floor, Boston MA 02110, (617) 223-4671; Central States Regional Office, Old Federal Office Building, Room 3103, 911 Walnut Street, Kansas City MO 64106, (816) 758-5253;

\* All members concurred.

Rocky Mountain Regional Office, Brooks Towers, 1020 Fifteenth Street, Suite 2235, Denver CO 80202, (303) 327-2211; Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio TX 78204, (512) 730-5570; or Northwestern Regional Office, 915 Second Avenue, Room 2852, Seattle WA 98174, (206) 399-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 21, 1981.

Thomas L. Neumann,  
Advisory Committee Management Officer.

[FR Doc. 81-2734 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

### Maine Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 7:00 p.m., on February 12, 1981, at the Maine Teachers Association, 35 Community Drive, Augusta, Maine. The purpose of this meeting is to discuss status of State service to off-reservation Indians; possible projects on domestic violence; rights of the handicapped and women in nontraditional jobs; public response to the information kit on sexual harassment and the report on civil rights developments in 1980.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Madeleine Giguere, 35 Change Extension, Lewiston, Maine, (207) 784-9946, or the Regional Office, New England Region, U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, MA 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 21, 1981.

Thomas L. Neumann,  
Advisory Committee Management Officer.

[FR Doc. 81-2732 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

### Maryland Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Maryland Advisory Committee on the Commission originally scheduled for January 21, 1981, at

Annapolis, Maryland, (FR Doc. 81-722 on page 2372) has been changed.

The meeting now will be held on January 28, 1981, beginning at 6:30 p.m., and will end at 9:30 p.m., at the Thomas Hunter Lowe Office Building, 6 Bladen Blvd., Room 212, Annapolis, Maryland.

Dated at Washington, D.C., January 14, 1981.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 81-2758 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

#### Minnesota Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m., and will end at 9:00 p.m., on February 12, 1981, at the Minneapolis Radison (Downtown), 45 S. 7th, Minneapolis, Minnesota. The purpose of the meeting is a final review of the "Administration of Justice: Police Practices in the Twin Cities" report—findings and recommendations. Followup activity for Police Study and Duluth Desegregation statement will also be discussed.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Lupe Lopez, 509 Sibley, St. Paul, Minnesota 55101, (612) 227-8954 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois, 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 14, 1981.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 81-2790 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

#### Oklahoma Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 2:00p and will end at 6:00p, on February 17, 1981, at Cameron University, Staff Conference Room 200, Administration Building, 2800 Gore, Lawton, Oklahoma 73501. The purpose of the meeting is to plan for project on desegregation of higher education.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Rep. Hannah Atkins, State Capitol Building, Room 334, Oklahoma City OK 73105, (405) 771-3586, or the Southwestern Regional Office, U.S. Commission on Civil Rights, Heritage Plaza, 418 South Main, San Antonio TX 78204, (512) 730-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 21, 1981.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 81-2757 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

#### Oregon Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 11:00 a.m., and will end at 2:00 p.m., on February 6, 1981, at the Klamath County Public Library, 126 South Third Street, Klamath Falls, Oregon 97601. The purpose of the meeting is a civil rights community forum.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Thomas J. Sloan, 215 NW Orchard Drive, Portland, Oregon 97229, (503) 644-0161 or the Northwest Regional Office, 915 Second Avenue, Room 2852, Seattle, Washington 98174, (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 14, 1981.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 81-2761 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

#### Pennsylvania Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 1:00p and will end at 4:00p, on February 19, 1981, at Federal Building, Room 7310, 600 Arch Street, Philadelphia PA 19106. The purpose of the meeting is to report on progress of study of civil rights conditions at

Lewisburg Penitentiary; update on school desegregation; progress report on Northeast Corridor Improvement (Rail) Project; civil rights status reports and new program possibilities.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Grace Alpern, 260 South 16th Street Philadelphia PA 19126, (215) 546-7600; or the Regional Office, Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, 2120 L Street, N.W., Room 510, Washington DC 20037, (202) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 21, 1981.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 81-2755 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

#### Rhode Island Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 5:00p and will end at 6:30p, on February 11, 1981, Third World Center, Brown University, 96 Angell Street, Providence, Rhode Island. The purpose of this meeting is program planning.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Miriam E. Satterfield, 54 Arbor Drive, Providence, Rhode Island 02908, (401) 277-6920, or the Regional Office, New England Regional Office, U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston MA 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 21, 1981.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 81-2753 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

#### Virginia Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will

convene at 3:00 p.m. and will end at 5:30 p.m., on February 26, 1981, at 400 North Eighth Street, Room 1035, Richmond VA 23240. The purpose of the meeting is orientation of newly-chartered members and program planning for 1981.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Ruth Harvey Charity, 453 South Main Street, Danville VA 24541, (804) 793-6282; or the Regional Office, Mid-Atlantic Region, U.S. Commission on Civil Rights, 2121 L Street, N.W., Room 510, Washington DC 20037, (202) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 21, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-2756 Filed 1-26-81; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Bryn Mawr College; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80-00325. Applicant: Bryn Mawr College, Department of Physics, Bryn Mawr, PA 19010. Article: NMR Spectrometer, Model CPS-2 and Accessories. Manufacturer: Spin-Lock Ltd., Canada. Intended use of article: See Notice on page 47894 in the *Federal Register* of July 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides coherent pulse NMR spectrometry. The National Bureau of Standards advises in its memorandum dated October 16, 1980

that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2631 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-25-M

#### Department of Commerce, NBS; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80-00358. Applicant: Department of Commerce, National Bureau of Standards, Washington, D.C. 20234. Article: High Power X-Ray Rotating Anode Generator, RU-200. Manufacturer: Rigaku Denki, Japan. Intended use of article: See Notice on page 56854 in the *Federal Register* of August 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a rotating anode with a maximum x-ray beam intensity of 12 kilowatts per square millimeter. The Department of Health and Human Services advises in its memorandum dated November 12, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or

apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2627 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-25-M

#### Labor Department, et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80-00201. Applicant: U.S. Department of Labor, Occupational Safety and Health Laboratory, 390 Wakara Way, Salt Lake City, UT 84108. Article: 100CX-THG1, Ultra High Resolution Top Entry Goniometer and 100CX-TES12, Top Entry Stage. Manufacturer: JEOL Ltd., Japan. Intended use of article: See Notice on page 26744 in the *Federal Register* of April 21, 1980. Advice submitted by: Department of Health and Human Services: June 25, 1980.

Docket Number 80-00152. Applicant: University of California, Molecular Biology Institute, 405 Hilgard Avenue, Los Angeles, CA 90024. Article: Arndt Wonacott Rotation Camera without Controller. Manufacturer: Enraf-Nonius, The Netherlands. Intended use of article: See Notice on page 27969 in the *Federal Register* of April 25, 1980. Advice submitted by: Department of Health and Human Services: June 6, 1980.

Docket Number 80-00156. Applicant: Medical University of South Carolina, 171 Ashley Avenue, Charleston, South

Carolina 29403. Article: LKB 14800 Cryokit and 14860 Cryotools. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: See Notice on page 27970 in the *Federal Register* of April 25, 1980. Advice submitted by: Department of Health and Human Services: June 6, 1980.

Docket Number 80-00216. Applicant: Duke University, Durham, North Carolina 27706. Article: LKB 14811 Cryokit and Set of Tools. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: See Notice on page 27462 in the *Federal Register* of April 23, 1980. Advice Submitted by: Department of Health and Human Services: July 17, 1980.

Docket Number 80-00218. Applicant: National Eye Institute, 9000 Rockville Pike, Bethesda, MD 20205. Article: LKB 14800-1 Cryokit. Manufacturer: Sweden. Intended use of article: See Notice on page 27462 in the *Federal Register* of April 23, 1980. Advice submitted by: National Bureau of Standards: June 17, 1980.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the National Bureau of Standards and the Department of Health and Human Services in their respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that they know of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign article are intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,  
Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2629 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-25-M

#### Northeastern University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number 80-00329. Applicant: Northeastern University, 360 Huntington Avenue, Boston, Massachusetts 02115. Article: High Performance Liquid Chromatograph-Electron Capture Detector. Manufacturer: Pye Unicam, Ltd., United Kingdom. Intended use of article: See Notice on page 47894 in the *Federal Register* of July 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides electron capture detection in liquid chromatography eluents. The National Bureau of Standards advises in its memorandum dated November 19, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,  
Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2628 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-25-M

#### University of Arizona, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free

entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(c)).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number 80-00-350. Applicant: University of Arizona, Tucson, Arizona 85724. Article: Electron Microscope, Model EM 109R with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: See Notice on page 56-122 in the *Federal Register* of August 22, 1980. Article ordered: March 21, 1980.

Docket Number 80-00-352. Applicant: Notre Dame University, Notre Dame Indiana 46556. Article: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi Instruments, Japan. Intended use of article: See Notice on page 56-122 in the *Federal Register* of August 22, 1980. Article ordered: May 16, 1980.

Docket Number 80-00-354. Applicant: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Bethesda, MD 20205. Article: Electron Microscope, Model EM 400T and Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of article: See Notice on page 56-123 in the *Federal Register* of August 22, 1980. Application received by Commissioner of Customs: June 26, 1980.

Docket Number 80-00-359. Applicant: The University of Texas at Tyler, 3900 University Blvd., Tyler Texas 75701. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: See Notice on page 56-855 of the *Federal Register* of August 26, 1980. Article ordered: May 30, 1980.

Docket Number 80-00-363. Applicant: University of Tennessee, College of Medicine, Department of Pathology, 858 Madison Avenue, Memphis, TN 38163. Article: Electron Microscope, Model EM 10C. Manufacturer: Carl Zeiss, West Germany. Intended use of article: See Notice on page 56-856 in the *Federal Register* of August 26, 1980. Article ordered: June 6, 1980.

Docket Number 80-00-371. Applicant: University of Maryland Medical School, 660 W. Redwood Street, Baltimore, Maryland 21201. Article: Electron Microscope, Model EM 109R and

Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: See Notice on page 66-830 in *Federal Register* of October 8, 1980. Article ordered: May 22, 1980.

Docket Number 80-00-373. Applicant: University of Tennessee, Biology Business Office, 125 Austin Peay, Knoxville, Tennessee 37916. Article: Electron Microscope, Model H-600 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of article: See Notice on page 68-983 in the *Federal Register* of October 17, 1980. Article ordered: June 27, 1980.

Docket Number 80-00-381. Applicant: University of Georgia, Dept. of Anatomy and Radiology, College of Vet. Med., Athens, Georgia 30602. Article: Electron Microscope, Model JEM 100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: See Notice on page 68-984 in the *Federal Register* of October 17, 1980. Article ordered: June 6, 1980.

Docket Number 80-00-382. Applicant: National Institute for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: See Notice on page 68-984 in the *Federal Register* of October 17, 1980.

Docket Number 80-00-389. Applicant: Veterans Administration Medical Center, 150 Muir Road, Martinez, CA 94553. Article: Electron Microscope, Model EM 109R. Manufacturer: Carl Zeiss, West Germany. Intended use of article: See Notice on page 68-984 in the *Federal Register* of October 17, 1980. Article ordered: June 30, 1980.

Docket Number 80-00-393. Applicant: University of North Carolina at Chapel Hill, Department of Physiology, 186 Medical Research Wing 20GH. Article: Electron Microscope EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: See Notice on page 68-985 in the *Federal Register* of October 17, 1980. Article ordered: December 19, 1980.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered.

Reasons: Each foreign article to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or

educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2626 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-25-M

#### University of California; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80-00338. Applicant: University of California, San Diego, Department of Chemistry, B-014, La Jolla, CA 92093. Article: Rare Gas Halide Laser, Model TE-861. Manufacturer: Lumonics, Canada. Intended use of article: See Notice on page 54390 in the *Federal Register* of August 15, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a maximum pulse energy of 80 millijoules as well as a repetition rate of more than 150 Hertz for Xenon chloride.

The National Bureau of Standards advises in its memorandum dated November 19, 1980 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2624 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-25-M

#### University of Illinois; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket Number 80-00225. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. Article: Metallurgical Microscope. Manufacturer: Carl Zeiss, West Germany. Intended use of article: See Notice on Page 41999 in the *Federal Register* of June 23, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a Nomarski differential interference contrast attachment. The National Bureau of Standards advises in its memorandum dated November 5, 1980 that (1) the capability of the foreign article described above is pertinent to



the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2830 Filed 1-23-81; 8:45 am]

BILLING CODE 3510-25-M

#### University of Michigan, et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket Number 80-00334. Applicant: University of Michigan, Physiology and Biophysics SJ-40, Seattle, WA 98195. Article: Automatic Stepping Micromanipulator. Manufacturer: AB Transvertex, Sweden. Intended use of article: See Notice on page 47895 in the Federal Register of July 17, 1980. Advice submitted by: Department of Health and Human Services: November 12, 1980.

Docket Number 80-00347. Applicant: The Regents of the University of California, Riverside, Materiel Management Department, Riverside, CA 92521. Article: Cryokit, LKB 14800-3 Freezing Accessory. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: See Notice on page 56122 in the Federal Register of August 22, 1980. Advice submitted by: Department of Health and Human Services: November 12, 1980.

Docket Number 80-00356. Applicant: Mount Sinai School of Medicine, 1 Gustave Levy Place, New York, N.Y.

10029. Article: Replacement Parts for Free-flow Electrophoresis Apparatus, Model FF5. Manufacturer: Bender and Hobein, West Germany. Intended use of article: See Notice on page 56854 in the Federal Register of August 26, 1980. Advice submitted by: Department of Health and Human Services: November 12, 1980.

Docket Number 80-00366. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Turbo Molecular Pump, #120. Manufacturer: Cameca, France. Intended use of article: See Notice on page 56855 in the Federal Register of August 26, 1980. Advice submitted by: National Bureau of Standards: December 3, 1980.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the National Bureau of Standards and the Department of Health and Human Services in their respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that they know of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign article are intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2825 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-25-M

#### Steel Trigger Price Mechanism; Product Coverage

AGENCY: Department of Commerce.

ACTION: Review of pending requests for changes in trigger price product coverage and guidelines for product coverage requests.

SUMMARY: The Department of Commerce hereby announces its review of requests to expand coverage of certain stainless steel pipe and tubing and steel wire products under the steel trigger price mechanism (TPM). The Department also announces various clarifications and guidelines concerning product coverage requests and the coverage review procedure.

SUPPLEMENTARY INFORMATION: On October 8, 1980 (45 FR 66833), the Department of Commerce published its intention to reinstate the TPM. On October 21, 1980, Commerce began its monitoring of all imported basic steel mill products entering the United States for possible initiation of dumping investigations.

The TPM uses the system of categorization of steel mill products of the American Iron and Steel Institute (AISI). The first 32 AISI import categories are subject to trigger price coverage. All import of products in these categories require a Special Summary Steel Invoice and are reported to the Department of Commerce for analysis under the TPM.

Upon the reinstatement of the TPM, Commerce announced that it would initially retain the same product coverage used for the second quarter 1980 trigger prices. At the same time, Commerce announced requests that it had received for changes in product coverage and that it would entertain further written requests and comments for additions to and deletions from coverage under the TPM. Commerce has announced requests for changes in product coverage on October 21, 1980 (45 FR 69527) and November 20, 1980 (45 FR 76722) in the Federal Register.

#### I. Recent Request for Changes in Trigger Price Product Coverage

Commerce has received requests to expand trigger price coverage to the following products:

1. Seamless stainless steel pipe and tubing.
2. Welded stainless steel pipe.
3. Bale ties.
4. Hardware cloth; 2,4,8 mesh.
5. Light welded mesh 2x4, 14 gauge 2x4, 12.5 gauge.
6. Paper clips.

Any party interested in commenting on these requests should submit written comments as soon as possible, and no later than February 27, 1981 to F. Lynn Holec, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. Comments should focus on the economic factors involved.

Public notice of and opportunity for comment on any additional requests for

review of trigger price product coverage under TPM will be provided.

Commerce will maintain these requests in a public file. Anyone submitting business confidential information should clearly so label the confidential portion of their submissions.

## II. Guidelines for Product Coverage Requests

With regard to trigger price product coverage review procedures, Commerce shall consider a request as being any submission which requests expansion or deletion of TPM coverage for a specific steel product or product category. Accordingly, submissions which address a previously submitted product coverage request for the purpose of expanding upon or challenging the information contained in the request shall be considered a comment. In those cases where a submission supports any previous request for the addition or deletion of a variety of products or of a general product category, but requests that specific products within the general product grouping be exempted from the proposed action, such a submission shall also be considered a comment on the original request.

Commerce encourages parties requesting a change in coverage attempt to be as specific as possible with regard to the product or products recommended for product coverage review. This means that requests for product coverage changes and comments on requests should include information on price levels, shipments, import penetration, and all other economic factors that support a change in trigger price product coverage.

Any party submitting written comments on coverage requests is also encouraged to submit such comments as soon as possible after the request has been published. In the interests of acting upon coverage requests in a timely manner, Commerce may not have the opportunity to consider those comments received after the deadline designated in the Federal Register notice announcing a product coverage request.

Dated: January 21, 1981.

**John D. Greenwald,**  
Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-2956 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-25-M

## National Oceanic and Atmospheric Administration Caribbean Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The Caribbean Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will hold its 33rd regular meeting to consider status reports on fishery management plans (FMP's) under development; draft FMP framework for shallow-water reef fishes; draft FMP for coastal migratory pelagic resources; discuss progress on preparation of a color-slide narrated presentation, as well as administrative matters and other Council business.

**DATES:** The meetings, which are open to the public, will convene on Tuesday, February 17, 1981, at approximately 1:30 p.m., and will adjourn on Thursday, February 19, 1981, at approximately noon.

**ADDRESS:** The meetings will take place at the Conference Room of the Hotel Pierre, 105 de Diego Avenue, Santurce, Puerto Rico.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, Suite 1108—Banco de Ponce Building, Hato Rey, Puerto Rico 00918, Telephone: (809) 753-4926.

Dated: January 21, 1981.

**Robert K. Crowell,**  
Deputy Executive Director,  
National Marine Fisheries Service.

[FR Doc. 81-2965 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-22-M

## New England Fishery Management Council's Scientific and Statistical Committee; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee which will meet to: discuss proposal for programmatic research on herring; continue discussion of Committee operations and organization, hold preliminary discussion of stability in fisheries as an objective of management, as well as other appropriate business.

**DATE:** The meetings, which is open to the public, will convene on Wednesday, February 11, 1981, at approximately 10 a.m., and will adjourn at approximately 5 p.m. The meeting may be lengthened or shortened, or agenda items rearranged, depending upon progress on the agenda.

**ADDRESS:** The meeting will take place at the Logan Hilton, Logan International Airport, Boston, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** New England Fishery Management Council, Suntaug Office Building, Five Broadway—Route One, Saugus, Massachusetts 01906, Telephone: (617) 231-0422.

Dated: January 21, 1981.

**Robert K. Crowell,** Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-2964 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-22-M

## Gulf of Mexico Fishery Management Council; Public Hearings

**AGENCY:** National Oceanic and Atmospheric Administration/Commerce.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will hold public hearings for the purpose of public input on the Draft Environmental Impact Statement/Fishery Management Plan for Spiny Lobster.

**DATES:** Written comments on the spiny lobster plan from members of the public may be submitted no later than March 9, 1981. Individuals or organizations wishing to comment on the fishery management plan may do so at public hearings to be held as follows: February 10, 1981—Key West, Florida; February 11, 1981—Marathon, Florida; February 12, 1981—Key Largo, Florida; February 17, 1981—Naples, Florida; February 18, 1981—St. Petersburg, Florida; to be conducted jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils. All of the above hearings will start at 7:00 p.m. and adjourn at 10:00 p.m.

The hearings will be tape recorded and the tapes will be filed as an official transcript of the proceedings. A written summary will be prepared on each hearing.

**ADDRESS:** Send comments to: Chairman, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

### Hearing Locations

February 10, 1981—Key West High School Auditorium, 2100 Flagler Avenue, Key West, Florida  
February 11, 1981—Marathon High School Cafeteria, Sombrero Beach Road, Marathon, Florida  
February 12, 1981—Key Largo Civic Center, Ocean Bay Drive, Key Largo, Florida  
February 17, 1981—East Naples Middle School Cafeteria, 4100 Estey Avenue, Naples, Florida

February 18, 1981—Bayfront Center,  
Posono Room, 400 First Street, South,  
St. Petersburg, Florida

**FOR FURTHER INFORMATION CONTACT:**  
Wayne E. Swingle, Executive Director,  
Gulf of Mexico Fishery Management  
Council, Lincoln Center, Suite 881, 5401  
West Kennedy Boulevard, Tampa,  
Florida 33609, (813) 228-2815.

**SUPPLEMENTARY INFORMATION:** The  
hearings will deal with a proposal to  
implement a fishery management plan  
for spiny lobster in the geographical  
area of the Gulf of Mexico and South  
Atlantic Fishery Management Councils  
under the authority of the Fishery  
Conservation and Management Act of  
1976 (FCMA).

The Environmental Impact Statement  
is a review of the plan and a statement  
of its expected impacts. A fishery  
management plan is a major Federal  
action significantly affecting the human  
environment and requires the approval  
of the Secretary of Commerce prior to  
implementation. The plan for spiny  
lobster, when approved, will serve to  
manage the spiny lobster fishery for  
optimum yield and therefore, contains  
regulatory measures applicable to  
domestic fishing. The management area  
is the fishery conservation zone of the  
Gulf of Mexico and the Atlantic south of  
the North Carolina-Virginia border.

Species addressed in this draft plan  
include spiny lobster, *Panulirus argus*,  
spotted spiny lobster, smooth tail  
lobster, and Spanish lobster. Only spiny  
lobster will be covered by regulations  
proposed by this draft plan.

The draft plan is intended to  
accomplish the following objectives:

1. Protect long-run yields and prevent  
depletion of lobster stocks;
2. Increase yield by weight from the  
fishery;
3. Reduce user group and gear  
conflicts in the fishery;
4. Acquire the necessary information  
to manage the fishery; and
5. Promote efficiency in the fishery.

Optimum yield is specified in terms of  
a minimum size limit for the harvest of  
whole lobsters or for the lobster tails.  
Optimum yield is specified to be all  
lobster more than 3.0 inches carapace  
length or not less than 5.5 inches tail  
length that can be harvested by  
commercial and recreational fishermen  
given existing technology and prevailing  
economic conditions. For 1981, optimum  
yield, expected domestic annual  
harvest, and total allowable level of  
foreign fishing are as follows (in millions  
of pounds):

Optimum yield.....	8.0
Expected domestic annual harvest.....	8.0

Total allowable level of foreign fishing..... 0

The Councils propose the following  
management measures for domestic  
fishermen.

1. A minimum harvestable size limit of  
more than 3.0 inches carapace length or  
not less than 5.5 inches tail length shall  
be established.

2. A closed season from April 1  
through July 25 shall be established.  
During this closed season, there shall be  
a five-day "soak period" from July 21-25  
and a five-day grace period for removal  
of traps from April 1-5.

3. All spiny lobster traps shall have a  
degradable surface of sufficient size so  
as to allow escapement of lobsters from  
lost traps.

4. The taking of spiny lobsters in the  
fishery conservation zone with spears,  
hooks, and similar devices, or gear  
containing such devices, shall be  
prohibited. The possession of speared,  
pierced or punctured lobsters shall be  
prima facie evidence of the taking with  
prohibited gear while in the fishery  
conservation zone.

5. No person shall willfully molest a  
trap or buoy, or work a trap belonging to  
another, without permission from the  
owner.

6. To aid enforcement, traps may be  
worked during daylight hours only.

7. Encourage the design and  
implementation of a system that will  
assist in locating and retrieving of traps  
and minimize conflicts between users of  
the resource area.

8. All spiny lobster taken below the  
legal size limit shall be immediately  
returned to the water unharmed except  
undersized of "short" lobsters which  
may be carried on the boat/vessel while  
in the fishery conservation zone,  
provided they are: for use as lures or  
attractants in traps or kept in a shaded  
"bait" box while being transported  
between traps. No more than three live  
"shorts" per trap (traps carried on the  
boat) or 200 live "shorts," whichever is  
greater, may be carried at any one time.

9. All lobster traps used in the fishery  
within the fishery conservation zone  
shall be identified by a number and  
color code through the office of the  
Regional Director of NMFS or his  
designee to each vessel desiring to use  
lobster traps in the fishery conservation  
zone. Further, each vessel using such  
traps must be clearly marked with the  
same color to allow identification from  
aerial and water patrol craft.

10. A special two-day recreational  
nontrap season shall be established.

11. The taking of possession of  
"berried" female spiny lobsters at any  
time shall be prohibited. Stripping or

otherwise molesting female lobsters to  
remove the eggs shall be prohibited.  
"Berried" female lobsters taken in traps  
or with other gear must be immediately  
returned to the water alive and  
unharmed.

12. Use of poisons or explosives to  
take spiny lobsters shall be prohibited.

13. Statistical reporting:

a. The vessel enumeration information  
system shall be applied in the spiny  
lobster fishery and mandatory reporting  
shall be required.

b. Mandatory trip tickets shall be  
submitted as necessary by commercial  
spiny lobster fishermen.

c. A commercial spiny lobster  
fisherman is one who sells his catch.

Dated: January 21, 1981.

**Robert K. Crowell,**

*Deputy Executive Director, National  
Maritime Fisheries Service.*

[FR Doc. 81-3018 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-22-M

### South Atlantic Fishery Management Council; Public Hearings

**AGENCY:** National Oceanic and  
Atmospheric Administration/  
Commerce.

**ACTION:** Notice of Public Hearings.

**SUMMARY:** The South Atlantic Fishery  
Management Council will hold public  
hearings for the purpose of public input  
on the Draft Environmental Impact  
Statement/Fishery Management Plan for  
Spiny Lobster. The hearings on February  
10, 11, and 12, will be held jointly with  
the Gulf of Mexico Fishery Management  
Council.

**DATES:** Written comments on the Spiny  
Lobster Fishery Management plan from  
members of the public may be submitted  
no later than March 9, 1981. Individuals  
or organizations wishing to comment on  
the fishery management plan may do so  
at public hearings to be held as follows:  
February 10, 1981—Key West, Florida;  
February 11, 1981—Marathon, Florida;  
February 12, 1981—Key Largo, Florida;  
February 17, 1981—Miami, Florida;  
February 18, 1981—West Palm Beach,  
Florida; February 19, 1981—Daytona  
Beach, Florida. All of the above hearings  
will start at 7:30 p.m. and adjourn at  
10:00 p.m. The hearings will be tape  
recorded and the tapes will be filed as  
an official transcript of the proceedings.  
A written summary will be prepared on  
each hearing.

**ADDRESSES:** Send comments to:  
Chairman, South Atlantic Fishery  
Management Council, 1 Southpark  
Circle, Suite 306, Charleston, South  
Carolina 29407.

**Hearing Locations**

- February 10, 1981: Key West High School Auditorium, 2100 Flagler Avenue, Key West, Florida
- February 11, 1981: Marathon High School, Sombrero Beach Road, Marathon, Florida
- February 12, 1981: Civic Center, Ocean Bay Drive, Key Largo, Florida
- February 17, 1981: Rosenstiel Marine School Auditorium, University of Miami, 4600 Rickenbacker Causeway, Virginia Key, Miami, Florida
- February 18, 1981: County Commission Chambers, 1st Floor, County Courthouse, 300 North Dixie, West Palm Beach, Florida
- February 19, 1981: Holiday Inn Surfside, 2700 N. Atlantic Avenue, Daytona Beach, Florida

**FOR FURTHER INFORMATION CONTACT:**

David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Suite 306, Charleston, S.C. 29407, (803) 571-4366.

The hearings will be tape recorded and the tapes will be filed as an official transcript of the proceedings. A written summary will be prepared on each hearing.

**ADDRESS:** Send comments to: Chairman, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

**Hearing Locations**

- February 10, 1981: Key West High School Auditorium, 2100 Flagler Avenue, Key West, Florida
- February 11, 1981: Marathon High School Cafeteria, Sombrero Beach Road, Marathon, Florida
- February 12, 1981: Key Largo Civic Center, Ocean Bay Drive, Key Largo, Florida
- February 17, 1981: East Naples Middle School Cafeteria, 4100 Estey Avenue, Naples, Florida
- February 18, 1981: Bayfront Center, Posno Room, 400 First Street, South, St. Petersburg, Florida

**FOR FURTHER INFORMATION CONTACT:**

Wayne E. Swingle, Executive Director Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, (813) 228-2815.

**SUPPLEMENTARY INFORMATION:** The hearings will deal with a proposal to implement a fishery management plan for spiny lobster in the geographical area of the Gulf of Mexico and South Atlantic Fishery Management Councils under the authority of the Fishery Conservation and Management Act of 1976 (FCMA).

The Environmental Impact Statement is a review of the plan and a statement of its expected impacts. A fishery management plan is a major Federal action significantly affecting the human environment and requires the approval of the Secretary of Commerce prior to implementation. The plan for spiny lobster, when approved, will serve to manage the spiny lobster fishery for optimum yield and therefore, contains regulatory measures applicable to domestic fishing. The management area is the fishery conservation zone of the Gulf of Mexico and the South Atlantic from the North Carolina-Virginia border.

Species addressed in this draft plan include spiny lobster, *Panulirus argus*, spotted spiny lobster, smooth tail lobster, and Spanish lobster. Only spiny lobster will be covered by regulations proposed by this draft plan.

The draft plan is intended to accomplish the following objectives:

1. Protect long-run yields and prevent depletion of lobster stocks;
2. Increase yield by weight from the fishery;
3. Reduce user group and gear conflicts in the fishery;
4. Acquire the necessary information to manage the fishery; and
5. Promote efficiency in the fishery.

Optimum yield (OY) is specified in terms of a minimum size limit for the harvest of whole lobsters or for the lobster tails. OY is specified to be all lobster more than 3.0 inches carapace length or not less than 5.5 inches tail length that can be harvested by commercial and recreational fishermen given existing technology and prevailing economic conditions. For 1981, OY, expected domestic annual harvest (EDAH) and total allowable level of foreign fishing (TALFF) are as follows (in millions of pounds):

Optimum Yield.....	8.0
Expected Domestic Annual Harvest (1981).....	6.0
TALFF.....	0

The Councils propose the following management measures for domestic fishermen.

1. A minimum harvestable size limit of more than 3.0 inches carapace length or not less than 5.5 inches tail length shall be established.
2. A closed season from April 1 through July 25 shall be established. During this closed season, there shall be a five-day "soak period" from July 21-25 and a five-day grace period for removal of traps from April 1-5.
3. All spiny lobster traps shall have a degradable surface of sufficient size so as to allow escapement of lobsters from lost traps.

4. The taking of spiny lobsters in the fishery conservation zone (FCZ) with spears, hooks, and similar devices, or gear containing such devices, shall be prohibited. The possession of speared, pierced or punctured lobsters shall be prima facie evidence of the taking with prohibited gear while in the FCZ.

5. No person shall willfully molest a trap or buoy, or work a trap belonging to another, without permission from the owner.

6. To aid enforcement, traps may be worked during daylight hours only.

7. Encourage the design and implementation of a system that will assist in locating and retrieving of traps and minimize conflicts between users of the resource area.

8. All spiny lobster taken below the legal size limit shall be immediately returned to the water unharmed except undersized or "short" lobsters which may be carried on the boat/vessel while in the FCZ, provided they are: for use as lures or attractants in traps or kept in a shaded "bait" box while being transported between traps. No more than three live "shorts" per trap (traps carried on the boat) or 200 live "shorts," which ever is greater, may be carried at any one time.

9. All lobster traps used in the fishery within the FCZ shall be identified by a number and color code through the office of the Regional Director of NMFS or his designee to each vessel desiring to use lobster traps in the FCZ. Further, each vessel using such traps must be clearly marked with the same color to allow identification from aerial and water patrol craft.

10. A special two-day recreational nontrap season shall be established.

11. The taking or possession of "berried" female spiny lobsters at any time shall be prohibited. Stripping or otherwise molesting female lobsters to remove the eggs shall be prohibited. "Berried" female lobsters taken in traps or with other gear must be immediately returned to the water alive and unharmed.

12. Use of poisons or explosives to take spiny lobsters shall be prohibited.

13. Statistical reporting:

a. The vessel enumeration information system shall be applied in the spiny lobster fishery and mandatory reporting shall be required.

b. Mandatory trip tickets shall be submitted as necessary by commercial spiny lobster fishermen.

c. A commercial spiny lobster fishermen is one who sells his catch.

Dated: January 21, 1981.

Robert K. Crowell,  
Deputy Executive Director, National Marine  
Fisheries Service.

[FR Doc. 81-3019 Filed 1-26-81; 8:45 am]  
BILLING CODE 3510-22-M

### National Technical Information Service

#### U.S. Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for \$50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for \$5.00 each (\$10.00 outside North American Continent). Requests for copies of patent applications must include the patent application number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,  
Program Coordinator, Office of Government  
Inventions and Patents, National Technical  
Information Service, U.S. Department of  
Commerce.

Chief, Intellectual Property Division, OTJAG,  
Department of the Army, Room 2D444,  
Pentagon, Washington, D.C. 20310

Patent application 6-052,300: Automated  
Exposure—Contrast Control Index Meter;  
filed June 26, 1979.

Patent application 6-057,873: Non-Slip  
Turning Joint for Fuzes; filed July 16, 1979.

Patent application 6-084,965: Temperature  
Responsive Device; filed Oct. 15, 1979.

Patent application 6-118,136: Gage to  
Measure Track Tension; filed Feb. 4, 1980.

Patent application 6-121,765: Mechanism for  
Selectively Adjusting Ammunition Feed  
Chutes; filed Feb. 15, 1980.

Patent 4,168,863: Computer Fuzes; filed Dec. 1,  
1954; patented Sept. 25, 1979; not available  
NTIS.

Patent 4,172,235: Thin Film Magnetometer  
Insensitive to Spin; filed Apr. 18, 1968;  
patented Oct. 23, 1979; not available NTIS.

Patent 4,174,666: Springless Impact Switch;  
filed May 1, 1978; patented Nov. 20, 1979;  
not available NTIS.

Patent 4,201,612: Bonding Plastic Layers; filed  
May 15, 1978; patented May 6, 1980; not  
available NTIS.

U.S. Department of Commerce, National  
Technical Information Service, Office of  
Government Inventions and Patents,  
Springfield, Va. 22161

Patent application 6-192,261: Triple-Beam  
Offset Paraboloidal Antenna; filed Sept. 30,  
1980.

U.S. Department of Energy, Assistant General  
Counsel for Patents, Washington, D.C. 20545

Patent 4,209,780: Coded Aperture Imaging  
with Uniformly Redundant Arrays; filed  
May 2, 1978; patented June 24, 1980; not  
available NTIS.

U.S. Department of Health and Human  
Services, National Institutes of Health, Chief,  
Patent Branch, Westwood Building, Bethesda,  
Md. 20205

Patent 4,227,937: Additive Composition for  
Making Dental Materials; filed June 23,  
1976; patented Oct. 14, 1980; not available  
NTIS.

U.S. Department of the Navy, Director, Navy  
Patent Program/Patent Counsel for the Navy,  
Office of Naval Research, Code 302,  
Arlington, Va. 22217

Patent application 6-155,879: High Density  
Liquid Fuels; filed June 6, 1980.

Patent application 6-164,449: Electronically  
Conductive Oxidizer Material and Method  
for Preparing It; filed June 30, 1980.

Patent application 6-178,330: Photographic  
Image Enhancement by a Gold-Toning  
Neutron-Activation Process; filed Aug. 15,  
1980.

Patent application 6-179,607: Highly  
Aromatized Polyphthalocyanines; filed  
Aug. 19, 1980.

Patent 4,217,581: High Range Resolution  
Radar Rate Aided Range Tracker; filed  
Sept. 22, 1978; patented Aug. 12, 1980.

Patent 4,119,556: Thermal Energy Storage  
Material Comprising Mixtures of Sodium,  
Potassium and Magnesium Chlorides; filed  
June 1, 1977; patented Oct. 10, 1978; not  
available NTIS.

Patent 4,214,239: Magnetic Drum Storage for  
the Track before Detect System; filed Apr.  
2, 1963; patented July 22, 1980; not available  
NTIS.

Patent 4,214,313: Multiple Sonar Masking and  
Jamming Countermeasure System; filed  
Apr. 27, 1961; patented July 22, 1980; not  
available NTIS.

National Aeronautics and Space  
Administration, Assistant General Counsel  
for Patent Matters, NASA Code GP-2,  
Washington, D.C. 20546

Patent application 6-171,934: Film Advance  
Indicator; filed July 18, 1980.

U.S. Department of the Air Force, AF/JACP,  
1900 Half Street SW., Washington, D.C. 20324

Patent 4,214,904: Gold-Tin-Silicon Alloy for  
Brazing Silicon to Metal; filed Dec. 12, 1978;  
patented July 29, 1980; not available NTIS.

[FR Doc. 81-2719 Filed 1-26-81; 8:45 am]

BILLING CODE 3510-04-M

### COMMISSION OF FINE ARTS

#### Meetings

The Commission of Fine Arts will next meet in open session on Tuesday, February 10, 1981, at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various project affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C. January 19,  
1980.

Charles H. Atherton,  
Secretary.

[FR Doc. 81-2722 Filed 1-26-81; 8:45 am]

BILLING CODE 6330-01-M

### COMMODITY FUTURES TRADING COMMISSION

#### Proposed Futures Contracts; Proposed Rules of Major Economic Significance; Terms and Conditions of the Six-Month United States Treasury Bill Futures Contract of the Chicago Mercantile Exchange

AGENCY: Commodity Futures Trading  
Commission.

ACTION: Notice of proposed rules of  
contract markets.

SUMMARY: The Chicago Mercantile  
Exchange ("CME") has applied for  
designation as a contract market in  
United States Treasury bills ("U.S. T-  
bill"). The Commodity Futures Trading  
Commission ("Commission") has  
determined that the proposed terms and  
conditions of this proposed futures  
contract are of major economic  
significance and that, accordingly,  
publication of the proposed terms and  
conditions is in the public interest, will  
assist the Commission in considering the  
views of interested persons, and is  
consistent with the purposes of the  
Commodity Exchange Act.

DATE: Comments must be received on or  
before March 30, 1981.

ADDRESS: Interested persons should  
submit their views and comments to  
Jane K. Stuckey, Secretary, Commodity  
Futures Trading Commission, 2033 K  
Street, N.W., Washington, D.C. 20581.  
Reference should be made to CME Six-  
Month U.S. T-Bill Futures Contract.

FOR FURTHER INFORMATION CONTACT:  
George Garrow, Staff Attorney, Division  
of Trading and Markets, Commodity  
Futures Trading Commission, 2033 K

Street, N.W., Washington, D.C. 20581; Telephone: (202) 254-8955.

**SUPPLEMENTARY INFORMATION:** The terms and conditions of CME's proposed six-month U.S. T-bill futures contract are as follows:

#### CHAPTER—

#### 6 Months U.S. Treasury Bills

—00. SCOPE OF CHAPTER.—This chapter is limited in application to futures trading in 6-month U.S. Treasury bills. The procedures for trading, clearing, inspection, delivery and settlement, and any other matters not specifically covered herein shall be governed by the rules of the Exchange.

#### —01. COMMODITY

**SPECIFICATION.**—Each futures contract shall be for U.S. Treasury Bills of 6-month maturity with \$500,000 face value at maturity.

#### —02. FUTURES CALL.—

#### A. Trading Months and Hours

Futures contract shall be scheduled for trading during such hours and delivery in such months as may be determined by the Board of Governors.

#### B. Size of Trading Unit

The size of the unit of trading shall be United States Treasury bills having a face value at maturity of \$500,000.

#### C. Minimum Increments

Bids and offers shall be quoted in terms of the IMM index, 100.00 minus yield on an annual basis for a 360-day year. Minimum fluctuations of the IMM index shall be in multiples of .01 (\$25.00). The minimum fluctuation is equal to one basis point.

#### D. Daily Limits

There shall be no trading at a level more than .60 (60 basis points) above or below the preceding day's settlement index except as provided by Rule 3607 (Expanded Daily Limits), and on the last day of trading when there shall be no limit.

#### E. Discretionary Position Limits

The Board may in its sole and complete discretion impose limits upon an individual or upon related accounts.

#### F. Termination of Trading

Futures trading shall terminate on the first business day preceding the delivery date, unless that day is an Exchange or Illinois bank holiday, in which case trading shall terminate on the preceding business day.

#### G. Contract Modification

Specifications shall be fixed as of the first day of trading of a contract except

that all deliveries must conform to government regulations in force at the time of delivery. If any U.S. governmental agency or body issues an order, ruling, directive or law pertaining to the trading, government action, or delivery of U.S. Treasury bills, such order, ruling, directive or law shall be construed to take precedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

—03. DELIVERY.—The following shall apply specifically to the delivery of 6 month U.S. Treasury bills. Delivery is made by book-entry in accordance with Department of Treasury Circular 300, Subpart O; Book-Entry Procedure.

#### A. Delivery Days

Par delivery shall be made on the 182nd business day following the issue date of one-year U.S. Treasury bills, unless that day is an Exchange or U.S. bank holiday, in which case delivery shall be on the next business day common to the Exchange and U.S. banks. Deliveries shall be allowed on the two succeeding business days.

#### B. Registered Banks and Other Facilities

The Board shall establish such requirements and preconditions for registration as a facility for the delivery of 6-month Treasury bills as it deems necessary.

#### C. Seller's Duties

The clearing member representing the seller shall deliver to the Clearing House by 12:00 noon (Chicago time) on the last day of trading, a Seller's Delivery Commitment indicating a Chicago bank, registered with the Exchange and a member of the Federal Reserve System, and the name and number of the account from which the delivery unit(s), in book-entry form, will be transferred.

$$\$500,000 \left[ 1 - \frac{(\text{number of days after first delivery date to maturity date} \times \text{T-bill yield}^*)}{360} \right]$$

#### F. Costs of Delivery

All costs incurred in making delivery shall be borne by the seller.

#### —04. PAR DELIVERY.—

#### A. Par Delivery

A delivery unit shall be composed of

In addition, the Seller's Delivery Commitment shall include the name and number of the account in a Chicago bank registered with the Exchange and a member of the Federal Reserve System, into which payment will be received. By 12:45 p.m. (Chicago time) on the day of delivery, the seller shall deliver (by the book-entry procedure referred to above) to a Chicago bank, registered with the Exchange and a member of the Federal Reserve System, selected by the buyer, a United States Treasury Bill(s) maturing in 6 months, with a face value at maturity of \$500,000.

#### D. Buyer's Duties

The clearing member representing the buyer shall deliver to the Clearing House by 12:00 noon (Chicago time) on the last day of trading, a Buyer's Delivery Commitment indicating a Chicago bank registered with the Exchange and a member of the Federal Reserve System, and the name and number of the account into which the delivery unit will be transferred. In addition, the Buyer's Delivery Commitment shall include the name and number of the account in a Chicago bank, registered with the Exchange and a member of the Federal Reserve System, from which payment for the net invoicing price will be made. By 12:45 p.m. (Chicago time) on the day of delivery, the buyer shall present to the selling clearing member's bank or its designated agent a wire transfer of Federal funds for the net invoicing price.

#### E. Payment

The Clearing House shall monitor the delivery procedure to ensure proper transfer of 6-month Treasury bills and direct payment by the buyer to the seller. Payment shall be made on the basis of par value (\$500,000) minus the discount, that is,

United States Treasury bill(s), in book-entry form, maturing 6 months hence with a face value of \$500,000 at maturity.

#### B. Delivery Points

Delivery shall be made to a Chicago bank, registered with the Exchange and

a member of the Federal Reserve System, specified by the buyer's clearing member. All banks selected by the buyer and by the seller to effectuate delivery must be members of the Federal Reserve System.

—05. EMERGENCIES, ACTS OF GOD, ACTS OF GOVERNMENT.—If delivery or acceptance or any precondition or requirement of either is prevented by strike, fire, accident, act of government act of God, or other emergency, the seller or buyer shall immediately notify the Exchange President. If the President determines that emergency action may be necessary, he shall call a special meeting of the Board of Governors or the Business Conduct Committee and arrange for the presentation of evidence respecting the emergency condition. If the Board or the Committee determines that an emergency exists, it shall take such action as it deems necessary under the circumstances and its decision shall be binding upon all parties to the contract. For example, and without limiting the Board's or Committee's power, it may: determine and assess losses in accordance with the procedures specified in Rule —06; extend delivery dates; and designate alternate delivery points in the event of conditions interfering with the normal operations of approved facilities.

In the event that the Board of Governors or Business Conduct Committee determines that there exists a shortage of deliverable six month U.S. Treasury Bills, it may upon a two-thirds vote of the members present or upon a two-thirds vote of the members who respond to a poll take such action as may in the Board's or Committee's sole discretion appear necessary to prevent, correct, or alleviate the condition. Without limiting the foregoing, the Board or Committee may: (1) designate as deliverable U.S. Treasury Bills of other maturities and (2) determine a cash settlement based on the current cash value of a six-month U.S. Treasury Bill as determined by using the current cash market yield curve on the last day of trading.

—06. FAILURE TO PERFORM.—If the clearing member with a delivery commitment fails to perform all acts required by this chapter, then that clearing member shall be deemed as failing to perform which may be punishable as a major violation. A clearing member failing to perform shall be liable to the clearing member to which it was matched on the failing transaction for any loss sustained. The Board shall determine and assess losses sustained, taking into account the

settlement price, interest earnings foregone, and such other factors as it deems appropriate. The Board may also assess such penalties as deemed appropriate in addition to damages.

—067. EXPANDED DAILY LIMITS.—Whenever or two successive days any contract month closes at the normal daily limit in the same direction (not necessarily the same direction contract month on both days) an expanded daily limit schedule shall go into effect as follows:

1. The third day's limit in all contract months shall be 150% of the normal daily limit.

2. If any contract month closes at its expanded daily limit on the third day in the same direction, then the fourth day's expanded daily limit will be 200% of the normal daily limit.

3. If any contract month closes at its expanded daily limit on the fourth day in the same direction then there shall be no daily limit for said contract on the fifth day.

4. On the sixth day of the foregoing progression, the normal daily limit shall be reinstated.

5. Whenever the foregoing daily limit schedule is in effect and no contract month closes at the limit in the same direction which initiated the expanded schedule, then the normal daily limit shall be reinstated on the following day.

The Commission also will make available any other materials submitted by the CME in support of its application for contract market designation in the proposed futures contract to the extent that such materials are not entitled to confidential treatment under Part 145 of the Commission's regulations (17 CFR Part 145). Copies of such materials submitted by the CME in support of its application for designation will be available through the Commission's Secretary or its offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract or with respect to the other materials submitted by the CME in support of its applications for contract market designation should send comments by [sixty days after publication], to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

Issued in Washington, D.C., on January 21, 1981.

Jane K. Stuckey,  
Secretary of the Commission.  
[FR Doc. 81-2707 Filed 1-26-81; 8:45 am]  
BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Fort Devens, Massachusetts, Filing of Environmental Impact Statement

The Army, on January 21, 1981, provided the Environmental Protection Agency a Final Environmental Impact Statement (FEIS) concerning the on-going missions at Fort Devens, Massachusetts. The alternatives of maintaining, discontinuing, or changing missions at Fort Devens are analyzed. Copies of the statement have been forwarded to concerned Federal, State, and local agencies. Interested organizations or individuals may obtain copies for the cost of reproduction from the Directorate Facilities Engineering, Environmental Office, Fort Devens, MA 01433.

In the Washington area, copies may be during normal duty hours, in the Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, DC 20310, telephone: (202) 694-3434.

Lewis D. Walker,  
Deputy for Environment, Safety and Occupational Health, OASA (IL&FM).

[FR Doc. 81-2939 Filed 1-26-81; 8:45 am]  
BILLING CODE 3710-06-M

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education

#### Teacher Centers Program; Correction

AGENCY: Department of Education.

ACTION: Correction, notice of closing dates for the transmittal of applications.

SUMMARY: The notice of closing dates for the transmittal of applications published in the Federal Register on December 8, 1980 (45 FR 80994-80995) incorrectly indicate that institutions of higher education are eligible for grants to plan, establish, or operate teacher centers. However, under the Teacher Center Program statute, as amended by the Education Amendments of 1980, institutions of higher education are still eligible only for grants to operate teacher centers. In order to eliminate the incorrect information, the following correction is made in the notice of

closing dates for the transmittal of applications:

On page 80994, first column, the third paragraph which begins with the phrase "This program makes awards \* \* \*" is revised to read as follows: "This program makes awards to local educational agencies and educational service agencies to assist them in planning, establishing, and operating teacher centers, and makes awards to institutions of higher education to assist them in operating teacher centers."

(Catalog of Federal Domestic Assistance No. 84.006, Teacher Centers Program)

Dated: January 22, 1981.

Stewart A. Baker,

Deputy General Counsel for Regulations and Legislation.

[FR Doc. 81-2501 Filed 1-26-81; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the energy policy and Conservation Act (42 U.S.C. 6272), notice is hereby provided of the following meetings:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 28, 1981, at the Great Eastern Hotel (Essex Suite), Liverpool Street, London, England, beginning at 9:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Communications to and from IEA and Reporting Companies.
3. Matters arising from record notes of IAB meetings of September 12 and December 15, 1980.
4. Report on, and discussion of, SEQ meeting of December 16, 1980.
5. Report by IEA on, and discussion of, world-wide supply situation following January Questionnaire "B".
6. Governing Board's December 9, 1980, decision for correcting imbalances:
  - A. Report from European Economic Community (EEC) and U.S. Government on clearances to implement plan.
  - B. Other national legislation required.
  - C. Discussion of conditions which might require the plan to be put into effect.
7. Subcommittee "C" report, including:
  - A. IEA Dispute Settlement Center Procedures for Arbitration.
  - B. Legal clearances for AST-3.
  - C. IEA Secretariat's energy legislation summary.

D. Implementation of any amendment to the IEP.

E. Legal clearances for a real emergency:

- (i) Under Treaty of Rome.
- (ii) Under U.S. and any other national legislation.

F. March 15, 1981, expiration of U.S. legislation providing antitrust defense for IEA activities.

G. Future work program.

8. Subcommittee "A" report, including:

A. Proposed inclusion of synfuels in emergency sharing system.

B. Three-week lead time to reduce demand in a crisis.

C. Proposed inclusion of naphtha and bunkers in emergency reserves.

D. Relationship between national and international allocation systems pursuant to the IEP.

E. Quantification of emergency reserves to provide 90 days at all times.

F. AST-3 appraisal report and related items.

G. Proposed Emergency Management Manual changes arising from AST-3.

H. Product allocation to countries with insufficient refining capacity.

I. Data questions, including:

(i) Report on December 17, 1980, SEQ *ad hoc* group meeting.

(ii) Extension of stocks-at-sea reporting.

(iii) Possible amendments and alternatives to Questionnaire A and Questionnaire B.

J. Future work program.

9. ISAG staffing.

10. Future work program and meeting schedule.

II. A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on January 28, 1981, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 10:30 a.m. The purpose of this meeting is to permit attendance by representatives of the IWP at a meeting of an *ad hoc* group of the IEA Standing Group on the Oil Market (SOM) which is being held at Paris on that date.

The agenda for the meeting is under the control of the SOM *ad hoc* group. It is expected that the following provisional agenda will be followed:

1. Adoption of provisional agenda.
2. Review of the crude oil and oil product import registers.
3. Other business.
4. Date of next meeting.

Representatives of the IWP will be present during discussion of item 2 of the above agenda, as required.

III. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 29, 1981, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 2:30 p.m. The purpose of this meeting is to permit

attendance by representatives of the IAB at a meeting of the IEA Standing Group on Emergency Questions (SEQ), which is being held at Paris on that date.

The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of draft agenda.
2. Summary record of the 35th meeting.
3. Stocks-at-sea.
4. Consumer stocks, report to the Governing Board.
5. Demand restraint reviews:
  - Review of Greece.
  - Review of Ireland.
  - Review of New Zealand.
6. Remaining Review Program Demand Restraint Program in AST-3.
7. Fair Sharing Preparations.
8. Other business.
9. Future meeting dates.

IV. A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on January 28, 29 and 30, 1981, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 4:30 p.m. on January 28. The purpose of this meeting is to permit attendance by representatives of the IWP at a meeting of the IEA Standing Group on the Oil Market (SOM) which is being held at Paris on those dates.

The agenda for the meeting is under the control of the SOM. It is expected that the following provisional agenda will be followed:

1. Adoption of the provisional agenda.
2. Approval of the summary record of the 36th session.
3. Consultations with BP and Gulf on the short and medium term oil market outlook.
4. Review of the crude oil and oil product import registers.
5. Note by the Secretariat.
6. Report by the Chairman of the *ad hoc* group.
7. Analysis of the 2nd quarter of 1980 crude register data.
8. Review of the financial information system.
9. Note by the Secretariat.
10. Review of the crude cost information system.
11. Oral report by the Secretariat.
12. Structure of crude oil imports—2nd half of 1980.
13. Refinery flexibility study.
14. Oral progress report by the Secretariat.
15. Other business.
16. Date of next meeting.

IWP representatives will be present during discussion of item 4 and may be present during discussion of other items of the above provisional agenda, except for the consultations described in item 3.



which will be held separately on January 28 and on January 30.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

As permitted by 10 CFR 209.32, the usual 7-day notice period has been shortened because unanticipated procedural delays prevented processing in sufficient time to provide such notice.

Issued in Washington, D.C., January 21, 1981.

Craig S. Bamberger,

*Assistant General Counsel, International Trade & Emergency Preparedness.*

[FR Doc. 81-2982 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

#### National Petroleum Council, Land Use Task Group of the Committee on Environmental Conservation; Meeting

Notice is hereby given that that Land Use Task Group of the Committee on Environmental Conservation will meet in February 1981. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the availability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Land Use Task Group meeting follows:

The Land Use Task Group will hold its second meeting on Monday, February 2, 1981, starting at 1:30 p.m., in the Conference Room of the National Petroleum Council, 1625 K Street, Northwest, Washington, D.C.

The tentative agenda for the meeting follows:

1. Discuss Task Group study approach and individual assignments.
2. Discuss Task Group schedule.
3. Discuss any other matters pertinent to the overall assignment of the Land Use Task Group.

The meeting is open to the public. The Chairman of the Land Use Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any members of the public who wishes to file a written statement with the Land Use Task Group will be permitted to do so, either before or after the meeting. Members of the public who

wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provisions will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room IE-190, DOE, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on January 13, 1981.

R. D. Langenkamp,

*Deputy Assistant Secretary, Resource Development & Operations, Resource Applications.*

January 13, 1981.

[FR Doc. 81-2908 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

#### Bonneville Power Administration

##### The Role of the Bonneville Power Administration in the Pacific Northwest Power Supply System, Including Its Participation in a Hydro-Thermal Power Program; Availability of Final Environmental Impact Statement

Notice is hereby given that Bonneville Power Administration (BPA), Department of Energy, has issued the final environmental impact statement (EIS) on the Role of the Bonneville Power Administration in the Pacific Northwest Power Supply System, Including its Participation in a Hydro-Thermal Power Program ("the Role EIS"). This statement evaluates the environmental impacts associated with the operation and development of the regional power system under various levels of regional cooperation and coordination.

Copies of the EIS are available for public inspection at designated Federal depositories (for location, contact the Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208) and at Department of Energy public document rooms located at:

Library, FOI—Public Reading Room 1E-190 Forrestal Building, 1000 Independence Avenue SW., Washington, D.C.;

BPA, Washington, D.C., Office, Room 3352, Federal Building, 12th & Pennsylvania Avenue NW., Washington, D.C.;

Library, BPA Headquarters, 1002 NE Holladay Street, Portland, Oregon;

and in the following BPA Area and District Offices:

Eugene District, Room 206, U.S. Federal Building, 211 East 7th Street, Eugene, Oregon;

Idaho Falls District, 531 Lomax Street, Idaho Falls, Idaho;

Kalispell District, Highway 2 (East of Kalispell), Kalispell, Montana;

Portland Area, Room 288, Plaza Building, 1500 NE Irving, Portland, Oregon;

Seattle Area, Room 250, 415 First Avenue North, Seattle, Washington;

Spokane Area, Room 561, U.S. Court House, W. 920 Riverside Avenue, Spokane, Washington;

Walla Walla Area, West 101 Poplar, Walla Walla, Washington;

Wenatchee District, Room 314, U.S. Federal Building, 301 Yakima Street, Wenatchee, Washington.

A limited number of single copies are available from the Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208, or the BPA Area and District Offices listed above.

Dated at Portland, Oregon, this 9th day of December, 1980.

Sterling Munro,

*Administrator.*

[FR Doc. 81-2810 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

#### Economic Regulatory Administration

##### Action Taken on Consent Order

**AGENCY:** Economic Regulatory Administration.

**ACTION:** Notice of action taken on consent order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that a Consent Order was entered into between the Office of Enforcement, ERA, and the firm listed below during the month of November 1980. The Consent Order represents resolution of outstanding compliance investigations or proceedings by the DOE and the firm which involves a sum of less than \$500,000, excluding penalties and interest. This Consent Order is concerned exclusively with payment of the refunded amounts to injured parties for alleged overcharges made by the specified companies during the time periods indicated below through direct refund or rollbacks of prices. For further information regarding this Consent Order, please contact Mr. Edward F. Momorella, District Manager of Enforcement, 1421 Cherry Street,

Philadelphia, Pennsylvania 19102, telephone number (215) 597-2662.

Firm name and address	Refund amount	Product	Period	Recipients of refund
Manhattan & Queens Fuel Oil Corp. and Vidage No. 2 (Century), S/S, 22-22 Hazen Street, Jackson Heights, NY 11370.	\$24,095	Motor gas	Mar. 1, 1979 to July 31, 1979.	End-user customer.

Issued in Philadelphia, on the 12th day of January 1981.

Edward F. Momorella,  
District Manager of Enforcement.

[FR Doc. 81-2004 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

### Canadian Crude Oil Allocation Program Supplemental; January 1, 1981, Through March 31, 1981 Allocation Period

In accordance with the provisions of the Mandatory Canadian Crude Oil Allocation Regulations, 10 CFR Part 214, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues a supplemental allocation notice to reflect an adjustment to the number of Canadian heavy crude oil rights issued for the January 1981 through March 1981 allocation period.

Koch Oil and Ashland Oil Company, Priority I refiners under the Canadian Allocation Program, have advised the ERA that they are unable to utilize the total amount of heavy crude oil rights assigned to them in the Allocation Notice for the January through March 1981 allocation period issued on November 24, 1980, (45 FR 79878, December 2, 1980). Koch has reduced its January 1981 nomination for Canadian heavy crude oil by 22,200 B/D from 95,000 B/D to 72,800 B/D. Ashland has reduced its nomination for Canadian heavy crude oil for the entire January through March 1981 allocation period by 10,000 B/D from 15,000 B/D to 5,000 B/D. The original and revised nominations relate to Canadian heavy crude oil allocations for Koch's Pine Bend, and Ashland's St. Paul Park, Minnesota, refineries.

Since allocations of Canadian heavy crude oil are determined on the basis of the average level of Canadian heavy crude oil exports during the 90 day, January-March 1981 allocation period, Koch's reduced heavy crude oil nominations for January 1981 must be reflected in the number of Canadian heavy crude oil rights issued to Koch during this period. Accordingly,

pursuant to 10 CFR Section 214.32(c), the number of rights of Canadian heavy crude oil assigned to Koch for the January-March 1981 allocation period are hereby reduced by 7,647 B/D to 87,353 B/D.<sup>4</sup> Further, the number of rights of Canadian heavy crude oil assigned to Ashland for the January-March 1981 allocation period are reduced by 10,000 B/D to 5,000 B/D.

As explained in the allocation notice issued on November 24, 1980, the exportable surplus of Canadian heavy crude oil in the January-March 1981 allocation period exceeded the nominations of priority refiners by 565 B/D. Further, pursuant to Section 214.31(b), ERA determined that this volume of crude oil was surplus for the January-March 1981 allocation period and was therefore not subject to the provisions of Section 214.31(a)(3). Accordingly, ERA has determined that the 17,647 B/D of Canadian heavy crude oil rights that are being withdrawn from Koch and Ashland in the January-March 1981 allocation period should be added to this surplus and not be subject to the allocation provisions of Section 214.31(a)(3). Therefore, the adjusted total surplus for the January-March 1981 allocation period is 18,212 B/D.

This notice is issued pursuant to Subpart G of DOE's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with DOE's Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before February 26, 1981.

<sup>4</sup> Calculated by adding Koch's revised heavy crude oil nomination of 72,800 B/D in January 1981 to its 95,000 B/D heavy crude oil nominations for February and March 1981, pro rated over the entire 90 day allocation period.

Issued in Washington, D.C. on January 19, 1981.

Paul T. Burke,  
Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 81-2800 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

### Crude Oil Entitlements Program; Notice of Intent

**AGENCY:** Department of Energy, Economic Regulatory Administration.  
**ACTION:** Notice of Intent.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received numerous inquiries regarding the effect on the crude oil entitlements program in 10 CFR 211.67 when the numerator of the "national domestic crude oil supply ratio" (DOSR) becomes a negative number.

The DOSR is defined in § 211.62, and basically is the ratio of controlled domestic crude oil to all refiners' crude oil runs-to-stills. Both the numerator and denominator of the ratio, however, are subject to certain adjustments. Specifically, in the numerator the volume of "deemed old oil" (which is defined in § 211.67(b)) received by all refiners in a given month is decreased by the number of entitlements issuable that month to small refiners under the small refiner bias, the Strategic Petroleum Reserve, refiners with receipts of California crude oil, and persons receiving exception relief. As phased decontrol of crude oil progresses, the volume of deemed old oil will decrease. At a certain point the number of entitlements issued to the persons described above will exceed the number of barrels of deemed old oil. Thus the numerator of the DOSR and, in fact, the DOSR itself would become a negative number.

Under § 211.67(a)(1), each refiner is issued each month a number of entitlements equal to the number of barrels of crude oil runs-to-stills by that refiner in that month multiplied by the DOSR for that month. Many persons have questioned whether, if the DOSR became a negative number, this would result in the issuance of "negative" entitlements to refiners pursuant to § 211.67(a)(1) that would require purchases of entitlements from the class of persons who receive entitlements under other provisions not dependent on the DOSR.

The General Counsel of DOE has determined that, at such time as the DOSR becomes a negative number, the entitlements program as currently

structured would cease to function, because by the terms of § 211.67(a)(1) ERA could not "issue" to a refiner a number of entitlements less than zero.

ERA has projected that the DOSR would not become a negative number before May 1981, which would be reflected in the July 1981 Entitlements Notice. ERA is currently considering alternatives to address this problem and expects no obstacle to achieving a solution, after appropriate notice and comment, prior to the time the DOSR would become a negative number.

**FOR FURTHER INFORMATION CONTACT:**

Jack Vandenberg (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-4055

Gerald Emmer (Office of Petroleum Allocation Regulations), Economic Regulatory Administration, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3256

William Funk or Peter Schaumberg (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6736 or 252-6754

Issued in Washington, D.C., January 19, 1981.

F. Scott Bush,

*Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.*

[FR Doc. 81-2901 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

**Earth Resources Co.; Action on Consent Order**

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Action Taken on Consent Order—Second Notice.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that a Consent Order was entered into between the Office of Enforcement, ERA and Earth Resources Company (d.b.a. Delta Refining Company) on November 26, 1980.

A Notice of Action Taken and opportunity for comment on this Consent Order was published in 45 FR 239 (December 10, 1980). Written Comments regarding terms and conditions of the Consent Order were solicited during the 30 day period following publication in the Federal Register. No comments were received regarding terms of the Consent Order relating to deposits in the DOE escrow account.

Seven written responses were received regarding the provisions of the Consent order which allows Earth Resources Company to refund \$5,000,000 through price rollbacks in retail sales of gasoline through its company operated stations. DOE considered all comments submitted during the comment period. Of the comments received, only two provided specific information which could be verified and used to review the pricing policies of Earth Resources Company. A market area survey by DOE indicated no evidence of market disruption as a result of the terms and conditions of the rollback provision in the Consent Order.

Based upon the terms and conditions specified in the executed Consent Order, Earth Resources Company shall deliver certified checks, not to exceed 36 monthly installments, the sum of eight million five hundred and one thousand dollars, made payable to the U.S. Department of Energy. Delivery shall be to the Assistant Administrator for Enforcement, ERA, 2000 M Street, NW, Washington, DC 20461. The Assistant Administrator for Enforcement shall direct that these monies be distributed in a just and equitable manner in accordance with applicable laws and regulations.

For purposes of effecting the remedial terms and conditions specified in the Consent Order, the executed Consent Order will become effective February 6, 1981.

For further information regarding this Consent Order, please contact James C. Easterday, District Manager of Enforcement, Southeast District, Economic Regulatory Administration, 1655 Peachtree, NE, Atlanta, Georgia 30367, telephone number (404) 881-2396.

Issued in Atlanta, Georgia, on the 14th day of January 1981.

James C. Easterday,  
*District Manager.*

Concurrence:  
Leonard F. Bittner,  
*Chief Enforcement Counsel.*

[FR Doc. 81-2903 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

**[ERA Docket No. 79-32-NG]**

**Midwestern Gas Transmission Co.; Application for Amendment to Existing Authorization**

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Application for Amendment to Existing Authorization To Import Natural Gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of an application of Midwestern Gas Transmission Company (Midwestern) to amend the authorization granted in DOE/ERA Opinion and Order No. 20, issued October 16, 1980, in ERA Docket No. 80-17-NG. In that Order, ERA extended a previous authorization to import up to 350,000 Mcf of natural gas per day through October 31, 1981, or until a total volume of 114,000,000 Mcf had been imported, whichever came first. Midwestern now seeks to increase their maximum daily import volume to 600,000 Mcf per day. The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

**DATES:** Protests or petitions to intervene are to be filed on or before February 11, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Leonard B. Levine (Division of Natural Gas), Economic Regulatory Administration, 2000 M Street, N.W., Room 7108, RG-55, Washington, D.C. 20461, (202) 653-3286

James K. White (Assistant General Counsel for Natural Gas and Mineral Leasing), Department of Energy, 1000 Independence Ave., S.W., Room 5E-074, GC-15, Washington, D.C. 20585, (202) 252-2900

**SUPPLEMENTARY INFORMATION:** On March 13, 1979, Midwestern filed an application with the ERA requesting authorization to import up to 114,000,000 Mcf of natural gas through October 31, 1980, at a rate of 350,000 Mcf per day. ERA authorized the import in an order issued on August 9, 1979, in ERA Docket No. 79-04-NG.

Subsequently, TransCanada Pipelines Limited (TransCanada) informed Midwestern that it expected to have available from time to time up to 600,000 Mcf per day for export. On October 31, 1979, Midwestern filed an application with the ERA to amend its authorization to permit importation at the higher daily rate. That application was assigned Docket No. 79-32-NG and noticed in the Federal Register on January 31, 1980 (45 FR 6991).

On July 23, 1980, Midwestern filed another application with the ERA seeking to extend the authorization granted earlier in Docket No. 79-04-NG for an additional year, through October 31, 1981, but continuing the import volume at 350,000 Mcf per day. ERA granted the extension in Opinion and Order No. 20, issued on October 16, 1980, in ERA Docket No. 80-17-NG.

Because no action had been taken by ERA in ERA Docket No. 79-32-NG prior to October 31, 1980, Midwestern's application became moot. Now, TransCanada has again informed Midwestern that it may from time to time be able to export up to 600,000 Mcf per day and Midwestern has filed the instant application. Because the issue is essentially the same as that raised in ERA Docket No. 79-32-NG, we have incorporated this application into that docket. Persons who have petitioned for intervention in ERA Docket No. 79-32-NG need not file new petitions, but may submit additional comments as appropriate.

**OTHER INFORMATION:** The ERA invites protests or additional petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Economic Regulatory Administration, Division of Natural Gas, Room 7108, RG-55, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 1.8 and 1.10). Such protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on February 11, 1981.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the application should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

A hearing will not be held unless a motion for a hearing is made by any party or person seeking intervention and is granted by ERA, or if the ERA on its own motion believes that a hearing is required. If a hearing is required, due notice will be given.

A copy of Midwestern's petition is available for inspection and copying in the Division of Natural Gas Docket Room, Room 7108, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on January 19, 1981.

**F. Scott Bush,**

*Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.*

(FR Doc. 81-2805 Filed 1-26-81; 8:45 am)

BILLING CODE 6450-01-M

### **National Distillers and Chemical Corp.; Proposed Remedial Order**

Pursuant to 10 CFR 205.192(c) the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to National Distillers and Chemical Corporation of New York, New York.

This Proposed Remedial Order charged National Distillers and Chemical Corporation with pricing violations in the amount of \$102.8 million in sales of propane, butane, and natural gasoline during the time period September 1, 1973, through August 31, 1978.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from William D. Miller, District Manager of Enforcement, 324 East 11th Street, Kansas City, Missouri 64106. On or before February 11, 1981, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri, on the 19th day of January, 1981.

**William D. Miller,**

*District Manager, Central Enforcement District.*

**David H. Jackson,**

*Concurrence*

*Chief, Enforcement Counsel.*

(FR Doc. 81-2806 Filed 1-26-81; 8:45 am)

BILLING CODE 6450-01-M

### **[ERA Docket No. 80-CERT-044]**

### **Public Service Electric and Gas Co.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil**

On December 2, 1980, Public Service Electric and Gas Company (Public Service), 80 Park Place, Newark, New Jersey 07101, filed with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 an application for certification of an eligible use of approximately eight billion cubic feet of natural gas which is expected to displace the use of approximately 1,200,000 barrels of No. 6 fuel oil (0.3 percent maximum sulfur) and approximately 32,000 barrels of No. 2 fuel oil (0.2 percent sulfur) or kerosene (0.1 percent sulfur) per year at eight of its electric generating stations in New Jersey. The eligible seller of the natural gas is the National Fuel Gas Distribution Corporation, 10 LaFayette Square,

Buffalo, New York 14203. The gas will be transported by the Transcontinental Gas Pipeline Corporation, P.O. Box 1396, Houston, Texas 77001. Notice of that application was published in the Federal Register (45 FR 86530, December 31, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed Public Service's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Public Service's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification are available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG-55, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., January 19, 1981.

**F. Scott Bush,**

*Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.*

(FR Doc. 81-2807 Filed 1-26-81; 8:45 am)

BILLING CODE 6450-01-M

### **National Petroleum Council; Committee on Emergency Preparedness; Coordinating Subcommittee; Meeting**

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** Notice of Change of Meeting Location. Notice was provided at 46 FR 6035, January 21, 1981, of a meeting of the Coordinating Subcommittee of the Committee on Emergency Preparedness of the National Petroleum Council to be held on Thursday, January 29, 1981, starting at 9:00 a.m., Exxon Building, Room 3920, 800 Bell Avenue, Houston, Texas. The meeting is now scheduled for:

• Thursday, January 29, 1981, starting at 8:30 a.m., Dolley Madison Room, Madison Hotel, 15th and M St. NW., Washington, D.C.

Issued in Washington, D.C., January 19, 1981.

F. Scott Bush,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 81-2632 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 81-CERT-002]

**American Cyanamid Co.; Application for Recertification of the Use of Natural Gas To Displace Fuel Oil**

On September 17, 1979, American Cyanamid Company (American Cyanamid) Berdan Avenue, Wayne, New Jersey 07470, was granted a certificate of an eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 79-CERT-082). The certification involved the purchase of natural gas from Conecuh-Monroe Counties Gas District for use by American Cyanamid at its acrylic fiber plant located in Pensacola, Florida. That certificate expired on September 16, 1980.

American Cyanamid did not file an application until January 15, 1981, for recertification of an eligible use of natural gas to displace fuel oil at its Pensacola Plant pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG-55, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, American Cyanamid states that the volume of natural gas for which it requests recertification is up to 3,000 Mcf per day. It is estimated that approximately 20,000 gallons (476 barrels) of No. 6 fuel oil (0.25 percent sulfur) will be displaced at the Pensacola Plant per day. The eligible seller of the natural gas is Conecuh-Monroe Counties Gas District, P.O. Box 310, Evergreen, Alabama 36401. The gas will be transported by United Gas Pipe Line Company, 700 Milam, P.O. Box 1478, Houston, Texas 77001.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG-55, 2000

M Street, N.W., Washington, D.C. 20461 Attention: Albert F. Bass, within ten (10) calendar days of the date of publication of this notice in the Federal Register.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application maybe requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to American Cyanamid and any persons filing comments and will be published in the Federal Register.

Issued in Washington, D.C., on January 21, 1981.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 81-3014 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 81-08-LNG]

**Boston Gas Co.; Emergency Import of Liquefied Natural Gas From Indonesia**

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Application to Authorize the Emergency Import of Liquefied Natural Gas from Indonesia.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 16, 1981, of an application of the Boston Gas Company (Boston Gas) for authorization to import 125,000 cubic meters (M<sup>3</sup>) of liquefied natural gas (LNG) from Indonesia in order to alleviate a natural gas supply emergency brought about by unusually sustained cold weather in Boston Gas' service area.

The application was filed pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-54. Comments, protests or petitions to intervene are invited.

**DATES:** Comments, protests or petitions to intervene are to be filed on or before 4:30 p.m., January 30, 1981.

**FOR FURTHER INFORMATION CONTACT:** Lawrence A. DiRicco (Division of

Natural Gas), Economic Regulatory Administration, 2000 M Street NW., Room 7108, Washington, D.C. 20461, Telephone (202) 653-3220.

James K. White (Acting Assistant General Counsel for Natural Gas and Mineral Leasing), 1000 Independence Ave. SW., Forrestal Bldg., Room 5E-064, Washington, D.C. 20585, Telephone (202) 252-2900.

**SUPPLEMENTARY INFORMATION:** In its application and supplementary information also filed, Boston Gas seeks ERA authorization for a one-time importation of 125,000 cubic meters (M<sup>3</sup>) of LNG (the equivalent of approximately 2.7 billion cubic feet of natural gas) from Perusahaan Pertambangan Dan Bumi Negara (Pertamina), the Indonesian national oil and gas company. The LNG would be used to replenish Boston Gas' inventory of LNG which it claims is now nearly exhausted and to replace approximately 60,000 M<sup>3</sup> of LNG already borrowed on an emergency basis from the Southern Energy Company's Elba Island, Georgia facility.

The LNG is expected to be lifted at the Badak-Pertamina LNG facility between February 3 and February 10, 1981, and transported by the U.S. flag vessel *El Paso Southern*. The transit time to the U.S. will be approximately thirty days. Boston Gas has already chartered the vessel for sixty days at an approximate cost of \$74,000 per day plus operation costs.

Boston Gas has contracted with Pertamina to pay \$6.13 per million Btu (MMBtu) of LNG, f.o.b. Indonesia. Boston Gas states that the sales price is a negotiated price based on the prices paid by Japan for Indonesian LNG under long-term contracts. The LNG proposed to be imported originally was scheduled to be shipped to Japan. Boston Gas estimates the unit cost of transportation to be between \$3.25 and \$3.50 per MMBtu and the landed price to be between \$9.38 and \$9.63 per MMBtu. U.S. terminalling costs have not yet been determined.

Boston Gas states that this winter has been the coldest winter in history in its service area and considerably colder than its design year (a winter period as cold as the coldest winter experienced in the last seventeen years). As a result, Boston Gas has been forced to rely to an extraordinary degree on its inventories of LNG, which are now nearly exhausted.

Boston Gas states further that replacement volumes of LNG from Algeria which ordinarily might have averted a supply emergency have been

cut off due to severe storm damage to the harbor facilities in Arzew, Algeria, which occurred on December 28, 1980. Boston Gas also states that it does not know when the Algerian LNG facilities will become fully operational again. However, it appears that a shipment of approximately 90,000 M<sup>3</sup>, already in storage, of which Boston Gas will receive approximately 60,000 M<sup>3</sup>, will depart from Algeria on January 24, 1981.

Because of the extraordinary nature of the request, ERA is seeking comment specifically on whether the need for this import is sufficiently great to warrant approval of a landed price for the LNG far in excess of that which ERA would likely approve for long-term LNG or pipeline natural gas imports in non-emergency circumstances. In particular we note that the LNG is not scheduled to arrive prior to mid-March 1981, and it now appears that some LNG volumes will be arriving in Boston in February. In order to respond to Boston Gas' request for expeditious treatment of their application, we are limiting the comment period, which will end on close of business January 30, 1981.

#### Other Information

The ERA invites protests or petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Economic Regulatory Administration, Room 7108, RG-55, 2000 M Street NW., Washington, D.C. 20461, in accordance with the requirements of the applicable rules of practice and procedure (18 CFR 1.8 and 1.10). Protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., January 30, 1981.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Protests filed with the ERA will be considered in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A hearing will not be held unless a motion for a hearing is made by any party and is granted by ERA, or if the ERA on its own motion believes that hearing is required. A party filing a motion for hearing must demonstrate how a hearing will advance the proceeding. If a hearing is ordered, due notice will be given to the parties.

A copy of Boston Gas' application is available for public inspection and copying in Room 7108, 2000 M Street NW., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on January 23, 1981.

Barton R. House,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 81-3032 Filed 1-29-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 55023-9053-01-12 and 55023-9053-02-12; Docket No. ERA-FC-79-001]

#### Modification of Order Issued Under the Powerplant and Industrial Fuel Use Act of 1978

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** Modification of Order Issued Under the Powerplant and Industrial Fuel Use Act of 1978.

On December 19, 1980 the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) published notice in the *Federal Register* (45 FR 83651) that Anheuser-Busch, Incorporated (Anheuser-Busch) had petitioned for a modification to an order issued to Anheuser-Busch on December 14, 1979 granting permanent exemptions from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) so as to permit Anheuser-Busch to operate on either natural gas or petroleum in two boilers being installed at their Los Angeles, California brewery.

Publication of the notice in the *Federal Register* commenced a 14-day public comment period which ended January 2, 1981. No comments were received. ERA therefore modifies Term and Condition 15 to the Order issued December 14, 1979 to read as follows:

15. In addition to the above conditions, the Company has voluntarily agreed to consider and study the technical and economic feasibility of the installation of a solar energy system for hot water and heating and cooling at either the present administrative building at the Los Angeles brewery or a new hospitality center should Anheuser-Busch decide to build such a facility at the Los Angeles brewery. The Company shall notify ERA of the results of its study and of its decision to build or abandon the project.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, Phone (202) 653-4265.

Issued in Washington, D.C. on January 16, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-3015 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-R-80-40]

#### Voluntary Guideline for the Master Metering Standard Under the Public Utility Regulatory Policies Act of 1978

**AGENCY:** Economic Regulatory Administration.

**ACTION:** Notice of Cancellation of Public Hearing.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of the cancellation of the public hearing on the "Proposed Voluntary Guideline for the Master Metering Standard under the Public Utility Regulatory Policies Act of 1978" (45 FR 84936, December 23, 1980) scheduled for 9:30 A.M. on January 27, 1981 in Room 2105, 2000 M St., N.W., Washington, D.C. 20461.

#### FOR FURTHER INFORMATION CONTACT:

Stephen S. Skjel, Division of Rates and Energy Management, Office of Utility Systems, Economic Regulatory Administration, 2000 M Street, N.W., Room 4016 D, Department of Energy, Washington, D.C. 20461, telephone (202) 653-3913

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, 2000 M Street, N.W., Room B-110, Department of Energy, Washington, D.C. 20461, telephone (202) 653-4055

Arthur Perry Bruder, Office of General Counsel, 1000 Independence Avenue, S.W., Room 1E-258, Department of Energy, Washington, D.C. 20585, telephone (202) 252-9516

Cynthia Ford, Office of Public Hearings Management, Economic Regulatory Administration, 2000 M Street, N.W., Room B-210, Department of Energy, Washington, D.C. 20461, telephone (202) 653-3971

Issued at Washington, D.C. on January 21, 1981.

Howard F. Perry,

Acting Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 81-3033 Filed 1-28-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-79-04; OFC Case No. 68001-9068-21-77; 68001-9068-22-77]

**Wabash Power Equipment Co.;  
Classification**

**AGENCY:** Economic Regulatory Administration, Department of Energy.  
**ACTION:** Notice of Classification—Wabash Power Equipment Company.

**SUMMARY:** On November 29, 1979, the Economic Regulatory Administration (ERA) published notice in the *Federal Register* (44 FR 68508) of Wabash Power Equipment Company's (Wabash) filing of requests for classification as existing facilities of seven major fuel burning installations (MFBI's) pursuant to Section 515.10 of the Revised Interim Rules to Permit Classification of Certain Powerplants and Installations as Existing Facilities issued by ERA on March 15, 1979 (44 FR 17464, March 21, 1979) (Revised Interim Rule), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act). On April 3, 1980 (45 FR 24223, April 8, 1980), ERA determined that five of those MFBI's, numbers 25507, 520, 522, 523, 22505, should be classified as existing facilities pursuant to Section 515.12(c) of its Final Rule governing transitional facilities (44 FR 60690, October 19, 1979) (Final Rule).

Pursuant to § 515.13(a) of the Final Rule, ERA has now determined that the two remaining Wabash MFBI's, numbers 78221 and 78222, are existing facilities and are therefore subject to the provisions of Title III of the Act.

**SUPPLEMENTARY INFORMATION:** On June 6, 1979, Wabash requested that ERA classify as existing, under the authority of its Revised Interim Rule governing transitional facilities, seven package boilers designed to burn oil and/or natural gas. Notice of Wabash's filing of the requests for classification was published in the *Federal Register* on November 29, 1979, at 44 FR 68508. The public comment period provided in the notice expired on December 26, 1979. No comments were received.

On April 3, 1980, ERA issued a determination that five of Wabash's MFBI's noticed in the November 29, 1979 *Federal Register* qualified for automatic classification as existing installations pursuant to Section 515.12(c) of ERA's Final Rule governing transitional facilities. The two remaining MFBI's which are the subject of this notice are as follows:

OFC case No.	Wabash unit No.
68001-9068-21-77	78221
68001-9068-22-77	78222

Wabash has established its eligibility to request classification of units numbers 78221 and 78222 by satisfactorily demonstrating, pursuant to Section 515.10 of ERA's Revised Interim Rule that it had executed a contract for the construction or acquisition of such units prior to November 9, 1978. Wabash claims that these units should be classified as existing pursuant to § 515.13(a) of ERA's Final Rule, on the basis that its cancellation, rescheduling, or modification of the two units as of November 9, 1978 would result in a substantial financial penalty. Specifically, Wabash claims that charges incurred as a result of cancellation of its contracts for the subject boilers as of November 9, 1978 would, in each case, qualify under the 25 percent test set forth in § 515.13(a) of the Final Rule.

Based upon its review of Wabash's request, together with Wabash's supplementary filings of May 19, June 11, and November 3, 1980, ERA has now determined that Wabash's nonrecoverable outlays for the cancellation of units numbers 78211 and 78222 as of November 9, 1978, would, in each case, exceed 25 percent of its total projected project costs for those units. Accordingly, Wabash's unit numbers 78221 and 78222 are classified as existing facilities pursuant to § 515.13(a) of ERA's Final Rule, and are therefore subject to the provisions of Title III of the Act.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Russell, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, Phone (202) 653-4265

Allan J. Stein, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-2967

The public files (OFC Case Numbers 68001-9068-21-77 and 22-77) containing documents on these proceedings are available for inspection upon request at: Economic Regulatory Administration, Room B-110, 2000 M Street, NW., Washington, D.C., Monday through Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, D.C. on January 16, 1981.

Robert L. Davies,  
Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-3016 Filed 1-26-81; 8:45 am]

BILLING CODE 8450-01-M

**Federal Energy Regulatory  
Commission**

[Docket No. GP80-119]

**USGS New Mexico Section 108  
Determination Amoco Production Co.,  
L. C. Kelly No. 1 Well FERC Control No.  
JD80-11312; Renote of Request for  
Withdrawal of Well Category  
Determination January 19, 1981**

Take notice that on August 7, 1980, the United States Geological Survey, Albuquerque, New Mexico (USGS) filed with the Federal Energy Regulatory Commission (Commission) a request to withdraw its determination that the Amoco Production Company (Amoco) L. C. Kelly No. 1 Well qualified as a stripper well pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301, *et seq.* The determination of eligibility for the subject well became final by operation of § 275.202 of the Commission's regulations on February 16, 1980, prior to the date on which the USGS filed its request for withdrawal of its determination of eligibility.

In its request to withdraw its determination of eligibility, the USGS states that due to an administrative oversight, on December 5, 1979, USGS issued a preliminary determination and on December 5, 1979, a final determination that the L.C. Kelly No. 1 Well qualified for section 108 treatment was issued.

Any person desiring to be heard or to protest this request should, within 15 days after publication of this notice in the *Federal Register*, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered but will not make the protestant parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a

<sup>1</sup>The request to withdraw the well category determination was improperly filed with the Office of Pipeline and Producer Regulation, Division of NGPA Compliance on August 7, 1979 instead of the Office of the Secretary. For purposes of this notice the filing date will be treated as August 7, 1980.

party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 81-2040 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-207-000]

#### Kansas Gas & Electric Co.; Proposed Tariff Change

January 15, 1981.

The filing Company submits the following:

Take notice that Kansas Gas and Electric Company on January 5, 1981, tendered for filing a proposed change in its FPC Electric Service Tariff No. 115. The proposed Amending Agreement changes the minimum and maximum amounts of power.

The Amending Agreement is necessary because the present demands are being exceeded.

Copies of this filing were served upon the City of La Harpe, Kansas.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 4, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 81-2032 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-211-000]

#### Kansas Gas & Electric Co.; Proposed Tariff Change

January 15, 1981.

The filing Company submits the following:

Take notice that Kansas Gas and Electric Company on January 8, 1981, tendered for filing a proposed change in its FPC Electric Service Tariff No. 135. The proposed Amending Agreement changes the minimum and maximum amounts of power.

The Amending Agreement is necessary because the present demands are being exceeded.

Copies of this filing were served upon the City of Oxford, Kansas.

Any person desiring to be heard or to protest said Application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Para. 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 81-2033 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-212-000]

#### Kansas Power & Light Co.; Notice of Filing

January 15, 1981.

The filing Company submits the following:

Take notice that The Kansas Power and Light Company (KPL), on January 9, 1981, tendered for filing a Service Schedule G—Participation Power Service Agreement executed with Missouri Public Service Company dated September 17, 1980. Included with the filing was a Certificate of Concurrence of Missouri Public Service Company assenting to and concurring in the filed rate schedule.

KPL requests an effective date of September 17, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 81-2034 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RE80-78]

#### Kentucky Utilities Co.; Application for Exemption

January 16, 1981.

Take notice that Kentucky Utilities Company (KU), on August 18, 1980, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirements to file as to its Tennessee retail jurisdiction, on or before June 30, 1982, certain jurisdictional load data pertaining to its cost of providing electric service as specified in Section 290.401(b).

On September 18, 1980 the Commission received comments from the Tennessee Public Service Commission supporting this application.

Also, On August 18, 1980, in a separate application, KU sought authorization to use an alternate plan for collecting load data that would rely partially on estimated data for the June 1982 filing instead of the required metered data, but would provide more extensive data than required by the Commission for all subsequent filings.

In its application for exemption, KU states that it should not be required to file the specified data for the following reasons. Section 290.404(g)(1) requires KU to develop data for its large rate classes for the June 1982 filing on a sample metering basis. KU proposes to go beyond this requirement and provide load data based on sample metering for certain subclasses within its large rate classes and for certain small rate classes. KU seeks to conduct its load research in three phases over a four-year period using a rotating plan. Under this program, KU would provide estimated data for a portion of its large rate classes in its June 1982 filing. KU supports its application on the grounds that its proposed metering program would provide more reliable information for cost studies, rate design, and rate support purposes and that research over a four-year period will reduce the costs of the program.

Copies of the application for exemption are on file with the



Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for exemption must file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before March 13, 1981. Within that 45-day day period such person must also serve a copy of such comments on KU, addressed to: Kentucky Utilities Company, Attention: Mr. J. W. Bradley, Vice President, Rates and Contracts, 1 Quality Street, Lexington, Kentucky 40507.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2835 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-205-000]

#### Maine Electric Power Co.; Filing

January 16, 1981.

The filing Company submits the following:

Take notice that on December 24, 1980 Maine Electric Company, Inc. (Maine Electric) tendered for filing an executed Amendment to the Unit Participation Agreement, dated November 15, 1971, between Maine Electric and The New Brunswick Electric Power Commission. The Unit Participation Agreement appears as an Exhibit to the Power Purchase and Transmission Agreement, dated December 3, 1971, between Maine Electric Power Company, Inc., and New England Power Company, Northeast Utilities, Boston Edison Company, Public Service Co. of New Hampshire, Central Maine Power Company, Vermont Electric Power Company, Montaup Electric Company, Bangor Hydro-Electric Company, Newport Electric Corporation, Maine Public Service Company, Fitchburg Gas & Electric Light Company, Eastern Maine Electric Cooperative, Inc., Union River Electric Cooperative, Inc., Peabody Municipal Light Plant, Danvers Electric Department, Shrewsbury Municipal Light Plant, Wakefield Municipal Light Department, Middleton Electric Light Department and Boylston Municipal Light Department.

The Amendment, which has an effective date of January 1, 1981, reduces the entitlement for electric power generated in Canada under the Unit Participation Agreement from 400 megawatts to 133 megawatts; it arises in the context of a reduction in the Canadian subsidy of oil used to generate energy for export to the United States. The termination date is also changed

from October 1986, to October 1985, or earlier.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2836 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Project No. 3525-000]

#### Messrs. Edward S. Cruz and William L. Beavers; Application for Preliminary Permit

January 14, 1981.

Take notice that Messrs. Edward S. Cruz and William L. Beaver (Applicant) filed on October 6, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3525 to be known as Cottonwood Canyon and Lone Tree Creek Project located on Cottonwood Canyon and Lone Tree Creek in Mono County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Messrs. Edward S. Cruz and William L. Beaver, Route 4 Box 15, Bishop, California 93514. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

**Project Description**—The proposed project would consist of: a penstock and powerhouse with a total installed capacity of 800 kW.

The Applicant estimates that the average annual energy output would be 3,650,000 kWh.

**Purpose of Project**—Power generated by the project would be sold to Southern California Edison Company or another local utility.

**Proposed Scope and Cost of Studies under Permit**—The studies to be

performed under the preliminary permit would include economic analysis, preliminary engineering plans, and a study of environmental impacts. Based on the results of the studies, Applicant would decide whether to proceed with more detailed studies and prepare an application for license to construct and operate the project. Applicant estimates that the cost of the studies to be performed under the preliminary permit would be \$65,000.

**Purpose of Preliminary Permit**—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

**Agency Comments**—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Competing Applications**—Anyone desiring to file a competing application must submit to the Commission, on or before March 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 22, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

**Comments, Protests, or Petitions to Intervene**—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments

filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petition to intervene must be received on or before March 23, 1981.

**Filing and Service of Responsive Documents**—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3525. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2837 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-214-000]

**Mid-Continent Power Pool; Filing**

January 16, 1981

Take notice that on January 9, 1981, Mid-Continent Power Pool (MAPP) tendered for filing Amendment No. 12 of the MAPP Agreement. MAPP requests an effective date of May 1, 1981.

MAPP states that the filing is on behalf of the following who are jurisdictional parties of the subject Agreement:

Interstate Power Company,  
Iowa Electric Light and Power Company,  
Iowa-Illinois Gas and Electric Company,  
Iowa Power and Light Company,  
Iowa Public Service Company.

Iowa Southern Utilities Company,  
Lake Superior District Power Company,  
Minnesota Power and Light Company,  
Montana-Dakota Utilities Company,  
Northern States Power Company (Minnesota).

Northwestern Public Service Company.

Otter Tail Power Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2838 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-206-000]

**Montana Power Co.; Filing**

January 15, 1981

The filing Company submits the following:

Take notice that on January 7, 1981, the Montana Power Company tendered for filing in compliance with the Federal Power Commission's Order of May 6, 1977, a summary of sales made under the Company's FPC Electric Tariff M-1 during July, 1980, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 4, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2839 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RP80-107, et al.]

**Natural Gas Pipe Line Company of America; Informal Technical and Settlement Conferences**

January 16, 1981.

Take notice that on February 3, 1981, at 10:00 a.m., there will be an informal technical conference in the above-captioned proceeding. All interested persons are invited to attend this conference. The meeting place for this conference will be at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Take notice also that on February 4, 1981, at 10:00 a.m., there will be an informal settlement conference in the above-captioned matter. All interested persons are invited to attend this conference. The meeting place for this conference will be at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend but if such persons have not previously been permitted to intervene in this matter by order of the Commission, attendance will not be deemed to authorize intervention as a party in these proceedings.

All parties will be expected to come fully prepared to discuss the merits of the issues arising in these proceedings and to make commitments with respect to such issues and to any offers of settlement or stipulation discussed at the conference.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2840 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RA81-43-000]

**Navajo Refining Co.; Filing of Petition for Review Under 42 U.S.C. 7194**

Issued: January 15, 1981.

Take notice that Navajo Refining Company on January 12, 1981, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all

participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before January 30, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before January 30, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2841 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Dockets No. ER80-66, 67, 68, and 220]

#### New England Power Co.; Filing

January 16, 1981.

The filing party submits the following: Take notice that on January 9, 1981, New England Power Company submitted for filing a compliance report pursuant to the Commission's order of November 26, 1980 in the above referenced proceeding.

A copy of this filing has been served upon the affected wholesale customers and state commissions.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 9, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on

file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2842 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER81-59-000 and ER81-60-000]

#### Niagara Mohawk Power Corp.; Filing

January 16, 1981.

The filing company submits the following:

Take notice that on January 2, 1981, Niagara Mohawk Power Corporation submitted for filing a refund compliance report in the above-reference proceeding.

A copy of this filing has been served upon the Public Service Commission of New York and the Green Mountain Power Corporation.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 9, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2843 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ST81-106-000]

#### Producer's Gas Co.; Application for Approval of Rates

January 15, 1981.

Take notice that on December 12, 1980, Producer's Gas Company (Applicant), 4925 Greenville Avenue, Dallas, Texas 75206, filed in Docket No. ST81-106-000 an application pursuant to Section 284.123(b)(2) of the Commission's Regulations under the Natural Gas Policy Act of 1978 for approval of rates charged for transporting natural gas for El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it and El Paso have entered into an agreement dated December 2, 1980, whereby Applicant agreed to provide a transportation service for El Paso for a two-year period and for a larger term thereafter subject to applicable Commission Regulations. Applicant further states that gas from

various wells in western Oklahoma attributable to the interest of El Paso at a delivery point between Applicant and Natural Gas Pipeline Company of America located in Grady County, Oklahoma, and redelivered to El Paso at a point of interconnection in Washita County, Oklahoma.

Applicant anticipates that it would initially transport approximately 35,000 Mcf per day on behalf of El Paso, with a projected total of 10,950,000 Mcf being delivered during the first year of the agreement. Applicant proposes a base transportation charge of 34.5 cents per Mcf as a fair and equitable rate for the service rendered.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 5, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2847 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. AR61-2, et al.]

#### Southern Natural Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

January 15, 1981.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 30, 1981. Copies of the respective filings are on file with the

Commission and available for public inspection.

Lois D. Cashell,  
Acting Secretary.

#### Appendix

Filing date	Company	Docket No.	Type filing
5/26/80	Southern Natural Gas Company.	APB1-2	Report.
1/7/81	United Gas Pipe Line Company.	RP77-107-005	Report.
1/9/81	Southern Natural Gas Company.	G-4264	Report.
1/9/81	Southern Natural Gas Company.	G-8592, et al.	Report.
1/9/81	Southern Natural Gas Company.	G-9279, et al.	Report.
1/9/81	Colorado Interstate Gas Company.	RP78-51-000	Report.

[FR Doc. 81-2948 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

### Federal Energy Regulatory Commission

[Project No. 3706-000]

#### American Hydro Power Co.; Application for Preliminary Permit

January 14, 1981.

Take notice that American Hydro Power Company (Applicant) filed on November 10, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3706 to be known as the Mussers Dam Project located on Middle Creek in Snyder County, Pennsylvania. The application is on file with the Commission and is available for public inspection.

Correspondence with the Applicant should be directed to: Mr. Peter A. McGrath, American Hydro Power Company, Two Aldwyn Center, Villanova, Pennsylvania 19085.

**Project Description.**—The proposed project would consist of: (1) an existing 31-foot high, 384-foot long earthfill and timber dam located approximately 0.8 mile upstream of the confluence of Middle Creek with Penns Creek; (2) and existing reservoir with negligible storage capacity; (3) a proposed powerhouse to contain units with an installed capacity of 825 kW; and (4) appurtenant works. The Mussers Dam and Reservoir is owned by the Pennsylvania Fish Commission.

The Applicant estimates that the average annual energy output would be 2,160,000 kWh.

**Purpose of Project.**—The energy generated by the project would be sold to a local public utility.

**Proposed Scope and Cost of Studies Under Permit.**—Applicant seeks issuance of a preliminary permit for a

period of three years, during which time it would evaluate the economic, environmental, and engineering feasibility of the project. If the project is found to be feasible, the Applicant would prepare an application for FERC license, including an environmental report. Applicant estimates the total cost of studies under the permit would be \$70,000.

**Purpose of Preliminary Permit.**—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

**Agency Comments.**—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Competing Applications.**—Anyone desiring to file a competing application must submit to the Commission, on or before March 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 22, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

**Comments, Protests, or Petitions to Intervene.**—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a

protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 23, 1981.

**Filing and Service of Responsive Documents.**—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE 'COMPETING APPLICATION'", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3706. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2992 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3727-000]

#### American Hydroelectric Development Corp.; Application for Preliminary Permit

January 14, 1981.

Take notice that American Hydroelectric Development Corporation (Applicant) filed on November 13, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3727 to be known as Stampede Hydroelectric Project located at the United States Department of the Interior, Water and Power Resources Service's (WPRS) Stampede Dam on the Little Truckee River in Sierra County, California. The application is on file with the Commission and is available for public inspection. Correspondence

with the Applicant should be directed to: Mr. William A. Jennings, American Hydroelectric Development Corporation, Suite 520, 100 Park Center Plaza, San Jose, California 95113. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

**Project Description**—The proposed project would consist of: (a) a 4.5-foot diameter, 150-foot long penstock connecting the existing outlet of the WPRS' Stampede Reservoir with; (b) a powerhouse with a total rated capacity of 3,000 kW; (c) a 200- to 500-foot long transmission line connecting the powerhouse with an existing 13.2-kV transmission line north of the powerhouse; and (d) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 16,000,000 kWh.

**Purpose of the Project**—Project energy would be sold to a local utility.

**Proposed Scope and Cost of Studies under Permit**—Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the WPRS and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be \$110,000.

**Purpose of Preliminary Permit**—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

**Agency Comments**—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file

comments within the time set below, it will be presumed to have no comments.

**Competing Applications**—Anyone desiring to file a competing application must submit to the Commission, on or before March 20, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 19, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

**Comments, Protests, or Petitions to Intervene**—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petition to intervene must be received on or before March 20, 1981.

**Filing and Service of Responsive Documents**—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filing must also state that it is made in response to this notice of application for preliminary permit for Project No. 3727. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of

any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2691 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Rate Schedule No. 51, et al., Docket Nos. SA80-136, SA80-143, SA80-144, and R180-15]

**American Natural Gas Production Co., et al.; Order Granting Blanket Waiver of Section 154.94(h)(2)(iii) for Specified Period, Accepting Notices of Change in Rate and Terminating Dockets**

Issued December 18, 1980.

In the matter of American Natural Gas Production Company, et al., Gulf Oil Corporation, Diamond Shamrock Corporation, and Amoco Production Company.

This order grants a blanket waiver of Section 154.94(h)(2)(iii) of the Commission's regulations with regard to the 30 day filing requirement for all notices of change in rate filed by producers prior to the date of issuance of this order or within sixty days of the date of issuance of this order which cover gas subject to § 102(d) and 108 of the Natural Gas Policy Act of 1978 (NGPA). The order also accepts for filing and grants waiver with respect to certain notices of change in rate filed by producers relating to the above subject.<sup>1</sup> Finally, the order terminates certain dockets involving this same subject as moot.

Order No. 25<sup>2</sup> expanded the blanket affidavit filing procedures established by Order No. 15<sup>3</sup> to gas determined to be eligible for Section 102(d) and 108 rates under the NGPA. Producers must file a notice of change in rate and a revised blanket affidavit for each rate schedule after a final determination of eligibility has been made. Pursuant to Section 154.94(h)(2)(iii), if these filings are made within 30 days of the date of a final determination, then the rate, as adjusted for the monthly inflation adjustment authorized under the NGPA, is effective on either the date of initial delivery of the gas or the date of the final determination itself, whichever date is later. But, if these filings are not made within this 30 day period after a final determination, the notice of change

<sup>1</sup> These producers and their rate schedules are listed in the Appendix.

<sup>2</sup> 44 F.R. 19387

<sup>3</sup> 43 F.R. 55756

in rate is not effective until 30 days after the actual filing date.

A determination by a jurisdictional agency becomes final 45 days after receipt by the Commission unless the Commission takes action to reverse or remand such determination or requests additional information pursuant to Section 275.202 of the regulations. Notices of Determinations by Jurisdictional Agencies are published in the Federal Register by the Commission within 30 days after receipt of determinations. Producers rely upon the Federal Register to calculate the date a determination becomes final and the 30 day filing period begins to run.

The producers cite various reasons as grounds for waiver of Section 154.94(h)(2)(iii), among them confusion as to the filing requirements themselves, difficulties in monitoring the large number of determinations, and inadequacies in the noticing procedure for final determinations.

Taking into consideration the difficulties encountered by producers in meeting the 30-day filing period, the Commission finds good cause exists to waive Section 154.94(h)(2)(iii) in order to permit untimely filed notices of change in rate for sales of gas governed by Sections 102(d) and 108 of the NGPA to become effective on either the date of final determination or the date of initial delivery, whichever is later.<sup>4</sup> The Commission intends that this waiver shall apply to all such sales of 102(d) and 108 gas where notices of change in rate, filed pursuant to a final determination, are on file with the Commission at the present time or are filed within 60 days of the date of issuance of this order. Requests for waiver of the 30-day period need not accompany notices of rate change made during this 60-day period. The Commission emphasizes that this is a one time only waiver and that producers are expected to comply fully with the 30-day filing requirement in the future.

Gulf Oil corporation, Diamond Shamrock Corporation, and Amoco Production Company initiated adjustment proceedings to obtain waiver of Section 154.94(h)(2)(iii). Since we have granted a blanket waiver, and all three producers have filed notices of rate change, there is no reason to continue these dockets, and they will be terminated.

Consistent with the above, we shall accept for filing effective as of their respective dates of final determination

<sup>4</sup>The Commission has previously waived Section 154.94(h)(2)(iii). Amoco Production Company, *et al.*, Rate Schedule No. 818, *et al.*, "Order Waiving Section 154.94(h)(2)(iii), issued July 9, 1980.

or date of initial delivery, whichever is later, the notices of change in rate listed in the Appendix.

#### The Commission orders:

(A) Waiver of the 30-day filing requirement of Section 154.94(h)(2)(iii) is hereby granted for all notices of change in rate coverings gas subject to Sections 102(d) and 108 of the NGPA which were filed, pursuant to a final determination, either prior to the date of issuance of this order or within 60 days thereafter.

(B) The notices of change listed on the attached Appendix are accepted to be effective as of their respective dates of final determination or date of initial delivery, whichever is later.

(C) Docket Nos. SA80-138, SA80-143, SA80-144 and RI80-15 are moot and hereby terminated.

By the Commission.  
Kenneth F. Plumb,  
Secretary.

#### Appendix

Producer	Rate schedule No.	Supplement No.
American Natural Gas Production Co.	51	1
Do	52	1
Amerada Hess Corp	86	19
Amoco Production Co.	441	19
Do	587	41
Do	611	34
Do	807	1
Do	822	1
APCO Oil and Gas Co., Division of Atlantic Richfield Co	178	28
Do	180	31
Do	191	23
Do	431	56
Do	532	22
Do	673	17
Do	682	23
Do	705	15
Chevron U.S.A. Inc.	173	1
Champion Petroleum Co.	91	6
Conoco, Inc.	192	15
Do	242	37
Do	267	23
Do	274	38
Do	277	52
Do	299	18
Do	309	21
Do	334	22
Do	336	42
Do	409	39
Consolidated Coal Corp.	1	8
Diamond Shamrock Corp	13	18
Do	57	8
Do	96	2
Do	99	1
Florida Gas Transmission Co.	36	1
General American Oil Co. of Texas	115	1
Do	117	1
Gulf Oil Corp	22	23
Do	82	33
Do	118	33
Do	130	38
Do	244	22
Do	473	14
Do	512	8
Do	519	8
Do	514	8
Do	623	1
Hondo Oil and Gas Co.	6	17
J. M. Huber Corp	80	11
Mesa Petroleum Co.	108	1
Mitchell Energy Corp.	19	73
Mobil Oil Co.	9	29
Do	100	22
Mobil G-C Corp	5	2
Do	7	1

#### Appendix—Continued

Producer	Rate schedule No.	Supplement No.
Do	25	2
Mobil Oil Exploration and Producing Southeast, Inc	76	1
Do	83	3
Do	84	1
Do	85	1
Do	86	1
Do	88	2
Do	89	2
TransOcean Oil, Inc	21	16
Warren Petroleum Co.	26	36
Do	64	27

[FR Doc. 81-2803 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER81-130-000; ER81-139-000]

#### Appalachian Power Co.; Order Accepting for Filing and Suspending Proposed Rates, Consolidating Dockets, Directing Summary Disposition, Granting Interventions, and Establishing Procedures

Issued January 16, 1981.

On November 20, 1980, Appalachian Power Company (APCO) tendered for filing in Docket No. ER81-130-000 revised rates for twenty wholesale customers proposed to become effective February 1, 1981, which provide for an increase in jurisdictional revenues from certain wholesale customers of approximately \$8,715,455 based on the twelve month period ending December 31, 1981. On November 26, 1981, APCO tendered for filing in Docket No. ER81-139-000 revised rates proposed to become effective February 1, 1981, which provide for an increase in jurisdictional revenues from Kingsport Power Company of approximately \$6,904,139 based on the twelve month period ending December 31, 1981. The proposed rate increases result primarily from increased demand and energy charges and from a revised base cost of fuel in APCO's fuel adjustment clauses.<sup>1</sup>

Notices of the filings were issued on November 25, 1980 and December 3, 1980, respectively, with responses due on or before December 15, 1980 and December 22, 1980, respectively. On December 8, 1980, the West Virginia Public Service Commission (WVPSC) filed a notice of intervention in Docket No. ER81-130-000. On December 15, 1980, the cities of Bedford, Danville, Martinsville, Radford, Richlands, and Salem, Virginia and the Virginia Polytechnic Institute and State University (Virginia Cities) filed a protest and petition to intervene.

<sup>1</sup>See Attachment for rate schedule designations.

The Virginia Cities seek a maximum five month suspension and an order instituting a hearing concerning the lawfulness of the proposed rate increase. The Virginia Cities also seek summary disposition of certain issues, raise a variety of cost of service issues, and request the institution of price squeeze procedures.

#### Discussion

Initially, we find that participation by each of the petitioners is in the public interest. Consequently, we shall grant the petition to intervene.

Considering the allegations raised by the Virginia Cities, we find that APCO's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,<sup>2</sup> we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that a variety of substantive contentions have been raised by the Virginia Cities, but that our preliminary analysis indicates that the proposed rates may not yield excessive revenues. We therefore believe that a five month suspension is unnecessary and may be inequitable to APCO. However, in order to ensure refund protection for the affected customers pending further review, we believe that we should exercise our discretion to suspend the rates for only one day permitting the rates to take effect subject to refund thereafter on February 2, 1981. Furthermore, because Docket Nos. ER81-130-000 and ER81-139-000 present common questions of law and fact, we shall consolidate these dockets for purposes of hearing and decision.

<sup>2</sup> E.g., *Boston Edison Co.*, Docket No. ER80-608 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, et al. (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

APCO has reflected accumulated deferred investment tax credits (ADITC) in its capitalization at the company's claimed overall rate of return. The Commission has previously determined that summary disposition is appropriate under these circumstances,<sup>3</sup> and we shall so resolve the issue in this docket. However, the Commission notes that the revenue impact of this summary disposition is relatively small in relation to the proposed rate increase. Moreover, as noted above, our preliminary analysis has indicated that APCO's proposed rates may not result in excess revenues. As a result, we shall not require APCO to refile its cost of service and rates at this time. Nonetheless, summary disposition of the ADITC issue shall be reflected in any rates finally approved by the Commission.

In accordance with the Commission's policy established in *Arkansas Power & Light Company*, Docket No. ER79-339, order issued August 6, 1979, we shall phase the price squeeze issue raised by the Virginia Cities. As we have noted in previous orders, this procedure will allow a decision first to be reached on the cost of service, capitalization and rate of return issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

*The Commission orders:* (A) APCO's proposed rates tendered for filing on November 20, 1980 and November 26, 1980, are accepted for filing and suspended for one day from the requested February 1, 1981 effective date to become effective on February 2, 1981, subject to refund pending hearing and decision thereon.

(B) The proceedings in Docket Nos. ER81-130-000 and ER81-139-000 are hereby consolidated for purposes of hearing and decision thereon.

(C) APCO's inclusion of ADITC in its capitalization at the claimed overall rate of return is summarily rejected. This determination shall be reflected in any rates ultimately approved by the Commission in this docket.

(D) We hereby order initiation of price squeeze procedures in Docket No. ER81-130-000 and further order that the proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of

<sup>3</sup> E.g., *El Paso Electric Co.*, Docket No. ER79-526, order issued September 24, 1979.

the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(E) The petitions to intervene are granted subject to the rules and regulations of the Commission; *Provided, however*, that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further*, that the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of IME's proposed rates.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately ten (10) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates, and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(H) The Commission staff shall serve top sheets in this proceeding on or before February 20, 1981.

Dockets No. ER81-130-000, ER81-139-000.

(I) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission.  
Kenneth F. Plumb,  
Secretary.

Appalachian Power Company Docket Nos. ER81-130-000 and ER81-139-000

Filed: (1) & (2) November 26, 1980; (3) through (42) November 20, 1980.

Instruments: Rate and Fuel Clause.

Designation	Other party	Designation	Other party
(1) Supplement No. 7 to Rate Schedule FPC No. 23 (Supersedes Supplement No. 5).	Kingsport Power Co.	(32) Supplement No. 8 to Rate Schedule FPC No. 90 (Supersedes Supplement No. 6).	
(2) Supplement No. 8 to Rate Schedule FPC No. 23 (Supersedes Supplement No. 6).		(33) Supplement No. 7 to Rate Schedule FPC No. 92 (Supersedes Supplement No. 5).	City of Bedford.
(3) Supplement No. 3 to Rate Schedule FPC No. 96 (Supersedes Supplement No. 1).	City of Danville.	(34) Supplement No. 8 to Rate Schedule FPC No. 92 (Supersedes Supplement No. 6).	
(4) Supplement No. 4 to Rate Schedule FPC No. 96 (Supersedes Supplement No. 2).		(35) Supplement No. 7 to Rate Schedule FPC No. 93 (Supersedes Supplement No. 5).	City of Radford.
(5) Supplement No. 7 to Rate Schedule FPC No. 76 (Supersedes Supplement No. 5).	City of Martinsville.	(36) Supplement No. 8 to Rate Schedule FPC No. 93 (Supersedes Supplement No. 6).	
(6) Supplement No. 8 to Rate Schedule FPC No. 76 (Supersedes Supplement No. 6).		(37) Supplement No. 7 to Rate Schedule FPC No. 95 (Supersedes Supplement No. 5).	City of Salem.
(7) Supplement No. 7 to Rate Schedule FPC No. 78 (Supersedes Supplement No. 5).	Black Diamond Power Co. (Elkhurst).	(38) Supplement No. 8 to Rate Schedule FPC No. 95 (Supersedes Supplement No. 6).	
(8) Supplement No. 8 to Rate Schedule FPC No. 78 (Supersedes Supplement No. 6).		(39) Supplement No. 10 to Rate Schedule FPC No. 54 (Supersedes Supplement No. 8).	Town of Richland.
(9) Supplement No. 7 to Rate Schedule FPC No. 79 (Supersedes Supplement No. 5).	Black Diamond Power Co. (East Hartland).	(40) Supplement No. 11 to Rate Schedule FPC No. 54 (Supersedes Supplement No. 9).	
(10) Supplement No. 8 to Rate Schedule FPC No. 79 (Supersedes Supplement No. 6).		(41) Supplement No. 10 to Rate Schedule FPC No. 57 (Supersedes Supplement No. 8).	Virginia Polytechnic Institute.
(11) Supplement No. 7 to Rate Schedule FPC No. 80 (Supersedes Supplement No. 5).	Black Diamond Power Co. (Sophia).	(42) Supplement No. 11 to Rate Schedule FPC No. 57 (Supersedes Supplement No. 9).	
(12) Supplement No. 8 to Rate Schedule FPC No. 80 (Supersedes Supplement No. 6).			
(13) Supplement No. 7 to Rate Schedule FPC No. 81 (Supersedes Supplement No. 5).	Chesapeake Light & Power Co.		
(14) Supplement No. 8 to Rate Schedule FPC No. 81 (Supersedes Supplement No. 6).			
(15) Supplement No. 7 to Rate Schedule FPC No. 82 (Supersedes Supplement No. 5).	Elk Power Co.		
(16) Supplement No. 8 to Rate Schedule FPC No. 82 (Supersedes Supplement No. 6).			
(17) Supplement No. 7 to Rate Schedule FPC No. 83 (Supersedes Supplement No. 5).	Elkhorn Public Service Co. (Elkhorn).		
(18) Supplement No. 8 to Rate Schedule FPC No. 83 (Supersedes Supplement No. 6).			
(19) Supplement No. 7 to Rate Schedule FPC No. 84 (Supersedes Supplement No. 5).	Elkhorn Public Service Co. (Crozier).		
(20) Supplement No. 8 to Rate Schedule FPC No. 84 (Supersedes Supplement No. 6).			
(21) Supplement No. 7 to Rate Schedule FPC No. 85 (Supersedes Supplement No. 5).	Kimball Light & Water Co.		
(22) Supplement No. 8 to Rate Schedule FPC No. 85 (Supersedes Supplement No. 6).			
(23) Supplement No. 7 to Rate Schedule FPC No. 86 (Supersedes Supplement No. 5).	Standard Utility Service Corp.		
(24) Supplement No. 8 to Rate Schedule FPC No. 86 (Supersedes Supplement No. 6).			
(25) Supplement No. 7 to Rate Schedule FPC No. 87 (Supersedes Supplement No. 5).	United Light & Power Co.		
(26) Supplement No. 8 to Rate Schedule FPC No. 87 (Supersedes Supplement No. 6).			
(27) Supplement No. 7 to Rate Schedule FPC No. 88 (Supersedes Supplement No. 5).	Union Power Co. (Rhodell).		
(28) Supplement No. 8 to Rate Schedule FPC No. 88 (Supersedes Supplement No. 6).			
(29) Supplement No. 7 to Rate Schedule FPC No. 89 (Supersedes Supplement No. 5).	Union Power Co. (Mullens).		
(30) Supplement No. 8 to Rate Schedule FPC No. 89 (Supersedes Supplement No. 6).			
(31) Supplement No. 7 to Rate Schedule FPC No. 90 (Supersedes Supplement No. 5).	War Light & Power Co.		

[FR Doc. 81-2804 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

**[Docket No. RE80-77]****Arkansas Power & Light Company; Application for Exemption**

January 16, 1981.

Take notice that Arkansas Power & Light Company (AP&L), on July 30, 1980, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirements to file as to its Louisiana and Tennessee jurisdictions, on or before June 30, 1982, certain jurisdictional load data pertaining to its cost of providing electric service as specified in Section 290.401(b).

In its application for exemption, AP&L states that it should not be required to file the specified data because the number of customers served in the Louisiana and Tennessee jurisdictions is so small (approximately 0.15% and 0.05% of its total load respectively) that the load data for such customers would not be useful for the analytical purposes for which it is intended under PURPA.

Copies of the application for exemption are on file with the Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for

exemption must file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45-day period such person must also serve a copy of such comments on AP&L, addressed to: Arkansas Power & Light Company Attention: Mr. Steve L. Riggs, Assistant Secretary, Assistant General Counsel & Director of Legal Services, P.O. Box 551, Little Rock, Arkansas 72203

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2805 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

**[Project No. 3615-000]****Branch River Mill, Inc.; Application for Preliminary Permit**

January 14, 1981.

Take notice that Branch River Mill, Inc. (Applicant) filed on October 28, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3615-000 to be known as the Branch River Mill Project located on the Branch River in the Town of Wakefield, Carroll County, New Hampshire. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. John E. Dowker, 5 Main Street, Union, New Hampshire 03887.

Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

**Project Description.**—The proposed project would consist of existing project works including: (1) a granite masonry dam, 50 feet long and 10 feet high; (2) a reservoir of negligible storage capacity with a surface area of about 3 acres at surface elevation 500 feet m.s.l.; (3) an intake structure with an 11-foot long sluice at the right (south) abutment of the dam; (4) a turbine pit in the basement of the mill structure immediately downstream of the dam; (5) a tailrace; and (6) other appurtenances. Applicant proposes to install a new 30-kW vertical turbine-generator unit in the turbine pit.

The Applicant estimates that the average annual energy output would be a maximum of 160,000 kWh.

**Purpose of Project.**—Project energy would be sold to the Public Service Company of New Hampshire.



**Proposed Scope and Cost of Studies under Permit.**—Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time it would perform economic, environmental, and historic studies, and prepare an application for FERC license. Applicant estimates cost of studies under the permit would not exceed \$2,000.

**Purpose of Preliminary Permit.**—A preliminary permit does not authorize construction. A permit, if issued gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

**Agency Comments.**—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Competing Applications.**—Anyone desiring to file a competing application must submit to the Commission, on or before March 20, 1981 either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 19, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b) and (c)(1980). A competing application must conform with the requirements of 18 CFR § 4.33(a) and (d)(1980).

**Comments, Protests, or Petitions to Intervene.**—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R., § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or

other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before March 20, 1981.

**Filing and Service of Responsive Documents.** Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3615-000. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

**Kenneth F. Plumb,  
Secretary.**

(FR Doc. 81-2996 filed 1-26-81; 8:45 am)

BILLING CODE 6450-65-M

**[Project No. 3381]**

**Cascade Water Power Development Corporation; Application for Preliminary Permit**

January 15, 1981

Take notice that Cascade Water Power Development Corporation (Applicant) filed on August 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3381 to be known as the Prineville Project located on the the Crooked River in Crook County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. David Holzman, P.O. Box 246, June Lake, California 93529.

Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

**Project Description.**—The proposed project would consist of: (1) a penstock installed in the existing outlet tunnel of the Water and Power Resources Service's Prineville Dam; (2) a powerhouse with a total capacity of up to 15.66 MW; and (3) a 3.5-mile long transmission line.

The Applicant estimates that the average annual energy output would be a maximum of 40,600 MWhH.

**Purpose of Project.**—Applicant states that energy produced by the project would be sold to the Bonneville Power Administration or other appropriate purchaser.

**Proposed Scope and Cost of Studies under Permit.**—Applicant proposes to study the environmental, hydraulic, power generation, construction, and economic aspects of the project to determine the feasibility of the proposed development. If the project should be feasible an application for license would be prepared. Applicant estimates that the costs of conducting the studies and preparing a license application would be \$65,000.

**Purpose of Preliminary Permit.**—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

**Agency Comments.**—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Competing Applications.**—This application is a competing application to the Prineville Dam Project No. 3518-000 filed on September 30, 1980, under 18 CFR 4.33 (1980), and, therefore, no

further competing applications or notices of intent to file a competing application will be accepted for filing.

**Comments, Protests, or Petitions to Intervene.**—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 4, 1981.

**Filing and Service of Responsive Documents.**—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3381-000. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2807 Filed 1-26-81; 8:46 am]

BILLING CODE 6450-95-M

[Docket No. ES81-23-000]

#### Citizens Utilities Company; Application

January 19, 1981.

Take notice that on January 13, 1981, Citizens Utilities Company (Applicant) filed an application, seeking authority to negotiate in connection with the

proposed financing and guarantee of pollution control facilities and other small construction projects by the Company and its subsidiaries. The financing is not expected to aggregate more than \$3,100,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 5, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2808 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-95-M

[Docket No. RE80-64]

#### Delmarva Power & Light Co.; Application for Exemption

January 16, 1981.

Take notice that Delmarva Power & Light Company, on June 26, 1980, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58837, October 11, 1979). Permanent exemption is sought from the requirement to file, on or before June 30, 1982 and by June 30 in subsequent even numbered years, information on the costs of providing electric service for its Virginia operations as specified in § 290.403—Load Data for Certain Customer Groups.

In its application for exemption, Delmarva Power & Light Company states that it should not be required to file the specified data for the following reasons: (1) Relative size of the Company's Virginia operations as compared to the Commonwealth of Virginia's total electric customers and sales; (2) Cost of the equipment necessary to sample meter the large rate classes; (3) Manpower requirements to install equipment and analyze data for the large rate classes; (4) Not in keeping with the spirit and intent of the Public Utility Regulatory Policies Act of 1978.

Copies of the application for exemption are on file with the Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for exemption must file such information

with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within the next 45-day period, such person must also serve a copy of such comments on Delmarva Power & Light Company, Attention: Mr. E. D. Krapf, 800 King Street, P.O. Box 231, Wilmington, Delaware 19899.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2800 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-95-M

[Docket No. ER80-454]

#### Ohio Edison Company; Order Granting Motion To Collect Interim Rates

Issued January 16, 1981.

On December 19, 1980, Ohio Edison Company (Ohio Edison) filed in this docket a motion to collect interim rates substantially lower than the rates it proposed in its June 10, 1980 filing requesting rate increases.<sup>1</sup> These interim rates are proposed to become effective subject to refund on January 10, 1981, the date that Ohio Edison's filed increases in rates would otherwise go into effect.<sup>2</sup> Ohio Edison requests the interim rates to reduce its potential refund obligation. Ohio Edison further requests that permission to collect the interim rates be without prejudice to its right (1) to seek the full amount of the increase reflected in the rates filed and (2) to collect any higher rates immediately upon issuance of the initial decision of the administrative law judge finding such rates just and reasonable. Any such increase would be prospective only and subject to refund pending final Commission approval.

The motion states that the intervenors in this proceeding, Ohio Edison's 21 municipal customers, support the requested interim rate with the understanding that they reserve the right to argue that lower rates should be ordered by the Commission. The motion further states that the Commission staff

<sup>1</sup>The June 10, 1980 filing proposed an increase in rates for full requirement services to its 21 municipal wholesale customers. Ohio Edison also filed a proposed increase in rates for partial requirements wholesale service. However, as of June 10, 1980, none of the affected customers elected to receive this partial requirements service.

According to Ohio Edison's motion, the interim rates would reduce the rate increase for full requirements service from approximately \$13.96 million to approximately \$10.62 million and would make corresponding reductions in its proposed rate increase for partial requirements service.

<sup>2</sup>By order issued August 1, 1980 in this docket, the Commission suspended the filed rate increases for five months to become effective January 10, 1981.

has no objection to the interim rate requested.

We find that good cause exists to expedite consideration of this motion, waive the notice requirements of section 35.3 and permit the collection, subject to refund, of the proposed interim rates as of January 10, 1981, until such time as an initial decision raising the rates is issued or as is otherwise provided below. This order shall be without prejudice to any determination on the merits of this rate proceeding. If the presiding administrative law judge should approve a higher rate than the interim rate, Ohio Edison may thereafter collect the higher filed rate prospectively only and subject to refund pending a final decision by the Commission.

#### *The Commission orders*

(A) Pursuant to section 35.1(e) of the regulations, Ohio Edison Company may collect its proposed interim rates, subject to refund, in lieu of the rates originally filed in this proceeding from January 10, 1981, unless and until an initial decision is issued which produces a higher rate, as conditioned below. If the initial decision does not produce a higher rate, the interim rate shall continue in effect, subject to refund, pending a final Commission decision.

(B) In order to collect any higher rate resulting from an initial decision in this docket Ohio Edison shall file, within 30 days of the issuance of such a decision, rate schedules which are in compliance with the initial decision. Ohio Edison may collect such rates, subject to refund pending a finding that they are in compliance and pending a final Commission decision in this docket, from the date of initial decision.

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission,  
Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2914 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

#### [Docket No. ES81-8-000]

#### **Pacific Power & Light Co. Supplemental Application**

January 16, 1981.

Take notice that on December 29, 1980, Pacific Power & Light Company (Applicant) filed a supplemental application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to increase the amount of First Mortgage Bonds being

negotiated from \$100 million to \$125 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 30, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules or Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2913 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

#### [Project Nos. 3530-000, 3549-000]

#### **Western Montana Electric Generating and Transmission Cooperative and Continental Hydro Corp.; Applications for Preliminary Permits**

January 15, 1981.

Take notice that Western Montana Electric Generating and Transmission Cooperative (WMEGTC) and Continental Hydro Corporation (CHC) (Applicants) filed on October 7, 1980, and October 9, 1980, respectively, applications for preliminary permits [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Projects Nos. 3530 and 3549, both to be known as the Clark Canyon Dam Project located at the existing Clark Canyon Dam on the Beaverhead River in Beaverhead County, Montana. The applications are on file with the Commission and are available for public inspection. Correspondence with the Applicants should be directed to: Mr. Leo Hansen, Western Montana Electric Generating and Transmission Cooperative, 1950 West Sherwood, Missoula, Montana 59801; and Mr. A. Gail Staker, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

*Project Description*—Both proposed projects would utilize the existing U.S. Department of the Interior (Water and Power Resources Service) Clark Canyon Dam.

The proposed Project No. 3530 would consist of: (1) a proposed powerhouse, to be located downstream of the dam, containing two generating units with a total installed capacity of 3 MW; (2) modification of the existing intake and outlet works of the dam; (3) a 400-foot

long steel pipe; (4) approximately 15 miles of new transmission line; and (5) appurtenant facilities. Applicant estimates the annual generation would average about 15 GWh.

The proposed Project No. 3549 would consist of: (1) a proposed powerhouse, to be located downstream of the dam, containing two generating units with a total installed capacity of 5-6 MW; (2) modification of the existing intake and outlet works of the dam; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 20-22 GWh.

*Purpose of Project*—WMEGTC proposes to distribute the energy produced to the Vigilante Electric Cooperative of Dillon, Montana to serve its customers. CHC proposes to sell energy produced to the Montana Power Company.

*Proposed Scope and Cost of Studies Under Permit*—Both WMEGTC and CHC seek issuance of a preliminary permit for a period of 36 months, during which time each Applicant would accomplish hydrological, engineering, environmental, and economic feasibility studies on the projects and prepare applications for FERC licenses. WMEGTC estimates cost of studies under permit would be about \$48,275, and CHC estimates cost of studies under its permit would be about \$49,000.

*Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permits. (A copy of the applications may be obtained directly from the Applicants.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

*Competing Applications*—Anyone desiring to file a competing application must submit to the Commission, on or before March 27, 1981, either the

competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 26, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

*Comments, Protests, or Petitions to Intervene*—Anyone desiring to be heard or to make any protest about these applications should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before March 27, 1981.

*Filing and Service of Responsive Documents*—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to these notices of applications for preliminary permits for Projects Nos. 3530 and 3549. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St. NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 81-2899 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M



VOLUME 343

PAGE 002

JU NO	JA DKT	API NO	SEL U WELL NAME	FIELD NAME	PROD	PURCHASEN
8108813		3411925296	103 GRACE MORRISON ETAL #1A RECEIVED: 12/10/80	BRUSH CREEK	10.0	
-CAMERON BROS			ROBERT POLLOCK #1 RECEIVED: 12/10/80	WASHINGTON	12.0	
8108812		3411925278	103 #1 A & E SWARTZENTRUBER #1 C M POND #2 L & E HERSBERGER RECEIVED: 12/10/80	MECHANIC C AND N POND MECHANIC	27.5 25.0 9.5	COLUMBIA GAS TRANSMI EAST OHIO GAS CO COLUMBIA GAS TRANSMI
8108861		3407522473	103 CHAMBERS WELL #1	NEW LYME	22.0	THE EAST OHIO GAS CO
8108773		3415123297	103 MALAVITE WELL #1	PIKE	20.0	COLUMBIA GAS TRANSMI
8108860		3400721480	103 SCHWANDT WELL #1	NEW LYME	20.0	THE EAST OHIO GAS CO
-ENERGY DEVELOPMENT CORP		3400721492	103 SCHWANDT WELL #2	NEW LYME	20.0	THE EAST OHIO GAS CO
8108846		3411521831	103 E MAUTZ #1	RURALDALE	0.0	
8108788		3411522169	103 FOX UNIT #1	RURALDALE	0.0	
8108844		3415501470	103 YOUNGSTOWN AIRPORT #10	VIENNA	20.0	COLUMBIA GAS TRANSMI
8108845		3415501484	103 YOUNGSTOWN AIRPORT #12	FOWLER	20.0	COLUMBIA GAS TRANSMI
-FORTUNE GAS AND OIL INC		3411925309	103 GAYLORD CALDWELL #13-1	SALEM	12.0	
8108810		3409921281	103 DIERKES UNIT #1	JACKSON	30.0	EAST OHIO GAS CO
8108811		3407522636	103 S MILLER #3	RIPLEY	12.0	COLUMBIA GAS TRANSMI
-GASEARCH INC		3407522635	103 S MILLER #4	RIPLEY	9.0	COLUMBIA GAS TRANSMI
8108794		3410521983	103 HIRAM SLAMTER #1	RUTLAND	5.0	COLUMBIA GAS TRANSMI
8108795		3408923876	103 E & P WILAND NO 1	TOBOSO QUAD	4.5	NEWZANE GAS CO
-GEO ENERGY INC		3411121955	103 RAYMOND BETZ #1	SUMMIT	10.0	COLUMBIA GAS TRANSMI
8108814		3407522760	103 MATHIE #1	HARDY	20.0	COLUMBIA GAS TRANSMI
-H & W ENERGY		3407522761	103 MATHIE #2	HARDY	20.0	COLUMBIA GAS TRANSMI
8108836		3412724146	103 FRANK ALBERT LORETTA FLAUTT #1	READING	9.5	COLUMBIA GAS TRANSMI
-H I SMITH OIL & GAS INC		3415123043	103 JONAS J HERSBERGER NO 2	BREMSTER MT EATON	6.0 8.0	COLUMBIA-GAS TRANSMI COLUMBIA GAS TRANSMI
8108823		3416922195	103 RECEIVED: 12/10/80	PLAIN WOODSTER	20.0 20.0	COLUMBIA GAS TRANSMI EAST OHIO GAS CO
8108822		3416922348	103 HEYL #1	NORTHAMPTON STON	20.0 12.0	
-HEW DRILLING CO		3416922365	103 JONES BARNES MONRER #1	SALT LICK	18.2	COLUMBIA GAS TRANSMI
8108804		3415320861	103 GUENTHER #1	SALT LICK	18.3	COLUMBIA GAS TRANSMI
-HOOPER PRODUCING & OPERATING		3415320800	103 STAIGER-ADLESIC #1	CLAYTON	3.0	FORAKER GAS CO
8108833		3412724621	103 CLAYCRAFT #1	NEWPORT	12.8	COLUMBIA GAS TRANSMI
-HOPWELL OIL & GAS		3412724667	103 CLAYCRAFT #5	NEWPORT	12.8	COLUMBIA GAS TRANSMI
8108805		3412724766	103 CLAYCRAFT #7			
-JACOBSON EXPLORATION		3412724629	103 ENTERPRISE/LEWIS #1			
8108829		3416725022	103 -FRANK BALL #6			
8108830		3416724783	103 -FRANK BALL #2-4			
-JAMES P NOLL						
8108818						
-JERRY MOORE INC						
8108785						
8108772						
-JOE L SCHRIMSHER						
8108777						
8106778						
-K S I OIL & GAS CO INC						
8108793						
8108792						
-L E M PETROLEUM						
8108819						
8108781						
8108784						
8108820						
8108764						
8108761						

VOLUME 343 PAGE 603

JD NO	JA DKT	API NO	SEL O	WELL NAME	FIELD NAME	PRDD	PURCHASER
8108760		3416725272	103	GLENN A BIEHL #1	LAWRENCE	12.8	COLUMBIA GAS TRANSMI
8108762		3412724695	103	GUY HILLS #2	PLEASANTS	18.3	COLUMBIA GAS TRANSMI
8108783		3412724729	103	METZGER #1	JACKSON	3.5	FORAKER GAS CO
8108769		3416725381	103	MILBUR BOHLEN UNIT #2	LAWRENCE	12.8	COLUMBIA GAS TRANSMI
8108765		3416725243	103	WILLIAM SCHILLING #2	WATERTOWN	12.8	GAS TRANSPORT INC
				RECEIVED: 12/10/80			JA: OH
				LAUDERMAN OIL & GAS DRILLING			
8108771		3416725570	103	CRADDICK #3 WELL	WARREN	237.3	COLUMBIA GAS TRANSMI
8108760		3416724526	103	DEUCHER #1 WELL	INDEPENDENCE	237.3	COLUMBIA GAS TRANSMI
8108762		3416724801	103	FLOYD S & MARY DEPUY #1	LAWRENCE	237.3	COLUMBIA GAS TRANSMI
8108763		3416724803	103	GEORGE MOORE #1 WELL	LUDLOW	18.3	COLUMBIA GAS TRANSMI
8108759		3416724525	103	R A MEYERS #1 WELL	INDEPENDENCE	237.3	COLUMBIA GAS TRANSMI
8108768		3416725324	103	THORNBERY #1 WELL	PALMER-BARLOW	237.3	COLUMBIA GAS TRANSMI
				RECEIVED: 12/10/80			JA: OH
				LBJ DRILLING DBA JEFF MORAN			
8108834		3408923926	103	JOHN & VERNIG BEKER #1	EDEN	17.0	
				RECEIVED: 12/10/80			JA: OH
				M C F OIL COMPANY INC			
8108859		3407522452	103	DONALD C MASON #1	MONROE	5.0	THE COLUMBIA GAS TRA
				RECEIVED: 12/10/80			JA: OH
				MASH INVESTMENT CO A PARTNERSHIP			
8108796		3415521580	103	MASH NO 5	WARREN	39.0	
				RECEIVED: 12/10/80			JA: OH
				MOSSWOOD OIL & GAS CO			
8108800		3416724306	103	K L & R CLINE #1 WELL	WARREN	10.0	GAS TRANSPORT INC
8108799		3416724270	103	M F GILLS #3 WELL	WARREN	11.0	GAS TRANSPORT INC
				RECEIVED: 12/10/80			JA: OH
				NEW FRONTIER EXPLORATION INC			
8108855		3405922564	103	WILLIAM EMOS #1	LIBERTY	28.0	
				RECEIVED: 12/10/80			JA: OH
				OHIO TITAN ENERGY CO 80-7			
8108862		3407522558	103	#1 THEO-LEEN REALTY	HARDY	125.0	COLUMBIA GAS TRANSMI
				RECEIVED: 12/10/80			JA: OH
				OHIO TITAN ENERGY CO 80-8			
8108863		3407522559	103	#2 THEO-LEEN	HARDY	95.0	COLUMBIA GAS TRANSMI
				RECEIVED: 12/10/80			JA: OH
				PENN-OHIO ENERGY CORP			
8108826		3407527210	103	SIDNEY J & ROGER B RICHARDS #5	KILLBUCK	62.0	COLUMBIA GAS TRANSMI
				RECEIVED: 12/10/80			JA: OH
				POI ENERGY INC			
8108841		3400721388	103	ARMSTRONG #1	ORWELL	40.0	EAST OHIO GAS CO
8108843		3400721429	103	EMASKA #1	COLEBROOK	30.0	EAST OHIO GAS CO
8108842		3400721400	103	PAE #1	ROME	50.0	EAST OHIO GAS CO
				RECEIVED: 12/10/80			JA: OH
				PONDEROSA OIL COMPANY			
8108824		3407522684	103	ARTHUR E PARROTT #1	PRAIRIE	10.0	COLUMBIA GAS TRANSMI
8108856		3407523240	103	HOWARD E WOLGANOTT #1	KNOX	10.0	COLUMBIA GAS TRANSMI
				RECEIVED: 12/10/80			JA: OH
				QUADRANT EXPLORATION			
8108770		3416725384	103	WILLIAM D GWIN WELL #1	LAWRENCE	0.0	
				RECEIVED: 12/10/80			JA: OH
				R D CURRY PRODUCTION COMPANY			
8108865		3407522623	103	BURGETT LISLE NO 1	MONROE	6.0	THE COLUMBIA GAS TRA
8108864		3407522621	103	HAZEL C ASHER NO 1	MONROE	5.0	THE COLUMBIA GAS TRA
8108821		3407522624	103	PAUL YOUNG NO 1	MONROE	5.0	THE COLUMBIA GAS TRA
				RECEIVED: 12/10/80			JA: OH
				RELANCE ENERGY			
8108854		3404520635	103	ROY LYNN & RUSSELL FOSTER #1	RICHLAND	15.0	COLUMBIA GAS TRANSMI
				RECEIVED: 12/10/80			JA: OH
				RICHARD C MEYER			
8108852		3403124023	103	MARY LUCILLE REISS NO 1	LAYLAND	2.0	COLUMBIA GAS TRANSMI
				RECEIVED: 12/10/80			JA: OH
				SKY PETROLEUM CORP			
8108851		3403123973	103	SHAH SHAH & PATEL INV CORP #5	BEDFORD	30.0	
				RECEIVED: 12/10/80			JA: OH
				SMITH SHAFER SMITH (A PARTNERSHIP)			
8108760		3416922427	103	J G EWING #1-A	CONGRESS	25.0	COLUMBIA GAS TRANSMI
8108779		3416922418	103	JAMES FOLLOWMAY #1	WOOSTER	25.0	EAST OHIO GAS CO
				RECEIVED: 12/10/80			JA: OH
				STRATA EXPL INC LTD PART 1980-10			
8108857		3407522425	103	#2 DON BERTLER	HARDY	750.0	COLUMBIA GAS TRANSMI





JA NO	JA DKT	API NO	SEC	J WELL NAME	FIELD NAME	PROD	PURCHASER
810886	05981	3706325587	103	MINTA M FORSHA ET AL #1	GREEN	25.0	
810874	05927	3706325016	103	PAUL LOMMAN ET UX #1	WHITE	25.0	
810879	05936	3706325616	103	PAUL SARNOVSKY ET UX #1	GRANT	25.0	
810873	05926	3706325495	103	RALPH RICHARD BROWN ET UX #1	CENTER	45.0	
810887	05982	3706325561	103	RICHARD MILLER ET UX ET AL #1	MARION CENTER BORO	60.0	
810878	05935	3706325619	103	VINCENT B HORNER ET AL #1	GRANT	30.0	
-RANUFF OIL & GAS				RECEIVED: 12/11/80			
810894	06006	3705900000	108	N M SAYERS #1	FRANKLIN	3.3	COLUMBIA GAS TRANSMI
-ROBERT BRACE				RECEIVED: 12/11/80			
810868	05852	3704921027	102	ROBERT BRACE #3	WATERFORD	0.0	NATIONAL FUEL GAS SU
-MATMCO OIL & GAS COMPANY				RECEIVED: 12/11/80			
810870	05921	3703920732	102	ARCHIE LINGO NO 1 (W-75)	ATHENS	40.0	COLUMBIA GAS TRANSMI
810869	05920	3703920731	102	GEORGE BANCROFT NO 2 (W-74)	ATHENS	40.0	COLUMBIA GAS TRANSMI

BILLING CODE 4810-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (\*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission February 11, 1981.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2941 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. RM79-3]

**Natural Gas Policy Act of 1978;  
Receipt of Texas Railroad Commission  
Application for Approval of Alternative  
Filing Requirements**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of receipt of application for approval of alternative filing requirements.

**SUMMARY:** Pursuant to § 274.207 of the Commission's regulations (18 CFR 274.207), the Texas Railroad Commission (Texas) filed an application for approval of alternative filing requirements for well determination applications filed under section 102 of the Natural Gas Policy Act of 1978. The Commission hereby issues notice of Texas' application.

**DATE:** Comments on Texas' application are due on or before February 3, 1981.

Requests for public hearing are due no later than February 3, 1981.

File comments and request for hearing with: Office of the Secretary, 825 N. Capitol Street, N.W., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:**

William Bushey, (202) 357-8672.

January 19, 1981.

Take notice that on December 22, 1980, the Texas Railroad Commission (Texas) filed with the Commission an application for approval of alternative filing requirements pursuant to § 274.207 of the Commission's regulations.

In Texas' application, two changes are proposed for filing requirements, which differ from the minimum filing requirements established by the Commission.<sup>1</sup> The changes concern filings made under section 102 of the NGPA; one involves new onshore wells under this section and the other involves new onshore reservoirs. Texas' proposals are as follows:

(1) *New Onshore Wells.* An application filed under § 274.202(c)(2)(iv) of the Commission's regulations must include a list of the deepest completion locations for all maker wells identified on the location plat. In Texas' proposed rules (Rules of the Railroad Commission of Texas, Oil and Gas Division, NGPA State Alternative Procedures, Rule 051.02.04.003(b)(1)) the only completion depth required to be listed is that for the marker well with the deepest location. Texas reasons that if the subject well is shown; to be 1000 feet deeper than the deepest completion depth, the subject well fulfills the 1000 feet deeper test for a new onshore well, set forth in section 102(c)(1)(ii).

(2) *New Onshore Reservoirs.* Section 274.202(d)(1)(ii) requires that geological information be submitted to prove that the subject well is completed in a reservoir which is a new onshore reservoir. The proposal submitted by Texas (Rule 051.02.04.003(b)(2)) would require, in lieu of the geological data, a copy of Railroad Commission Form P-7 and the order or notice of the Railroad Commission action designating a new reservoir and/or granting new field status for the reservoir in which the subject well is completed. Texas asserts that its technical staff reviews geological and engineering data prior to designating a new reservoir, and that the data reviewed is essentially the same as required in § 274.202(d)(1)(ii). To avoid requiring applicants to file duplicative material, Texas would simply allow the applicant to file the Form P-7, which is evidence of its technical review, and designation of a

<sup>1</sup>Texas makes other changes in its filing requirements which are designed to expedite the well determination process, but these changes do not affect the minimum filing requirements set by the Commission, and therefore do not need Commission approval.

new reservoir, as substantial evidence for the subject well.

Interested persons are invited to submit written comments on Texas' application. Comments should be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426, on or before February 3, 1981. An original and fourteen conformed copies should be filed. Written comments will be available for public inspection at the Commission's Office of Public Information, during business hours.

Any person wishing to present testimony, views, data or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than February 3, 1981.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2941 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RA81-41-000]

**Thrifty Rent-A-Car Inc., of California;  
Filing of Petition for Review Under 42  
U.S.C. 7194**

Issued: January 14, 1981.

Take notice that Thrifty Rent-A-Car Inc., of California on January 5, 1981, filed a Petition for Review under (42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before January 28, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before January 28, 1981, in accordance with the Commission's

Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 81-2671 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RP80-106-002]

**Trunkline Gas Co.; Proposed Tariff Change**

January 16, 1981.

Take notice that Trunkline Gas Company (Trunkline) on January 8, 1981, tendered for filing Substitute Fourth Revised Sheet No. 21-E to its FERC Gas Tariff, Original Volume No. 1. An effective date of December 1, 1980 was proposed.

Trunkline states that this substitute revised tariff sheet updates Section 18.25 of Trunkline's PGA provisions to reflect Trunkline's most current cost of purchased gas as was included in Trunkline's base tariff rates as required by Commission orders of June 27, 1980 and August 22, 1980 in Docket No. RP80-106.

Copies of this filing were served on Trunkline's jurisdictional customers, interested state commission and all parties to this proceeding.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 2, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

**Lois D. Cashell,**  
*Acting Secretary.*

[FR Doc. 81-2672 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER80-678]

**Union Electric Co.; Filing**

January 16, 1981.

The filing company submits the following:

Take notice that on January 2, 1981, Union Electric Company (Union) submitted for filing an amendment to the Interchange Agreement between Union and Iowa Southern Utilities Company. Said filing is in compliance with Commission Order No. 84. Union requests that said filing be incorporated into its filing of August 8, 1980, in the above reference proceeding.

A copy of this filing has been sent to the Iowa Southern Utilities Company.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 9, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**  
*Acting Secretary.*

[FR Doc. 81-2673 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. CP81-110-000]

**United Gas Pipe Line Co.; Application**

January 15, 1981.

Take notice that on December 22, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-110-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a farm tap on a new site near Duson, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a letter agreement between Applicant and Entex, Inc. (Entex) dated October 28, 1980, Applicant proposes to remove a farm tap from its present site on Applicant's existing 4-inch Dommert Well Line at Station 88 + 44, and reinstall it approximately 212 feet north of that site.

Entex would reconnect the required regulator, measurement and odorization facilities to the tap which serves the Laurence Dommert irrigation pump, it is stated.

Entex would reimburse Applicant for the estimated cost of \$1,200 for the proposed farm tap relocation, it is stated.

It is asserted the present site of the farm tap is located more than 200 feet into a cultivated bean field and consequently during wet weather the present farm tap is difficult to reach for meter reading and maintenance purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 5, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Lois D. Cashell,**  
*Acting Secretary.*

[FR Doc. 81-2674 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-121-000]

**Virginia Electric & Power Co.; Order Accepting for Filing and Suspending Proposed Rates, Granting Interventions, and Establishing Procedures**

January 13, 1981.

Virginia Electric and Power Company (VEPCO) filed on November 14, 1980, riders to its charges for service to its wholesale municipal and rural electric cooperative customers (cooperatives).<sup>1</sup> These riders constitute revisions in the rates presently in effect for these customers. The effect of these riders would be to increase VEPCO's charges to its municipal and cooperative customers by \$18,442,235 on an annual basis, or approximately 8.4%. VEPCO requested that the riders be made effective January 13, 1981, sixty days after filing. Notice of the filing was issued November 21, 1980, with protests and petitions to intervene due on or before December 12, 1980.

On December 12, 1980, a petition to intervene was filed on behalf of the cooperatives. The cooperatives also sought suspension of VEPCO's revised rates for five months and a hearing on the lawfulness of the revised rates. On December 12, 1980, a petition to intervene was filed by Electricities of North Carolina (Electricities), an unincorporated association of municipalities in North Carolina and Virginia that own and operate municipal electric systems. All of VEPCO's municipal customers are members of Electricities. Electricities protested VEPCO's revised rates, sought a hearing on the lawfulness of the revised rates and requested that the revised rates be suspended for five months.

VEPCO stated in a letter accompanying its filing that the filing was based upon its anticipation that its nuclear-powered generation station, North Anna No. 2 would be put into service before the end of 1980. VEPCO based its projected cost of service for the test period, calendar year 1981, on the assumption that North Anna No. 2 would be in service for all of 1981. In answers, filed December 24, 1980, to the petitions to intervene of the cooperatives and of Electricities, VEPCO informed the Commission that North Anna No. 2 was declared to be in commercial operation on December 14, 1980.

VEPCO informed the Commission in the letter accompanying its filing that it was revising its rates through the addition of a rider to the demand charge for the municipal customers in order to

reflect only the increased costs to VEPCO arising from placing North Anna No. 2 into service.

VEPCO further stated in its letter that it was adding riders to both the demand charge and the base energy charge applicable to the rural electric cooperative customers of VEPCO to reflect increased costs to it arising from placing North Anna No. 2 into service. VEPCO asserted that the difference in treatment of the two classes of customers arises from the terms of an earlier settlement agreement between VEPCO and the cooperatives in Docket No. ER78-522 under which permanent disposal costs associated with nuclear fuel are not to be collected through the fuel adjustment charge, as is done with respect to the municipal customers. VEPCO further asserts that since permanent disposal costs associated with nuclear fuel for North Anna No. 2 are primarily energy-related, it is appropriate to recover these increased costs through a rider to the energy charge to the cooperatives.

In their petition to intervene, the cooperatives, in support of their request that the revised rates be suspended for five months, raised a number of different issues with respect to the revised rates filed by VEPCO. The cooperatives asserted that in developing its cost of service for the revised rates VEPCO had made a number of errors: (1) VEPCO had improperly calculated interest expense for tax purposes; (2) VEPCO had improperly included both a provision for nuclear fuel in rate base and nuclear fuel expense as an expense item in the development of its allowance for cash working capital; (3) VEPCO had failed to give appropriate credit to the demand portion of its purchase power expense in view of its expectation that North Anna No. 2 would be in service throughout the test period; (4) VEPCO had improperly allocated operation and maintenance expenses on a demand basis rather than on the basis of energy; (5) VEPCO had claimed an allowance for cash working capital based upon its estimate of operation and maintenance expenses (net of fuel and purchased power) for 45 days.

The cooperatives also contended that VEPCO's approach in filing surcharges designed to recover only additional costs associated with the operation of North Anna No. 2 was unfair inasmuch as it might be said to preclude a re-examination of the settlement rates that the cooperatives had previously agreed to.

Electricities also put forth a number of reasons in support of its contention that VEPCO's revised rates should be suspended for five months. Electricities

contended that the revised rates would result in a price squeeze for at least those municipal customers in competition with VEPCO's retail rates in North Carolina. Electricities also contended that it would be inequitable for VEPCO's revised rates to be suspended for less than the maximum five months in view of the past reliability record of VEPCO's other nuclear generating stations. Additionally, Electricities alleged imprudent VEPCO management in support of the requested suspension.<sup>2</sup>

Electricities also contended that VEPCO had made two errors in its development of a cost of service. In particular, VEPCO had erred, according to Electricities, by overstating the test period projections of the sales and loads for the municipal customers. VEPCO had also erred, according to Electricities, in calculating its allowance for working cash by including nuclear fuel expense in its allowance for working cash and by understating the fossil fuel expense reduction when North Anna No. 2 went into service.

In its responses to the filings of the cooperatives and Electricities, VEPCO contended that at most a one day suspension of its revised rates was justified in view of the fact that the materials in VEPCO's filing showed a substantial revenue deficiency after allowing for VEPCO's revised rates. VEPCO further denied Electricities' allegation that the revised rates would result in a price squeeze. VEPCO stated that it would shortly file for a retail rate increase in North Carolina that would eliminate as a practical matter any chance of a price squeeze on the North Carolina municipal customers.

#### Discussion

Our analysis indicates that VEPCO's revised rates have not been shown to be just and reasonable and that they may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the revised rates for filing and suspend them as ordered below.

In a number of suspension orders,<sup>3</sup> we have addressed the considerations

<sup>2</sup> This issue was also raised in Docket No. ER78-522 and was the subject of a motion filed by the Attorney General of North Carolina. In addition, a staff investigation concerning such questions is in progress in Docket No. IN90-14. Particularly inasmuch as this investigation is still pending, the Commission will not consider the allegations of imprudence as an independent basis for determining an appropriate suspension period.

<sup>3</sup> E.g., *Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, et al. (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488, (August 22, 1980) (one day suspension).

<sup>1</sup> See attachment A for rate schedule designations.

underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances are presented here. Although a number of matters raised in this proceeding warrant investigation at hearing, our preliminary analysis reveals that the rates proposed by VEPCO may not produce excessive revenues. A nominal suspension should minimize any adverse effects on VEPCO while ensuring refund protection for its customers, especially insofar as the price squeeze issue is concerned. Accordingly, we shall exercise our discretion to suspend the rate schedules for only one day, permitting them to take effect subject to refund thereafter on January 14, 1981. The investigation hereinafter ordered into the justness and reasonableness of the filed riders shall include consideration of the entirety of the relevant rate schedules for these customers as well as the filing in this docket.

We find that participation in this proceeding by each of the petitioners may be in the public interest. Accordingly, we shall grant the petitions to intervene.

With respect to the allegation of a possible price squeeze by Electricities, in accordance with Commission policy established in *Arkansas Power and Light Company*,<sup>4</sup> we shall phase the price squeeze issue. This will allow a decision to be reached first on the cost of service issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

*The Commission orders:*

(A) VEPCO's revised rates are hereby accepted for filing and suspended for one day to become effective, subject to refund, on January 14, 1981.

(B) The petitioners are hereby permitted to intervene in this proceeding; *provided, however*, that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *provided, further*, that the admission of any intervenor shall not be construed as

recognition by the Commission that it might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(C) Pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act, and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I (1979)), a public hearing shall be held concerning the justness and reasonableness of VEPCO's revised rates.

(D) The Commission staff shall serve top sheets in this proceeding on or before January 14, 1981.

(E) A presiding administrative law judge to be designated by the Chief Administrative Law Judge for that purpose shall convene a conference in this proceeding to be held within approximately ten (10) days after the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20246. The designated law judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(F) We hereby order initiation of price squeeze procedures and further order that this proceeding shall be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be

just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in Section 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(G) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission.

Kenneth F. Plumb,  
Secretary.

Virginia Electric Power Company

[Docket No. ER81-121-000]

*Municipal Customers*

Filed: November 14, 1980.

Effective: January 14, 1981, subject to refund.

*Designation and Description*

FERC Electric Tariff, 1st Revised Volume No. 1, Original Sheet No. 4-A—Rider RS.

*Applicable to:*

Town of Belhaven  
Town of Edenton  
City of Elizabeth City  
Town of Enfield  
Greenville Utilities Commission  
Town of Hamilton  
Town of Hertford  
Town of Hobgood  
Town of Robersonville  
Town of Scotland Neck  
Town of Tarboro  
City of Washington  
Town of Windsor  
Town of Blackstone  
Town of Culpeper  
Town of Elkton  
City of Franklin  
Harrisonburg Electric Commission  
Town of Iron Gate  
City of Manassa  
Town of Wakefield

*Rural Electric Cooperative Customers*

Filed: (2), (5), (8), (11), (14), (17), (20), (23), (26), (32), (35), (38), (41), (44), (47), (50)—August 11, 1978; all others—November 14, 1980.

Effective: January 14, 1981, subject to refund.

#	Designation	Description	Other party
	FPC No. 76		
(1)	Supplement No. 1 to Supplement No. 29	Rider RC	B-A-R-C Electric Cooperative.
(2)	Supplement No. 31	Schedule RC—Interruptible	
(3)	Supplement No. 1 to Supplement No. 31	Rider RC—Interruptible	
	FPC No. 77		
(4)	Supplement No. 1 to Supplement No. 42	Rider RC	Community Electric Cooperative.
(5)	Supplement No. 44	Schedule RC—Interruptible	
(6)	Supplement No. 1 to Supplement No. 44	Rider RC—Interruptible	
	FPC No. 78		
(7)	Supplement No. 1 to Supplement No. 27	Rider RC	Craig-Boletourt Electric Cooperative.
(8)	Supplement No. 29	Schedule RC—Interruptible	
(9)	Supplement No. 1 to Supplement No. 29	Rider RC—Interruptible	
	FPC No. 79		
(10)	Supplement No. 1 to Supplement No. 51	Rider RC	Mecklenburg Electric Cooperative.
(11)	Supplement No. 55	Schedule RC—Interruptible	
(12)	Supplement No. 1 to Supplement No. 55	Rider RC—Interruptible	
	FPC No. 80		
			Northern Neck Electric Cooperative.

<sup>4</sup>Docket No. ER79-339, order issued August 6, 1978.

Designation	Description	Other party
(13) Supplement No. 1 to Supplement No. 34	Rider RC	
(14) Supplement No. 36	Schedule RC—Interruptible	
(15) Supplement No. 1 to Supplement No. 36	Rider RC—Interruptible	
FPC No. 82		Prince George Electric Cooperative.
(16) Supplement No. 1 to Supplement No. 30	Rider RC	
(17) Supplement No. 95	Schedule RC—Interruptible	
(18) Supplement No. 1 to Supplement No. 35	Rider RC—Interruptible	
FPC No. 83		Prince William Electric Cooperative.
(19) Supplement No. 1 to Supplement No. 46	Rider RC	
(20) Supplement No. 20	Schedule RC—Interruptible	
(21) Supplement No. 1 to Supplement No. 51	Rider RC—Interruptible	
FPC No. 84		Shenandoah Valley Electric Cooperative.
(22) Supplement No. 1 to Supplement No. 51	Rider RC	
(23) Supplement No. 56	Schedule RC—Interruptible	
(24) Supplement No. 1 to Supplement No. 56	Rider RC—Interruptible	
FPC No. 85		Southside Electric Cooperative.
(25) Supplement No. 1 to Supplement No. 57	Rider RC	
(26) Supplement No. 60	Schedule RC—Interruptible	
(27) Supplement No. 1 to Supplement No. 60	Rider RC—Interruptible	
FPC No. 86		Tri-County Electric Cooperative.
(28) Supplement No. 1 to Supplement No. 33	Rider RC	
(29) Supplement No. 35	Schedule RC—Interruptible	
(30) Supplement No. 1 to Supplement No. 35	Rider RC—Interruptible	
FPC No. 88		Albemarle Electric Cooperative.
(31) Supplement No. 1 to Supplement No. 29	Rider RC	
(32) Supplement No. 33	Schedule RC—Interruptible	
(33) Supplement No. 1 to Supplement No. 33	Rider RC—Interruptible	
FPC No. 89		Cape Hatteras Electric Membership Corporation.
(34) Supplement No. 1 to Supplement No. 17	Rider RC	
(35) Supplement No. 19	Schedule RC—Interruptible	
(36) Supplement No. 1 to Supplement No. 19	Rider RC—Interruptible	
FPC No. 90		Edgecomb-Martin County Electric Membership Corporation.
(37) Supplement No. 1 to Supplement No. 34	Rider RC	
(38) Supplement No. 36	Schedule RC—Interruptible	
(39) Supplement No. 1 to Supplement No. 36	Rider RC—Interruptible	
FPC No. 91		Halifax Electric Membership Corporation.
(40) Supplement No. 1 to Supplement No. 26	Rider RC	
(41) Supplement No. 28	Schedule RC—Interruptible	
(42) Supplement No. 1 to Supplement No. 26	Rider RC—Interruptible	
FPC No. 92		Roanoke Electric Membership Corporation.
(43) Supplement No. 1 to Supplement No. 38	Rider RC	
(44) Supplement No. 40	Schedule RC—Interruptible	
(45) Supplement No. 1 to Supplement No. 40	Rider RC—Interruptible	
FPC No. 93		Tideland Electric Membership Corporation.
(46) Supplement No. 1 to Supplement No. 23	Rider RC	
(47) Supplement No. 25	Schedule RC—Interruptible	
(48) Supplement No. 1 to Supplement No. 25	Rider RC—Interruptible	
FPC No. 94		Central Virginia Electric Cooperative.
(49) Supplement No. 1 to Supplement No. 38	Rider RC	
(50) Supplement No. 44	Schedule RC—Interruptible	
(51) Supplement No. 1 to Supplement No. 44	Rider RC—Interruptible	
FPC No. 101		Rappahannock Electric Cooperative.
(52) Supplement No. 1 to Supplement No. 1	Rider RC	
(53) Supplement No. 1 to Supplement No. 3	Rider RC—Interruptible	

[FR Doc. 81-2875 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EF81-5021]

**Western Area Power Administration;  
Filing**

January 16, 1981.

The filing company submits the following:

Take notice that on December 29, 1980, the Assistant Secretary for Resource Applications of the Department of Energy (Assistant Secretary) did confirm and approve, on an interim basis, effective January 23, 1981, Rate Order No. WAPA-4.

Rate Order WAPA-4 provides for wholesale power for the Western Area Power Administration's Colorado River Storage Project.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such

petitions or protests should be filed on or before February 9, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 81-2877 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket Nos. ER80-38 and ER80-121]

**West Texas Utilities Co.; Filing**

January 16, 1981.

The filing company submits the following:

Take notice that on December 15, 1980, West Texas Utilities Company submitted for filing a refund report pursuant to the Commission's order approving the settlement in the above-referenced proceeding.

A copy of this filing has been sent to all parties to this proceeding, and to the Public Utility Commission of Texas.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 9, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 81-2876 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER80-567]

**Wisconsin Electric Power Co.; Filing**

January 16, 1981.

The filing company submits the following:

Take notice that on December 16, 1980, Wisconsin Electric Power Company submitted for filing a revised tariff sheet in compliance with the Commission's order, issued November 6, 1980, in the above referenced proceeding.

A copy of this filing has been mailed to all parties to this proceeding.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street,

N.E., Washington, D.C. 20426, on or before February 9, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 81-2878 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RE81-8-000]

**Wisconsin Public Service Corp.; Application for Exemption**

January 16, 1981.

Take notice that Wisconsin Public Service Corporation on October 27, 1980, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file, on or before June 30, 1982, and all future filings, information on the costs of providing electric service as specified in Subpart D, Section 290.401(b), separate load study for the Michigan jurisdiction.

In its application for exemption Wisconsin Public Service Corporation states that it should not be required to file the specified data for the following reasons:

1. The kWh load in the Michigan jurisdiction is less than 3% of the total system load.
2. A separate load study for the Michigan jurisdiction would require Wisconsin Public Service Corporation to implement a sample metering program that would be approximately the same size and cost for both the Wisconsin and Michigan jurisdictions.

Copies of the application for exemption are on file with the Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for exemption must file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45-day period such person must also serve a copy of such comments on Wisconsin Public Service Corporation, Attention: Mr. A. E.

Pearson, 700 N. Adams Street, Green Bay, Wisconsin 54301.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 81-2879 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-213-000]

**Detroit Edison Co.; Proposed Tariff Changes**

January 16, 1981.

The filing Company submits the following:

Take notice that the Detroit Edison Company (DEC), on January 12, 1981 tendered for filing the following revised tariff sheets:

**FERC ELECTRIC Tariff Original Volume No. 1**

- Third Revised Sheet No. 1
- Fourth Revised Sheet No. 4
- Fourth Revised Sheet No. 5
- Fourth Revised Sheet No. 6
- Fourth Revised Sheet No. 7
- Fourth Revised Sheet No. 8
- Fourth Revised Sheet No. 9
- Fourth Revised Sheet No. 10
- Fourth Revised Sheet No. 15

The proposed changes would increase revenues from jurisdictional sales and service by \$8,145,000 based on the 12 month period ending December 31, 1981. DEC requests that the proposed rates and tariffs be made effective no later than June 1, 1981.

DEC further states that it is essential that these increased revenues be made available to the company on the proposed effective date in order to offset rapidly increasing costs which are resulting in deteriorating earnings to the Company from this class of service. DEC last filed a rate increase applicable to its jurisdictional sales on November 21, 1979. Since that time all costs including capital costs incurred by the Company have been subject to the continuous impact of inflation and other factors making it essential to adjust the rates to meet these increased costs.

DEC also states that copies of the filing were served upon the public utility's jurisdictional customers and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1981. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Casbell,  
Acting Secretary.

[FR Doc. 81-2902 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RA81-36-000]

**Diamond Gas & Fuel Co.; Filing of Petition for Review Under 42 U.S.C. 7194**

Issued: January 15, 1981.

Take notice that Diamond Gas & Fuel Company on December 16, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before January 30, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested

order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before January 30, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR §§ 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2903 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket Nos. CI79-416-002, et al.]

**Diamond Shamrock Corp.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates<sup>1</sup>**

January 16, 1981.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are

<sup>1</sup>This notice does not provide for consolidation for hearing of the several matters covered herein.

on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 3, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Casbell,  
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft <sup>3</sup>	Pressure base
CI79-416-002 B, Dec. 15, 1980	Diamond Shamrock Corporation, P.O. Box 631 Amarillo, TX 790173.	Colorado Interstate Gas Company, Davis Oil Company No. 3 Hay Reservoir Unit Well, NW/4 SE/4 Section 22, T24N, R97W, Sweetwater County, WY (from surface of ground down to stratigraphic equivalent of 10,500' as drilled in subject well).	( <sup>1</sup> )	—
CI80-180-001, Dec. 1, 1980 <sup>2</sup>	MCOR Oil and Gas Corporation (Formerly McCulloch Oil and Gas Corporation), 10880 Wilshire Blvd., Los Angeles, CA 90024.	El Paso Natural Gas Company, Ekl City Field, Washita County, OK	( <sup>2</sup> )	14.05
CI81-80-000, A, Dec. 15, 1980	The Superior Oil Company P.O. Box 1521, Houston, TX 77001.	Michigan Wisconsin Pipe Line Company, West Cameron Block 71, Offshore Louisiana.	( <sup>3</sup> )	15.025
CI81-81-000, A Dec. 19, 1980	Kerr-McGee Corporation, P.O. Box 25861 Oklahoma City, OK 73125.	Transcontinental Gas Pipe Line Corporation, Vermilion Area, N/2 Block 57, Offshore Louisiana.	( <sup>4</sup> )	15.025
CI81-82-000, A, Dec. 19, 1980	Kerr-McGee Corporation P.O. Box 25861 Oklahoma City, OK 73125.	Transcontinental Gas Pipe Line Corporation Galveston Area, Block A-126, Offshore Texas.	( <sup>5</sup> )	14.85
CI81-83-000, A, Dec. 19, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, OK 73125.	Transcontinental Gas Pipe Line Corporation, Vermilion Area, Block 37, Offshore Louisiana.	( <sup>6</sup> )	15.025
CI81-84-000 (CI71-400), B, Dec. 15, 1980	Cabot Corporation, One Houston Center, Suite 1000, Houston, TX.	United Gas Pipeline Company, State of Texas Lease Nos. 57743 and 57741, covering the SE/4 and the NE/4 of Tract 773-L, Gulf of Mexico, Nueces County, TX.	( <sup>7</sup> )	—
CI81-85-000 (CI88-498), B, Dec. 15, 1980	Cabot Corporation, One Houston Center, Suite 1000, Houston, TX.	United Gas Pipeline Company, State of Texas Lease Nos. 57742 and 57743 covering the NW/4 and SE/4 of Tract 773-L Gulf of Mexico, Nueces County, TX.	( <sup>8</sup> )	—



Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft <sup>3</sup>	Pressure base
G-12260-000, D, Jan 2, 1981	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, OK 73125.	Colorado Interstate Gas Company, Mocane Field, Beaver County, OK	( <sup>1</sup> )	—
G-15779-000, D, Jan 2, 1981	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, OK 73125.	Tennessee Gas Pipeline Company, Bully Camp Field, Lafourche Parish, LA.	( <sup>1</sup> )	—
C82-969-000, D, Dec. 19, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, OK 73125.	Parhandle Eastern Pipe Line Company, North Carthage Field, Texas County, OK.	( <sup>1</sup> )	14.65
C71-809-000, D, Dec. 15, 1980	Energy Reserves Group, Inc., P.O. Box 1201, Wichita, KS 67201.	Parhandle Eastern Pipe Line Company, Angell Field, Meade County, KS.	( <sup>1</sup> )	—
D72-160-000	Cities Service Company, P.O. Box 300, Tulsa, OK 74102.	Columbia Gas Transmission Corporation, Ripley District, Jackson County WV.	( <sup>1</sup> )	—
C81-103-000 (G-15222), B, Jan. 2, 1980	Energy Reserves Group, P.O. Box 1201, 217, North Water Street, Wichita, KS 67201.	United Gas Pipe Line Company, Boug Field, Terrebonne Parish, LA.	( <sup>1</sup> )	—
C81-104-000 (C161-222), B, Jan 2, 1981	Energy Reserves Group, P.O. Box 1201, 217 North Water Street, Wichita, KS 67201.	El Paso Natural Gas Company, Farnsworth Lower Morrow Field, Ochiltree County, TX.	( <sup>1</sup> )	—
C81-107-000 (C176-796), B, Jan 2, 1981	Energy Reserves Group, P.O. Box 1201, 217 North Water Street, Wichita, KS 67201.	Northern Natural Gas Company, Hugoton-Anadarko Area, Seward County, KS.	( <sup>1</sup> )	—
C81-108-000 (C173-295), B, Jan. 5, 1981	Energy Reserves Group, P.O. Box 1201, 217 North Water Street, Wichita, KS 67201.	Michigan Wisconsin Pipe Line Company, Calcasieu Lake Dome Field, Cameron Parish, LA.	( <sup>1</sup> )	—
C81-109-000 (C172-837), B, Jan. 5, 1981	Energy Reserves Group, P.O. Box 1201, 217 North Water Street, Wichita, KS 67201.	Transwestern Pipeline Company, Fieldman South Field, Hemphill County, TX.	( <sup>1</sup> )	—
C81-94-000 (C178-1071), B, Dec. 19, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, OK 73125.	Transwestern Pipeline Company, Horseshoe Bend Well No. 1, W 1/2 Section 34-T23S-R25E, Eddy County, NM.	( <sup>1</sup> )	—
C81-97-000 (C165-239), B, Dec. 23, 1980	Cities Service Company, Box 300, Tulsa, OK 74102	El Paso Natural Gas Company, Payton No. 1 Well in Section 99, Block 8, H&GN Survey, Pecos County, TX.	( <sup>1</sup> )	—
G-10827, D, Dec. 22, 1980	Gulf Oil Corporation, P.O. Box 2100, Houston, TX 77001.	United Gas Pipe Line Company, Platof Ridge Field, Forrest Lamar, and Pearl River Counties, MS.	( <sup>1</sup> )	—
CU69-1143, D, Dec. 22, 1980	Shell Oil Company, Two Shell Plaza, P.O. Box 2099, Houston, TX 77001.	Texas Eastern Transmission Corporation Helen Gohlke Field, DeWitt County, TX.	( <sup>1</sup> )	—

<sup>1</sup>Sellers' working interest in the Davis Oil Company No. 3 Hay Reservoir Unit Well was reduced upon payout of such well, effective May 1, 1980, from an undivided 50% interest to an undivided 25% interest.

<sup>2</sup>Conversion of overriding royalty interest to a working interest. Applicant received interest from El Paso Natural Gas Company (the purchaser).

<sup>3</sup>Applicant is filing under Supplemental Gas Purchase Agreement dated 7-1-80, as amended.

<sup>4</sup>Applicant is willing to accept an initial rate consistent with that prescribed by the Natural Gas Policy Act of 1978.

<sup>5</sup>Applicant is filing under Gas Purchase Contract dated November 28, 1980.

<sup>6</sup>Applicant is willing to accept the applicable price and the escalations thereto and is concurrently filing herewith an initial billing statement (Schedule 0507) to cover collection of the price provided by Section 102(b) of the NGPA.

<sup>7</sup>Applicant is willing to accept the applicable price and the escalations thereto and is concurrently filing herewith an initial billing statement (Schedule 0507) to cover collection of the price provided by Section 102(b) of the NGPA.

<sup>8</sup>The remaining recoverable gas reserves underlying the lease are not sufficient to recover the maintenance and operating expenses which would be required to continue production. The remaining producing well has been shut-in since August of 1980 due to equipment damage which was received as a result of Hurricane Allen.

<sup>9</sup>The remaining recoverable gas reserves underlying the lease are not sufficient to recover the maintenance and operating expenses which would be required to continue production. The remaining producing well has been shut-in since August of 1980 due to equipment damage which was received as a result of Hurricane Allen.

<sup>10</sup>Applicant's wells have been plugged and Applicant's leases on the lands involved have been released of record.

<sup>11</sup>Lands involved were not developed and Applicant's leases have been released.

<sup>12</sup>The available supply of natural gas producible from the committed depths has depleted and Applicant's well has been plugged.

<sup>13</sup>Well has been plugged, acreage has been released of record or has expired.

<sup>14</sup>The Jordan Consolidated "A" No. 1 Well, the last well on the Lease, ceased producing early in 1979. After it was determined that the reserves had been depleted, the well was plugged and abandoned on July 18, 1980.

<sup>15</sup>Contract expired, well plugged.

<sup>16</sup>Well plugged, gas contract has expired.

<sup>17</sup>Gas Contract terminated, well plugged.

<sup>18</sup>Acreage covered by Energy Reserves Group, Inc. Rate schedule No. 122 sold to C & K Offshore Company effective August 15, 1972.

<sup>19</sup>Acreage covered under Rate Schedule No. 112 sold to Dawson Operating Company, Inc. effective December 1, 1972.

<sup>20</sup>The only well drilled on the lands covered by this Applicant was plugged because it was no longer economically productive.

<sup>21</sup>The Payton No. 1 Well was the only well producing from the Payton-Simpson Unit. The Simpson Formation ceased production in 1966. The Simpson reserves were depleted and the well was plugged and abandoned on June 30, 1969. Cities has no plans for further development in this area.

<sup>22</sup>Leases have been assigned to other parties or have expired by their own terms.

<sup>23</sup>The Jack Garrett, et al lease, Shell File Reference T-46470, consisting of 140.64 gross acres, is past its primary terms. Said leases has been maintained by the Jack Garrett No. 2 well which ceased producing in September 1979 and was officially plugged and abandoned in March 1980.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 81-2004 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-22-000]

**El Paso Electric Co.; Application**

January 19, 1981.

Take notice that on January 8, 1981, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to Section 204 of the Federal Power Act to issue 750,000 shares of Common Stock, no par value (New Common Stock), pursuant to a Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to make any protest with reference to said

application should, on or before February 6, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available

for public inspection.

**Lois D. Cashell,**  
*Acting Secretary.*

[FR Doc. 81-2905 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP74-122, et al.]

**Energy Terminal Services, Inc.;**  
**Informal Conference**

January 16, 1981.

Take notice that at 10:00 a.m. Monday, January 26, 1981, Staff will meet with representatives of the above-captioned company for the purpose of discussing

the technical aspect of the issues in the above-referenced cases.

The conference will be held at the Commission's offices at 825 North Capitol Street, N.E., and all interested parties may at their option attend. Please contact Steven Miller, (202) 357-8851 for details or available space.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 81-2906 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-210-000]

**Florida Power & Light Co.; Filing**

January 15, 1981.

The filing company submits the following:

Take notice that Florida Power & Light Company (FPL) on January 9, 1981 tendered for filing a document entitled "Exhibit I to Service Agreement For Interchange Transmission Service Implementing Specific Transactions Under Service Schedules A (Emergency Service), B (Short Term Firm Service), C (Economy Interchange Service) and D (Firm Service) of Contracts for Interchange Service."

FPL states that under the Exhibit, FPL will transmit power and energy for the Lake Worth Utilities Authority (Lake Worth) as is required by Lake Worth in the implementation of its interchange agreement with the Sebring Utilities Commission.

FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed Exhibit be made effective immediately. FPL states that copies of the filing were served on the Chief of Engineering of Lake Worth.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 81-2907 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-209-000]

**Idaho Power Co.; Filing**

January 15, 1981.

The filing Company submits the following:

Take notice that on January 8, 1981, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during November, 1980, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 81-2908 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER81-46-000, ER81-47-000, and ER81-48-000]

**Indiana & Michigan Electric Co.; Order Accepting for Filing and Suspending Proposed Rates, Directing Summary Disposition, Denying Waiver of Notice, Granting Waiver of Filing Requirements, Granting Intervention, Consolidating Dockets, and Establishing Procedures**

Issued: December 18, 1980.

On October 24, 1980, Indiana & Michigan Electric Company (IME) tendered for filing revised rates proposed to become effective November 1, 1980, which provide for increases in jurisdictional revenues of approximately \$185,946 based on the twelve month

period ending December 31, 1979.<sup>1</sup> In Docket No. ER81-46-000, IME proposes to increase its demand charge from \$8.68/kW to \$9.20/kW, to decrease its energy charge from 9.20 mills/kWh to 9.05 mills/kWh, and to decrease its monthly customer charge from \$2,273 to \$1,950. In Docket No. ER81-47-000, IME proposes to increase its demand charge from \$7.70/kW to \$8.37/kW, to decrease its energy charge from 9.52 mills/kWh to 9.50 mills/kWh, and to decrease its monthly customer charge from \$124.18 to \$84.47. In Docket No. ER81-48-000, IME proposes to increase its demand charge from \$8.26/kW to \$8.67/kW, to decrease its energy charge from 9.12 mills/kWh to 8.94 mills/kWh, and to decrease its monthly customer charge from \$1,660 to \$1,030. In addition, with respect to each of the dockets, IME seeks to synchronize the applicable fuel adjustment clauses with the new rates, resulting in new fuel cost bases of 7.6030 mills/kWh, 7.7078 mills/kWh, and 7.5004 mills/kWh, respectively.

Notices of the filings were issued on October 30, 1980, with responses due on or before November 21, 1980. Petitions to intervene were filed in Docket No. ER81-46-000 by the City of Dowagiac, Michigan (Dowagiac) on November 21, 1980; in Docket No. ER81-47-000 by Wabash Valley Power Association, Fruit Belt Electric Cooperative, Jay County Rural Electric Membership Corporation, Noble County Rural Electric Membership Corporation, Paulding-Putnam Electric Cooperative, United Rural Electric Membership Corporation, Wayne County Rural Electric Membership Corporation, and Whitley County Rural Electric Membership Corporation (Cooperatives) on November 21, 1980; and in Docket No. ER81-48-000 by Richmond Power & Light of the City of Richmond, Indiana (Richmond) on November 20, 1980.

The Cooperatives argue that the increase is, in actuality, substantially larger than IME suggests and that waiver of the Commission's notice requirements is unjustified. The Cooperatives seek a maximum five month suspension and an order instituting a hearing concerning the lawfulness of the proposed rate increase. In addition, the Cooperatives

<sup>1</sup>The affected customers of IME are Michigan Power Company (Docket No. ER81-46-000), Richmond Power & Light Company (Docket No. ER81-48-000), and IME's rural electric cooperative customers (Docket No. ER81-47-000). The filings provide for increases in jurisdictional revenues from these customers of \$72,903, \$38,845, and \$74,195, respectively. See Attachment A for rate schedule designations. On November 10, 1980, in Docket No. ER81-105-000, IME separately tendered for filing revised rates for service to its municipal wholesale customers.

raise a variety of cost of service and rate design issues. Richmond and Dowagiac also argue that waiver of notice is unjustified, and request the initiation of a hearing.

#### Discussion

Initially, we find that participation by each of the petitioners is in the public interest. Consequently, we shall grant the petitions to intervene.

IME tendered its revised rates in accordance with the filing requirements of section 35.13 of the Commission's regulations, as revised by Order No. 91, Docket No. RM79-64, issued June 27, 1980, in order to utilize a calendar year 1979 test year. In Order No. 91, the Commission indicated that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that a variety of substantive contentions have been raised by the intervenors, but that our preliminary analysis indicates that the proposed rates may not yield excessive revenues. We therefore believe that a five month suspension is unnecessary and may be inequitable to IME. However, in order to ensure refund protection for the affected customers pending further review, we believe we should exercise our discretion to suspend the rates for only one day from sixty days after filing, permitting the rates to take effect subject to refund thereafter on December 25, 1980. Because Docket Nos. ER81-46-000, ER81-47-000, and ER81-48-000 present common questions of law and fact, we shall consolidate those dockets for purposes of hearing and decision.

The Cooperatives correctly note that IME has reflected accumulated deferred investment tax credits (ADITC) in its capitalization at the company's claimed overall rate of return. The Commission has previously determined that summary disposition is appropriate under these circumstances,<sup>5</sup> and we shall so resolve the issue in this docket. However, the Commission notes that the revenue impact of this summary disposition is relatively small in relation to the proposed rate increase. Moreover, as noted above, our preliminary analysis

has indicated that IME's proposed rates may not be substantially excessive. As a result, we shall not require IME to refile its cost of service and rates at this time. Nonetheless, summary disposition of the ADITC issue shall be reflected in any rates finally approved by the Commission.

The Commission further observes that IME's proposed rate schedules for the Cooperatives contain a tax adjustment clause. We shall not reject the tax adjustment clause, but we note that implementation of the clause will constitute a change in rate necessitating a timely filing with the Commission pursuant to section 35.13 of the regulations.

*The Commission orders:* (A) The requirements of the current section 35.13 of the Commission's regulations are hereby waived.

(B) IME's request for waiver of the Commission's notice requirements is denied.

(C) IME's proposed rates tendered for filing on October 24, 1980, are accepted for filing and suspended for one day from sixty days after filing, to become effective on December 25, 1980, subject to refund pending hearing and decision thereon.

(D) IME's inclusion of ADITC in its capitalization at the claimed overall rate of return is summarily rejected. This determination shall be reflected in any rates ultimately approved by the Commission in this docket.

(E) IME is hereby advised that implementation of its tax adjustment clause will require timely filing in accordance with the provisions of section 35.13 of the Commission's regulations.

(F) The petitions to intervene are granted subject to the rules and regulations of the Commission; *Provided, however*, that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further*, that the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held

concerning the justness and reasonableness of IME's proposed rates.

(H) Docket Nos. ER81-46-000, ER81-47-000, and ER81-48-000 are hereby consolidated for purposes of hearing and decision.

(I) The Commission staff shall serve top sheets in this proceeding on or before January 9, 1981.

(J) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within ten (10) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates, and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(K) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,  
Secretary.

#### Attachment A

##### *Indiana and Michigan Electric Company, Rate Schedule Designations*

Docket No. ER81-46-000

Filed: October 24, 1980.

Dated: October 24, 1980.

Other Party: Michigan Power Company.

Supplement No. 3 to Supplement No. 12 to Rate Schedule FPC No. 25 (Supersedes Supplement Nos. 1 and 2 to Supplement No. 12)

Docket No. ER81-47-000

Filed: October 24, 1980.

Dated: October 24, 1980.

##### *Designation and Other Parties*

First Revised Sheet Nos. 1A and 16, Second Revised Sheet Nos. 1, 5 and 6, and Third Revised Sheet No. 4 under FERC Electric Tariff, First Revised Volume No. III (Schedule REC-1) (Supersedes Original Sheet Nos. 1A, 4-1 and 16, First Revised Sheet Nos. 1, 5 and 6, and Second Revised Sheet No. 4 thereunder)—None at this time  
Supplement No. 2 to Supplement No. 6 to Rate Schedule FPC Nos. 44A and 44B (Schedule REC-1; Sheets designated by the company as First Revised Sheet No. 16 and Second Revised Sheet Nos. 4, 5 and 6) (Supersedes Supplement No. 1 to Supplement No. 6 to Rate Schedule FPC Nos. 44A and 44B)—United REMC  
Supplement No. 2 to Supplement No. 5 to Rate Schedule FPC No. 46 (Supersedes Supplement No. 1 to Supplement No. 5)—Fruit Belt Rural Electric Cooperative  
Supplement No. 2 to Supplement No. 5 to Rate Schedule FPC No. 48 (Supersedes

<sup>5</sup> *E.g., El Paso Electric Co.*, Docket No. ER79-526, order issued September 24, 1979.

Supplement No. 1 to Supplement No. 5)—  
Jay County REMC  
Supplement No. 2 to Supplement No. 5 to  
Rate Schedule FPC No. 50 (Supersedes  
Supplement No. 1 to Supplement No. 5)—  
Noble County REMC  
Supplement No. 2 to Supplement No. 5 to  
Rate Schedule FPC No. 52 (Supersedes  
Supplement No. 1 to Supplement No. 5)—  
Paulding-Putnam Electric Cooperative  
Supplement No. 2 to Supplement No. 5 to  
Rate Schedule FPC No. 54 (Supersedes  
Supplement No. 1 to Supplement No. 5)—  
Wayne County REMC  
Supplement No. 2 to Supplement No. 5 to  
Rate Schedule FPC No. 56 (Supersedes  
Supplement No. 1 to Supplement No. 5)—  
Whitley County REMC

Docket No. ER81-48-000

Filed: October 24, 1980.

Dated: October 24, 1980.

Other Party: City of Richmond, Indiana.

Supplement No. 3 to Supplement No. 1 to  
Rate Schedule FERC No. 70 (Supersedes  
Supplement Nos. 1 and 2 to Supplement No.  
1)

[FR Doc. 81-2309 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-208]

#### Iowa Public Service Co; Filing

January 15, 1981.

The filing Company submits the  
following:

Take notice that Iowa Public Service  
Company on January 6, 1981 tendered  
for filing a document entitled: "United  
States Department of Energy Western  
Area Power Administration  
Interconnection Contract with Iowa  
Public Service Company (345-kV  
interconnection at Sioux City)".

This interconnection agreement would  
establish a 345 kV point of  
interconnection at the Western Area  
Power Administration's Sioux City  
Substation Near Sioux City, Iowa and  
sets forth the terms and conditions of  
such interconnection.

A copy of this filing was served upon  
the Western Area Power  
Administration.

Any person desiring to be heard or to  
protest said Application should file a  
petition to intervene of protest with the  
Federal Energy Regulatory Commission,  
825 North Capitol Street, N.E.,  
Washington, D.C. 20426 in accordance  
with Sections 1.8 and 1.10 or the  
Commission's Rules of Practice and  
procedure (18 C.F.R. 1.8, 1.10). All such  
petitions or protests should be filed on  
or before February 4, 1981. Protests will  
be considered by the Commission in  
determining the appropriate action to be  
taken, but will not serve to make  
protestants parties to the proceeding.  
Any person wishing to become a party

must file a Petition to Intervene. Copies  
of this application are on file with the  
Commission and are available for public  
inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2910 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-793-001]

#### Kansas Gas and Electric Co.; Filing

January 16, 1981.

The filing company submits the  
following:

Take notice that on January 8, 1981,  
Kansas Gas and Electric Company  
(KGE) submitted for filing an  
amendment to its proposed Electric  
Service Agreement and related  
schedules (collectively referred to as  
Agreement) with the City of Burlington,  
Kansas.

The propose Agreement was  
originally filed on September 22, 1980  
and designated Docket No. ER80-793-  
000. KGE states that it is submitting the  
amendment so as to clarify certain  
language in the proposed agreement.

A copy of this filing has been served  
upon the City of Burlington, Kansas and  
the Kansas Corporation Commission.

Any person desiring to be heard or to  
protest this filing should file comments  
with the Federal Energy Regulatory  
Commission, 825 North Capitol Street,  
N.E., Washington, D.C. 20426 on or  
before February 9, 1981. Comments will  
be considered by the Commission in  
determining the appropriate action to be  
taken. Copies of this agreement are on  
file with the Commission and are  
available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2911 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

#### American Natural Gas Production Co. et al.; (Rate Schedules

December 18, 1980.

In the matter of American Natural Gas  
Production Company, et al. Rate  
Schedule No. 51, et al., Gulf Oil  
Corporation (Docket No. SA80-138),  
Diamond Shamrock Corporation (Docket  
Nos. SA80-143 and SA80-144), and  
Amoco Production Company (Docket  
No. RI80-15): Order granting blanket  
waiver of § 154.94 (h)(2)(iii) for specified  
period, accepting notices of change in  
rate and terminating dockets.

This order grants a blanket waiver of  
Section 154.94 (h)(2)(iii) of the  
Commission's regulations with regard to  
the 30 day filing requirement for all

notices of change in rate filed by  
producers prior to the date of issuance  
of this order or within sixty days of the  
date of issuance of this order which  
cover gas subject to Sections 102(d) and  
108 of the Natural Gas Policy Act of 1978  
(NGPA). The order also accepts for filing  
and grants waiver with respect to  
certain notices of change in rate filed by  
producers relating to the above subject.<sup>1</sup>  
Finally, the order terminates certain  
dockets involving this same subject as  
moot.

Order No. 25<sup>2</sup> expanded the blanket  
affidavit filing procedures established  
by Order No. 15<sup>3</sup> to gas determined to  
be eligible for Section 102(d) and 108  
rates under the NGPA. Producers must  
file a notice of change in rate and a  
revised blanket affidavit for each rate  
schedule after a final determination of  
eligibility has been made. Pursuant to  
Section 154.94 (h)(2)(iii), if these filings  
are made within 30 days of the date of a  
final determination, then the rate, as  
adjusted for the monthly inflation  
adjustment authorized under the NGPA,  
is effective on either the date of initial  
delivery of the gas or the date of the  
final determination itself, whichever  
date is later. But, if these filings are not  
made within this 30 day period after a  
final determination, the notice of change  
in rate is not effective until 30 days after  
the actual filing date.

A determination by a jurisdictional  
agency becomes final 45 days after  
receipt by the Commission unless the  
Commission takes action to reverse or  
remand such determination or requests  
additional information pursuant to  
Section 275.202 of the regulations.  
Notices of Determinations by  
Jurisdictional Agencies are published in  
the Federal Register by the Commission  
within 30 days after receipt of  
determinations. Producers rely upon the  
Federal Register to calculate the date a  
determination becomes final and the 30  
day filing period begins to run.

The producers cite various reasons as  
grounds for waiver of Section 154.94  
(h)(2)(iii), among them confusion as to  
the filing requirements themselves,  
difficulties in monitoring the large  
number of determinations, and  
inadequacies in the noticing procedure  
for final determinations.

Taking into consideration the  
difficulties encountered by producers in  
meeting the 30-day filing period, the  
Commission finds good cause exists to  
waive Section 154.94 (h)(2)(iii) in order  
to permit untimely filed notices of

<sup>1</sup> These producers and their rate schedules are  
listed in the Appendix.

<sup>2</sup> 44 FR 19387.

<sup>3</sup> 43 FR 55758.

change in rate for sales of gas governed by Sections 102(d) and 108 of the NGPA to become effective on either the date of final determination or the date of initial delivery, whichever is later.\* The Commission intends that this waiver shall apply to all such sales of 102(d) and 108 gas where notices of change in rate, filed pursuant to a final determination, are on file with the Commission at the present time or are filed within 60 days of the date of issuance of this order. Requests for waiver of the 30-day period need not accompany notices of rate change made during this 60-day period. The Commission emphasizes that this is a one time only waiver and that producers are expected to comply fully with the 30-day filing requirement in the future.

Gulf Oil Corporation, Diamond Shamrock Corporation, and Amoco Production Company initiated adjustment proceedings to obtain waiver of Section 154.94 (h)(2)(iii). Since we have granted a blanket waiver, and all three producers have filed notices of rate change, there is no reason to continue these dockets, and they will be terminated.

Consistent with the above, we shall accept for filing effective as of their respective dates of final determination or date of initial delivery, whichever is later, the notices of change in rate listed in the Appendix.

#### The Commission orders:

(A) Waiver of the 30-day filing requirement of Section 154.94 (h)(2)(iii) is hereby granted for all notices of change in rate covering gas subject to Sections 102(d) and 108 of the NGPA which were filed, pursuant to a final determination, either prior to the date of issuance of this order or within 60 days thereafter.

(B) The notices of change listed on the attached Appendix are accepted to be effective as of their respective dates of final determination or date of initial delivery, whichever is later.

(C) Docket Nos. SA80-138, SA80-143, SA80-144 and RI80-15 are moot and hereby terminated.

By the Commission,  
Kenneth F. Plumb,  
Secretary.

\*The Commission has previously waived Section 154.94 (h)(2)(iii). Amoco Production Company, et al., Rate Schedule No. 818, et al., "Order Waiving Section 154.94 (h)(2)(iii). Issued July 9, 1980.

### Appendix

Producer	Rate schedule No.	Supplement No.
American Natural Gas Production Company	51	1
Do	52	1
Amerada Hess Corporation	65	19
Amoco Production Company	441	19
Do	587	41
Do	611	34
Do	807	1
Do	822	1
ARCO Oil and Gas Company Division of Atlantic Richfield Company	178	29
Do	180	31
Do	191	23
Do	431	56
Do	532	22
Do	673	17
Do	692	23
Do	705	15
Chevron U.S.A. Inc.	173	1
Champion Petroleum Company	81	6
Conoco, Inc.	192	15
Do	242	37
Do	267	23
Do	274	36
Conoco, Inc.	277	52
Do	299	18
Do	309	21
Do	334	22
Do	336	42
Do	409	39
Consolidated Coal Corporation	1	8
Diamond Shamrock Corporation	13	18
Do	57	8
Do	98	2
Do	99	1
Florida Gas Transmission Company	36	1
General American Oil Company of Texas	115	1
Do	117	1
Gulf Oil Corporation	22	23
Do	92	33
Do	118	33
Do	130	38
Do	244	22
Do	473	14
Do	512	8
Do	513	8
Do	514	8
Do	623	1
Hondo Oil and Gas Company	6	17
J. M. Huber Corporation	93	11
Mesa Petroleum Company	108	1
Mitchell Energy Corporation	19	73
Mobil Oil Company	9	29
Do	100	22
Mobil G-C Corporation	5	2
Do	7	1
Do	25	2
Mobil Oil Exploration and Producing Southeast, Inc.	78	1
Do	83	3
Do	84	1
Do	85	1
Do	86	1
Do	88	2
Do	89	2
TransOcean Oil, Inc.	21	16
Warren Petroleum Company	29	36
Do	64	27

[PR Doc. 81-2344 Filed 1-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER81-46-000, ER81-47-000, and ER81-48-000]

### Indiana & Michigan Electric Co.; Rates

December 18, 1980.

Order accepting for filing and suspending proposed rates, directing

summary disposition, denying waiver of notice, granting waiver of filing requirements, granting intervention, consolidating dockets, and establishing procedures.

On October 24, 1980, Indiana & Michigan Electric Company (IME) tendered for filing revised rates proposed to become effective November 1, 1980, which provide for increases in jurisdictional revenues of approximately \$185,946 based on the twelve month period ending December 31, 1979.<sup>1</sup> In docket No. ER81-46-000, IME proposes to increase its demand charge from \$8.68/kW to \$9.20/kW, to decrease its energy charge from 9.20 mills/kWh to 9.05 mills/kWh, and to decrease its monthly customer charge from \$2,273 to \$1,590. In Docket No. ER81-47-000, IME proposes to increase its demand charge from \$7.70/kW to \$8.37/kW, to decrease its energy charge from 9.52 mills/kWh to 9.50 mills/kWh, and to decrease its monthly customer charge from \$124.18 to \$84.47. In Docket No. ER81-48-000, IME proposes to increase its demand charge from 8.26/kW to \$8.67/kW, to decrease its energy charge from 9.12 mills/kWh to 8.94 mills/kWh, and to decrease its monthly customer charge from \$1,660 to \$1,030. In addition, with respect to each of the dockets, IME seeks to synchronize the applicable fuel adjustment clauses with the new rates, resulting in new fuel cost bases of 7.6030 mills/kWh, 7.7076 mills/kWh, and 7.5004 mills/kWh, respectively.

Notices of the filings were issued on October 30, 1980, with responses due on or before November 21, 1980. Petitions to intervene were filed in Docket No. ER81-46-000 by the City of Dowagiac, Michigan (Dowagiac) on November 21, 1980; in Docket No. ER81-47-000 by Wabash Valley Power Association, Fruit Belt Electric Cooperative, Jay County Rural Electric Membership Corporation, Noble County Rural Electric Membership Corporation, Paulding-Putnam Electric Cooperative, United Rural Electric Membership Corporation, Wayne County Rural Electric Membership Corporation, and Whitley County Rural Electric Membership Corporation (Cooperatives) on November 21, 1980; and in Docket No. ER81-48-000 by Richmond Power &

<sup>1</sup>The affected customers of IME are Michigan Power Company (Docket No. ER81-46-000), Richmond Power & Light Company (Docket No. ER81-48-000), and IME's rural electric cooperative customers (Docket No. ER81-47-000). The filings provide for increases in jurisdictional revenues from these customers of \$72,903, \$38,845, and \$74,195, respectively. See Attachment A for rate schedule designations. On November 10, 1980, in Docket No. ER81-105-000, IME separately tendered for filing revised rates for service to its municipal wholesale customers.

Light of the City of Richmond, Indiana (Richmond) on November 20, 1980.

The Cooperatives argue that the increase is, in actuality, substantially larger than IME suggests and that waiver of the Commission's notice requirements is unjustified. The Cooperatives seek a maximum five month suspension and an order instituting a hearing concerning the lawfulness of the proposed rate increase. In addition, the Cooperatives raise a variety of cost of service and rate design issues. Richmond and Dowagiac also argue that waiver of notice is unjustified, and request the initiation of a hearing.

#### Discussion

Initially, we find that participation by each of the petitioners is in the public interest. Consequently, we shall grant the petitions to intervene.

IME tendered its revised rates in accordance with the filing requirements of section 35.13 of the Commission's regulations, as revised by Order No. 91, Docket No. RM79-64, issued June 27, 1980, in order to utilize a calendar year 1979 test year. In Order No. 91, the Commission indicated that until the revised filing regulations become effective on December 27, 1980, it would waive the requirements of the current section 35.13 for those utilities that seek to implement the revised cost of service format. Although IME has not specifically requested waiver of the requirements of the current section 35.13, the Commission regards such a request as implicit in IME's submittals and finds that waiver of the requirements of the current section 35.13 is warranted.

IME has requested waiver of the 60-day notice requirement of section 35.3 of the commission's regulations in order to allow an effective date of November 1, 1980. IME states that the proposed rates represent a nominal increase, and constitute only a technical filing designed to create a locked-in period with respect to rates which have been in effect, subject to refund, since December 23, 1978. According to IME, the purpose for creating such a locked-in period is to limit IME's exposure to refunds which might result if a recent initial decision<sup>3</sup> respecting the earlier rates is affirmed by the Commission. As indicated above, the intervenors contend that the Commission should deny IME's request because the increase in rates is not minimal, but rather is substantial in comparison to rates which might be

expected on the basis of the pending initial decision. The intervenors assert that IME's proposal could substantially eliminate refund protection in the earlier proceeding. Upon consideration, the Commission finds that IME's arguments do not constitute the requisite showing of good cause for waiver of the notice requirements, as required by section 35.11 of the Commission's regulations. The request will therefore be denied.

Considering the allegations raised by the intervenors, we find that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,<sup>4</sup> we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and reasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that a variety of substantive contentions have been raised by the intervenors, but that our preliminary analysis indicates that the proposed rates may not yield excessive revenues. We therefore believes that a five month suspension is unnecessary and may be inequitable to IME. However, in order to ensure refund protection for the affected customers pending further review, we believe we should exercise our discretion to suspend the rates for only one day from sixty days after filing, permitting the rates to take effect subject to refund thereafter on December 25, 1980, because Docket Nos. ER81-46-000, ER81-47-000, and ER81-48-000 present common questions of law and fact, we shall consolidate those dockets for purposes of hearing and decision.

The Cooperatives correctly note that IME has reflected accumulated deferred investment tax credits (ADITC) in its capitalization at the company's claimed

overall rate of return. The Commission has previously determined that summary disposition is appropriate under these circumstances,<sup>5</sup> and we shall so resolve the issue in this docket. However, the commission notes that the revenue impact of this summary disposition is relatively small in relation to the proposed rate increase. Moreover, as noted above, our preliminary analysis has indicated that IME's proposed rates may not be substantially excessive. As a result, we shall not require IME to refile its cost of service and rates at this time. Nonetheless, summary disposition of the ADITC issue shall be reflected in any rates finally approved by the Commission.

The Commission further observes that IME's proposed rate schedules for the cooperatives contain a tax adjustment clause. We shall not reject the tax adjustment clause, but we note that implementation of the clause will constitute a change in rate necessitating a timely filing with the Commission pursuant to section 35.13 of the regulations.

#### The Commission orders:

(A) The requirements of the current section 35.13 of the Commission's regulations are hereby waived.

(B) IME's request for waiver of the Commission's notice requirements is denied.

(C) IME's proposed rates tendered for filing on October 24, 1980, are accepted for filing and suspended for one day from sixty days after filing, to become effective on December 25, 1980, subject to refund pending hearing and decision thereon.

(D) IME's inclusion of ADITC in its capitalization at the claimed overall rate of return is summarily rejected. This determination shall be reflected in any rates ultimately approved by the Commission in this docket.

(E) IME is hereby advised that implementation of its tax adjustment clause will require timely filing in accordance with the provisions of section 35.13 of the Commission's regulations.

(F) The petitions to intervene are granted subject to the rules and regulations of the Commission; *Provided, however*, that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further*, that the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or

<sup>3</sup>E.g., *Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, et al. (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

<sup>5</sup>E.g., *El Paso Electric Co.*, Docket No. ER79-526, order issued September 24, 1979.

<sup>4</sup>*Indiana & Michigan Electric Co.*, Docket Nos. ER78-379, et al., Initial Decision, issued June 16, 1980.

orders by the Commission entered in this proceeding.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of IME's proposed rates.

(H) Docket Nos. ER81-46-000, ER81-47-000, and ER81-48-000 are hereby consolidated for purposes of hearing and decision.

(I) The Commission staff shall serve top sheets in this proceeding on or before January 9, 1981.

(J) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within ten (10) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates, and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(K) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

**Attachment A—Indiana and Michigan Electric Company, Rate Schedule Designations**

Docket No. ER81-46-000

Filed: October 24, 1980.

Dated: October 24, 1980.

Other Party: Michigan Power Company.  
Supplement No. 3 to Supplement No. 12 to Rate Schedule FPC No. 25 (Supersedes Supplement Nos. 1 and 2 to Supplement No. 12)

Docket No. ER81-47-000

Filed: October 24, 1980.

Dated: October 24, 1980.

*Designation and Other Parties*

First Revised Sheet Nos. 1A and 16, Second Revised Sheet Nos. 1, 5 and 6, and Third Revised Sheet No. 4 under FERC Electric Tariff, First Revised Volume No. III (Schedule REC-1) (Supersede Original Sheet Nos. 1A, 4-1 and 16, First Revised Sheet Nos. 1, 5 and 6, and Second Revised Sheet No. 4 thereunder)—None at this time  
Supplement No. 2 to Supplement No. 6 to Rate Schedule FPC Nos. 44A and 44B

(Schedule REC-1; Sheets designated by the company as First Revised Sheet No. 16 and Second Revised Sheet Nos. 4, 5 and 6) (Supersedes Supplement No. 1 to supplement No. 6 to Rate Schedule FPC Nos. 44A and 44B)—United REMC  
Supplement No. 2 to Supplement No. 5 to Rate Schedule FPC No. 46 (Supersedes Supplement No. 1 to Supplement No. 5)—Fruit Belt Rural Electric Cooperative  
Supplement No. 2 to Supplement No. 5 to Rate Schedule FPC No. 48 (Supersedes Supplement No. 1 to Supplement No. 5)—Jay County REMC  
Supplement No. 2 to Supplement No. 5 to Rate Schedule FPC No. 50 (Supersedes Supplement No. 1 to Supplement No. 5)—Noble County REMC  
Supplement No. 2 to Supplement No. 5 to Rate Schedule FPC No. 52 (Supersedes Supplement No. 1 to Supplement No. 5)—Paulding-Putnam Electric Cooperative  
Supplement No. 2 to Supplement No. 5 to Rate Schedule FPC No. 54 (Supersedes Supplement No. 1 to Supplement No. 5)—Wayne County REMC  
Supplement No. 2 to Supplement No. 5 to Rate Schedule FPC No. 56 (Supersedes Supplement No. 1 to Supplement No. 5)—Whitley County REMC

Docket No. ER81-48-000

Filed: October 24, 1980.

Dated: October 24, 1980.

Other Party: City of Richmond, Indiana.

Supplement No. 3 to Supplement No. 1 to Rate Schedule FERC No. 70 (Supersedes Supplement Nos 1 and 2 to Supplement No. 1).

[FR Doc. 81-2345 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Vol. 345]  
Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 15, 1981.

JD NO	JA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
*****						
TEXAS RAILROAD COMMISSION						
*****						
-ABERCROMBIE J S MINERAL CO INC						
8109027	17550	4240931332	103 RECEIVED: 12/16/80 JA: TX	TRIPLE A FIELD	0.0	UNITED GAS PIPELINE
8109149	24126	4221131157	103 RECEIVED: 12/16/80 JA: TX	HEMPHILL (GRANITE WASH)	547.0	NORTHERN NATURAL GAS
-ALPAR RESOURCES INC						
8109070	22759	4235730950	102 RECEIVED: 12/16/80 JA: TX	EDWARDS (UPPER MORROW)	306.0	NORTHERN NATURAL GAS
-AMERICAN PUBLIC ENERGY CO						
8109299	25559	4210532710	103 RECEIVED: 12/16/80 JA: TX	WHITEHEAD (STRAWN)	492.8	LOWE STAR GAS CO
8109298	25558	4210532813	103 ALLEANE F McMULLAN GU #1	WHITEHEAD (STRAWN)	343.1	LOWE STAR GAS CO
8109312	25592	4235730945	103 ANNA G BEEGLE WEL #3	FARNSWORTH-COWNER	7.0	PHILLIPS PETROLEUM C
8109322	25630	4243531206	108 BERTHA T GLASSCOCK/C/#2	ALDWELL RANCH/CANYON/	12.9	LOWE STAR GAS CO
8109330	25644	4213730116	108 C O WHITWORTH #1	SAMYER/CANYON/	4.9	LOWE STAR GAS CO
8109324	25637	4222732134	103 CHARLES B MUSGROVE #2	COAHOMA N (FUSSEL)	1.8	GETTY OIL CO
8109065	22233	4220130590	103 DRILLING DISTRICT 7 #7	HOUSTON SOUTH (DLIGOCENE	4.1	AMOCO GAS CO
*8109201	24667	4216730755	103 E KER CADE A R/A A #278	HIGH ISLAND	4.0	JOHN W MECOM CO
8109332	25650	4243530547	108 EDWIN S MAYER JR #8	SAMYER/CANYON/	17.1	LOWE STAR GAS CO
8109058	21737	421332137	103 F V ADDIS D #4	CONDEN SOUTH	1.7	PIONEER NATURAL GAS
8109059	21738	4213532970	103 F V ADDIS D #5	CONDEN SOUTH	1.1	PIONEER NATURAL GAS
8109069	22739	4235531433	103 G H MCCANN #35	LUBY/5200 SE/	62.0	VALLEY GAS TRANSMISS
8109331	25647	4213730143	108 H & C PETERSON #2	SAMYER/CANYON/	9.3	LOWE STAR GAS CO
8109060	22067	4213533016	103 J M CONDEN R/A A #110	NORTH CONDEN/DEEP/	1.0	PIONEER NATURAL GAS
8109321	25629	4243531257	108 JACK W BROWN/R/ #1	WHITEHEAD/STRAWN/	18.8	LOWE STAR GAS CO
8109075	22988	4239130586	103 M E OGDONOR #43	WOODSBORO SOUTH/4200/	27.4	LA ROSA CORP
8109061	22181	4235730831	103 R P ROBERTS MELL #6	HORIZON	55.0	PHILLIPS PETROLEUM C
8109062	22182	4235730844	103 R P ROBERTS MELL #7	HORIZON	7.0	PHILLIPS PETROLEUM C
8109063	22184	4235730846	103 R P ROBERTS MELL #9	HORIZON	5.0	PHILLIPS PETROLEUM C
8109057	21734	4213533027	103 T P LAND & TRUST A #9	CONDEN NORTH	7.3	PIONEER NATURAL GAS
8109195	24622	422731963	103 TEXAS LAND & TRGE CO A R/A A #107	IATAM EAST /HOWARD/	1.0	GETTY OIL CO
8109325	25638	4222732105	103 TEXAS LAND & TRGE CO A R/A B #113	COAHOMA N /FUSSELWAM/	18.2	GETTY OIL CO
8109052	20917	4236531010	102 VERNA B ROSS OIL UNIT #1	CARTHAGE (TRAVIS PEAK 65	25.2	TEXAS GAS TRANSMISSI
8109329	25642	4221932832	103 W G FRAZIER #119	SLAUGHTER	14.9	AMOCO PRODUCTION CO
8109328	25641	4221932833	103 W G FRAZIER #120	SLAUGHTER	9.1	AMOCO PRODUCTION CO
8109327	25640	4221932834	103 W G FRAZIER #121	SLAUGHTER	16.4	AMOCO PRODUCTION CO
8109326	25639	4221932835	103 W G FRAZIER #122	SLAUGHTER	10.9	AMOCO PRODUCTION CO
8109323	25634	4221932836	103 W G FRAZIER #123	SLAUGHTER	8.7	AMOCO PRODUCTION CO
8109074	22966	4224531244	103 W P MCCORMACK #14	BEAUMONT WEST	12.7	AMOCO GAS CO
8109320	25628	4243530979	108 WINNIE R ALDWELL TRUST #3	ALDWELL RANCH/CANYON/	19.0	LOWE STAR GAS CO
-ANDOVER OIL COMPANY						
*8109033	18043	4237132604	107 RECEIVED: 12/16/80 JA: TX	GREY RANCH (ELLENBURGER)	180.0	LOVACA GATHERING CO
-ARCO OIL AND GAS COMPANY						
8109268	25417	4200332290	103 RECEIVED: 12/16/80 JA: TX	EMMA	10.0	EL PASO NATURAL GAS





JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8109192	24599	4205130340	102	R D POEHL UNIT WELL NO 1 RECEIVED: 12/16/80 JA: TX	GIDDINGS (AUSTIN CHALK)	13.0	FERGUSON CROSSING PI
<b>-CONOCO INC</b>							
8109031	17693	4238900000	108	FORD GERALDINE UNIT #104 #21021	GERALDINE/FORD	0.4	EL PASO NATURAL GAS
8109030	17692	4238900000	108	FORD GERALDINE UNIT #121 #21021	GERALDINE/FORD	0.4	EL PASO NATURAL GAS
8109045	19410	4238900000	108	FORD GERALDINE UNIT #63 #21021	GERALDINE/FORD	0.4	EL PASO NATURAL GAS
8109029	17690	4238900000	108	FORD GERALDINE UNIT #87 #21021	GERALDINE/FORD	3.9	EL PASO NATURAL GAS
8109040	19401	4238930385	108	G E RAMSEY JR 8 #20 ID #21020	HOWARD GLASSCOCK	0.7	PHILLIPS PETROLEUM C
8109359	27612	4222700000	108	G O CHALK -D- #13 ID #02688	HOWARD GLASSCOCK	0.1	PHILLIPS PETROLEUM C
8109284	25501	4222700000	108	G O CHALK -E- #10	GUEST	0.4	CITIES SERVICE OIL C
*8109187	24552	4243330308	108	GUEST CANYON SAND UNIT #42	CONDEN SOUTH	0.1	PHILLIPS PETROLEUM C
8109041	19402	4213500000	108	H S FOSTER C #7 ID #18248	LACAFF	3.5	ALPINE OIL CO
8109188	24556	4231700000	108	HOWARD-ALEXANDER #2 ID #22905	FUHRMAN-MASCHO	12.8	PHILLIPS PETROLEUM C
8109355	25818	4200332229	103	J W BOMER B #34 ID #01664	ANDECTOR-GOLDSMITH-TXL	2.9	PHILLIPS PETROLEUM C
8109056	21684	4213500000	108	KLOH C-21 #3 ID #23035	ROUND TOP	5.9	LOWE STAR GAS CO
8109042	19404	4215130889	108	LUCIE MAE WILSON #21 #01915	ROUND TOP	0.0	LOWE STAR GAS CO
8109189	24564	4215100000	108	ROUND TOP PALO PINTO UNIT #91	FUHRMAN-MASCHO	18.2	PHILLIPS PETROLEUM C
8109357	25820	4200332236	103	W H BOMER A #29 ID #01663	FUHRMAN-MASCHO	5.8	PHILLIPS PETROLEUM C
8109356	25819	4200332303	103	W H BOMER A #31 ID #01663	FUHRMAN-MASCHO	12.0	TENNESSEE GAS PIPELI
8109162	24331	4242700000	108	W I CAMERON-138 NO 12 44713	RINCON NORTH (STRAY 3050	10.0	TENNESSEE GAS PIPELI
8109164	24333	4242700000	108	W I CAMERON-138 NO 7 40720	RINCON NORTH (FRID B)	12.0	TENNESSEE GAS PIPELI
8109163	24332	4242700000	108	W L CAMERON-138 NO 20 43902	RINCON NORTH (VSKBG 5500	3.8	SHELL OIL CO
8109043	19405	4216500000	108	WASSON 50 #11 #15706	WASSON	28.8	AMOCO PRODUCTION CO
8109055	21480	4213533307	103	MIGHT UNIT #143 ID #20661	CONDEN NORTH	1.6	AMOCO PRODUCTION CO
8109044	19406	4213500000	108	MIGHT UNIT #57 #20661	CONDEN NORTH	221.0	MARREN PETROLEUM CO
<b>-DALLAS PRODUCTION INC</b>							
8109076	23007	4242530107	103	RECEIVED: 12/16/80 JA: TX FRENCH NO 1	MCINTOSH (STRAMN)	1.0	LOWE STAR GAS CO
8109239	24966	4236700000	108	JAMES-JACKSON NO 1 #66819	MEEKER (CONGLOMERATE 440	117.0	BENGAL GAS TRANSMISS
8109176	24471	4213332238	103	SMITH NO 1-A	SEE JAY (37501)	146.0	LOWE STAR GAS CO
8109227	24900	4222130529	103	THOMAS B NO 1 #88240	SUN BELT (STRAMN)	85.0	TENNESSEE GAS PIPELI
<b>-DELTA DRILLING CO</b>							
8109079	23163	4220330646	102	RECEIVED: 12/16/80 JA: TX G ROBERTSON #1	WILLOCAT (COTTON VALLEY)	85.0	TENNESSEE GAS PIPELI
8109079	23163	4220330646	103	G ROBERTSON #1	WILLOCAT (COTTON VALLEY)	180.0	UNITED GAS PIPELINE
<b>-DINERO OIL CO</b>							
8109147	23993	4202531189	103	RECEIVED: 12/16/80 JA: TX A ALGEA #1	LITTLE JOHN (39701)	145.0	NORTHERN NATURAL GAS
<b>-DORCHESTER GAS PRODUCING CO</b>							
8109047	19903	4206530702	103	RECEIVED: 12/16/80 JA: TX KUYKENDALL NO 1A	PANHANDLE WEST	180.0	DIAMOND SHARROCK COR
<b>-DORE CORPORATION</b>							
*8109226	24884	4234130587	103	RECEIVED: 12/16/80 JA: TX DORE FEE 202 PRC NO 078485	PANHANDLE WEST	54.8	SEAGULL PIPELINE COR
<b>-DYNAMIC PRODUCTION INC</b>							
8109090	23451	4229732262	103	RECEIVED: 12/16/80 JA: TX GRIFFIN NO 1	MOUNT LUCAS (920)	36.0	NORTHERN NATURAL GAS
<b>-ENERGY RESERVES GROUP INC</b>							
8109314	25600	4223531459	103	RECEIVED: 12/16/80 JA: TX ELA C SUGG 59 A #2-U	SPRABERRY (TREND AREA)	18.0	NORTHERN NATURAL GAS
8109311	25588	4243500000	108	RECEIVED: 12/16/80 JA: TX W A HTERS A #5	SOMORA	0.0	VALERO TRANSMISSION
<b>-ENSCHER EXPLORATION INC</b>							
*8109051	20896	4228531431	102	RECEIVED: 12/16/80 JA: TX ALBERT SWOLIK NO 2	WORD N	6.0	LOWE STAR GAS CO
8109232	24938	4213701077	108	G O WALLACE 23 NO 1	SAWYER	14.0	LOWE STAR GAS CO
8109231	24937	4213702048	108	G O WALLACE 66 NO 2	SAWYER (CANYON)	135.0	LOWE STAR GAS CO
8109283	25471	4249731710	103	M B C JONES 2-C	BOONSVILLE	550.0	TRUNKLINE GAS CO
<b>-EXXON CORPORATION</b>							
8109220	24799	4224731127	102	RECEIVED: 12/16/80 JA: TX A R K BASS 44 (88054)	KELSEY DEEP (ZONE 21-E M	400.0	PHILLIPS PETROLEUM C
8109270	25430	4236531056	103	CARTHAGE GU 32 TOWNSITE (S1 #2	CARTHAGE (COTTON VALLEY)	17.0	PHILLIPS PETROLEUM C
*8109160	24256	4200332195	103	FULLERTON CLEARFORK UNIT #172	FULLERTON		

JO DKT	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8109262	25186	4208130830	103	I A B UNIT #111	I A B (MENTELLE PENN)		2.6 SUN GAS CO
8109225	24881	4210332241	103	J B TUBB A/C 1 #216L	SAND HILLS (TUBB)		16.0 EL PASO NATURAL GAS
8109174	24443	4210332242	103	J B TUBB A/C 1 #217U	SAND HILLS (TUBB)		55.0 EL PASO NATURAL GAS
8109353	25812	4210332237	103	J B TUBB B #23U	SAND HILLS (MCKNIGHT)		63.0 EL PASO NATURAL GAS
8109279	25455	4221131129	103	J C CAMPBELL #2U	MENDOTA SW (DOUGLAS LO)		2.0 TRANSMISSION PIPELINE
8109282	25469	4229732218	103	MARY A REYNOLDS #36	RAMIRENA NW (YEGUA 3)		393.0 NATURAL GAS PIPELINE
8109354	25815	4216531727	103	ROBERTSON/CLEARFORK/JUNIT #1052	ROBERTSON N (CLEARFORK 7)		13.0 PHILLIPS PETROLEUM C
8109222	24802	4226130558	102	SARITA FIELD UNIT 155-D	SARITA (15-S W)		1000.0 NATURAL GAS PIPELINE
8109221	24801	4226130444	102	SARITA FIELD UNIT 145-F (87898)	SARITA (14-E W)		700.0 NATURAL GAS PIPELINE
8109333	25660	4213134744	103	V KOHLER A-129 #06096	VIGGO (QUEEN CITY #1)		18.0 TENNESSEE GAS PIPELINE
-GFTTY OIL COMPANY							
8109295	25537	4236530968	103	RECEIVED: 12/16/80 JA: TX	CARTHAGE (COTTON VALLEY)		768.0 DELHI GAS PIPELINE C
8109109	23634	4235300000	108	B J JOHNSON WELL #2	DORA NORTH		7.3 SID RICHARDSON CARBO
8109110	23635	4235300000	108	BOYD B NO 17	DORA NORTH		9.4 SID RICHARDSON CARBO
8109108	23631	4235300000	108	BOYD B NO 9	DORA NORTH		3.1 SID RICHARDSON CARBO
8109112	23637	4243100000	108	E R FOSTER NO 2	W A M SOUTH		19.2 UNION TEXAS PETROLEUM
8109118	23670	4249700000	108	ELBERT BAILEY NO 1	TIDWELL		0.7
8109111	23636	4243100000	108	ETHEL FOSTER NO 2	W A M SOUTH		1.5 UNION TEXAS PETROLEUM
8109119	23674	4241300000	108	MATTIE ROYSTER NO 2	N EL DORADO (CANYON A)		9.0 ARCO OIL & GAS CO
8109113	23641	4235300000	108	NORTH MENA LUCIA UNIT NO 18	W A M SOUTH		1.2 WEST LAKE NATURAL GA
8109114	23649	4235300000	108	NORTH MENA LUCIA UNIT NO 69	W A M SOUTH		0.6 WEST LAKE NATURAL GA
8109115	23650	4235300000	108	NORTH MENA LUCIA UNIT NO 71	W A M SOUTH		14.0 WEST LAKE NATURAL GA
8109117	23653	4235300000	108	NORTH MENA LUCIA UNIT NO 77	W A M SOUTH		6.0 WEST LAKE NATURAL GA
8109116	23651	4235300000	108	NORTH MENA LUCIA UNIT NO 85	W A M SOUTH		0.7 WEST LAKE NATURAL GA
8109159	24207	4206500000	108	SCHAFFER RANCH NO 247	PANHANDLE CARSON		1.3 NORTHERN NATURAL GAS
8109296	25538	4236500000	103	MEPNER-LAGRONE WELL #2	CARTHAGE (COTTON VALLEY)		167.7 DELHI GAS PIPELINE C
8109210	24691	4207931150	103	XIT UNIT WELL NO 171	LEVELLAND-SAN ANDRES		1.5 CITIES SERVICE CO
8109211	24692	4207931151	103	XIT UNIT WELL NO 172	LEVELLAND-SAN ANDRES		1.8 CITIES SERVICE CO
8109212	24693	4207931149	103	XIT UNIT WELL NO 173	LEVELLAND - SAN ANDRES		4.7 CITIES SERVICE CO
-GIBSON DRILLING CO.							
8109064	22209	4240100000	108	RECEIVED: 12/16/80 JA: TX	PENN-GRAFFITH		1.0 NATURAL GAS PIPELINE
-GROVER J GEISELMAN				W M TATE ESTATE WELL NO 1	NEEDVILLE (38 FRID 1ST 5		250.0 PHILLIPS PETROLEUM C
8109263	25267	4215731095	103	BUSHNELL WELL NO 1A 87947	LAREDO (L080)		125.0 VALERO TRANSMISSION
-GULF OIL CORPORATION							
8109347	25695	4250531137	103	RECEIVED: 12/16/80 JA: TX	LAREDO (L080)		125.0 VALERO TRANSMISSION
8109008	04683	4221130655	102	FORGEY #3093	GEN HEMPHILL		7.0 CITIES SERVICE GAS C
8109008	04683	4221130655	103	FORGEY #3093	GEN HEMPHILL		7.0 CITIES SERVICE GAS C
8109308	25755	4249531121	103	KEYSTONE HOLT UNIT WELL NO 9336	KEYSTONE (HOLT)		67.0 CABOT CORP
8109129	23754	4248300000	108	MASSAY D N A #1	PANHANDLE EAST		7.0 TRANSMISSION PIPE LI
8109080	23201	4221530949	103	OLIVAREZ UNIT WELL NO 1	WILDCAT		0.0 TENNASCOCO GAS GATHER
8109309	25576	4237133079	103	T G MOORE ET AL NO 1	U S M (QUEEN)		20.0 NORTHERN NATURAL GAS
-GULFSTREAM PETROLEUM CORP							
8109071	22797	4228930349	102	RECEIVED: 12/16/80 JA: TX	HARRIS WOODBINE (PROPOSE		274.0 LOWE STAR GAS CO
-H V RISIEN							
8109302	25565	4220130951	103	T O HARRIS HEIRS NO 1	HOOKS (SHALLOW)		37.0 TRUNKLINE GAS CO
8109301	25564	4220130956	103	RECEIVED: 12/16/80 JA: TX	HOOKS (SHALLOW)		13.0 TRUNKLINE GAS CO
-HNG OIL COMPANY							
8109158	24197	4248330646	102	BRITT 7 #1 86356	ALLISON-BRITT		893.0 COLORADO INTERSTATE
8109158	24197	4248330646	103	BRITT 7 #1 86356	ALLISON-BRITT		893.0 COLORADO INTERSTATE
8109131	23772	423532170	103	WALLACE 77 #5 82876	SAMYER (CANYON)		22.0 INTRATEX GAS CO
8109131	23772	423532170	108	WALLACE 77 #5 82876	SAMYER (CANYON)		22.0 INTRATEX GAS CO
-HOUSTON OIL & MINERALS CORPORATION							
8109333	25660	4213134744	103	RECEIVED: 12/16/80 JA: TX	VIGGO (QUEEN CITY #1)		18.0 TENNESSEE GAS PIPELINE

VOLUME 345

PAGE 005

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8109224	24816	4238331538	103	MERCHANT ESTATE 16 #4 RECEIVED: 12/16/80 JA: TX	SPRABERRY (TREND AREA)	30.0	UNION TEXAS PETROLEUM
8109280	25460	4206530761	103	BURNETT 25 WELL NO 6 #04227 RECEIVED: 12/16/80 JA: TX	PANHANDLE CARSON COUNTY	45.6	PANHANDLE EASTERN PI
8109084	23403	4236731543	102	LEWIS #1 84687	BUCKNER (BEND) FIELD	55.0	JAMES P DUNIGAN INC
8109083	23402	4236731514	102	LEWIS #1 84688	BUCKNER (BEND)	4.0	JAMES P DUNIGAN INC
8109082	23401	4236731523	102	PHILLIPS UNIT #1 82732 RECEIVED: 12/16/80 JA: TX	BUCKNER (BEND)	4.0	JAMES P DUNIGAN INC
8109157	24156	4210532565	103	FORT LANCASTER #1	INGHAM DEVONIAN	1035.0	EL PASO NATURAL GAS
8109035	18526	4210532351	103	ODESSA ET AL 4-2X RECEIVED: 12/16/80 JA: TX	INGHAM (DEVONIAN)	144.0	EL PASO NATURAL GAS
8109351	25724	4206530732	103	CHAPMAN NO 4	PANHANDLE	67.5	COLORADO INTERSTATE
8109350	25723	4223330793	103	READ NO 15	PANHANDLE	73.0	COLORADO INTERSTATE
8109352	25725	4223330791	103	READ NO 17	PANHANDLE	42.7	COLORADO INTERSTATE
8109037	18892	4237100000	103	EFFIE SIBLEY NO 3 RECEIVED: 12/16/80 JA: TX	GOMEZ (WOLF CAMP)	204.0	LOVACA GATHERING CO
8109038	18893	4237131880	103	EFFIE SIBLEY NO 4	GOMEZ (WOLF CAMP)	72.0	LOVACA GATHERING CO
8109039	18894	4213237900	103	EFFIE SIBLEY NO 5 RECEIVED: 12/16/80 JA: TX	GOMEZ (WOLF CAMP)	48.0	LOVACA GATHERING CO
8109198	24659	4239100000	103	FAGAN #1 RECEIVED: 12/16/80 JA: TX	FAGAN FIELD	280.0	UNITED GAS PIPELINE
8109197	24654	4237132918	102	J N THIGPIN A #1 RECEIVED: 12/16/80 JA: TX	THIGPIN (DEVONIAN)	365.0	M WILSON CORP
8109339	25672	4243930886	103	BRAUN B #4 RRC #24949	PARKS (SPRABERRY)	10.0	MOBIL OIL CORP
8109053	21233	4246131506	103	CITIES NEAL WELL NO 1 RRC #08203	BENEDUM (FUSSELMAN)	50.0	UNION TEXAS PETROLEUM
8109340	25673	4238331548	103	CREWS #2-X RRC #04084	SPRABERRY (TREND AREA)	10.0	EL PASO NATURAL GAS
8109335	25667	4246131570	103	HALANICEK #1 RRC #08348	MCGILL (SPRABERRY)	10.0	PHILLIPS PETROLEUM C
8109341	23675	4241732100	103	JOHANICAL WOODY #3 RRC #21893	SPRABERRY (TREND AREA)	10.0	ALPINE OIL CO
8109337	25670	4231732155	103	MABEE RANCH #4 RRC #25704	LACAFF (DEANI)	10.0	NORTHERN NATURAL GAS
8109067	22442	4246131517	103	MCDANIEL-BARNET #1	BENEDUM (FUSSELMAN)	50.0	UNION TEXAS PETROLEUM
8109338	25671	4223530782	103	MISS ELA I #1 RRC #87002	ELA SUGG (MOLF CAMP)	5.0	VALERO TRANSMISSION
8109334	25666	4246131570	103	NEAL C #1 RRC #08369	NEAL RANCH	10.0	UNION TEXAS PETROLEUM
8109342	25676	4238331497	103	ROCKER B A #4 RRC #04475	SPRABERRY (TREND AREA)	10.0	EL PASO NATURAL GAS
8109346	25687	4238331598	103	ROCKER B P #13-X RRC #05173	SPRABERRY (TREND AREA)	10.0	EL PASO NATURAL GAS
8109345	25686	4246131536	103	RUNGE #1 RRC #08350	SPRABERRY (TREND AREA)	10.0	PHILLIPS PETROLEUM C
8109336	25668	4246131574	103	WANDA HANKS #1 RRC #08347	MCGILL (SPRABERRY)	10.0	PHILLIPS PETROLEUM C
8109319	25622	4248331590	103	WOLTERS ESTATE #1 RRC #08333	SPRABERRY (TREND AREA)	12.0	EL PASO NATURAL GAS
8109343	25677	4238331589	103	WOLTERS ESTATE #3 RRC #08333	SPRABERRY (TREND AREA)	10.0	EL PASO NATURAL GAS
8109344	25684	4238331606	103	WOLTERS ESTATE B #1 RRC #08313 RECEIVED: 12/16/80 JA: TX	SPRABERRY (TREND AREA)	10.0	EL PASO NATURAL GAS
8109177	24489	4239131320	103	HYMES MINERAL TRUST A #1-C RECEIVED: 12/16/80 JA: TX	REFUGIO-FOX (6300)	75.0	UNITED GAS PIPELINE
8109148	24051	4234100000	108	KILGORE #1 24571	WEST PANHANDLE	13.9	PHILLIPS PETROLEUM C
8109313	25595	4237500000	108	MASTERSON M RECEIVED: 12/16/80 JA: TX	PANHANDLE WEST (RED CAVE)	4.0	PIONEER NATURAL GAS
8109209	24681	4244131496	102	NEWSON-PARRISH #1 IO-15753 RECEIVED: 12/16/80 JA: TX	GRASS-BURR S (FRY SAND)	97.0	UNION TEXAS PETROLEUM
8109219	24798	4239131397	103	MARBERRY WELL NO 1 RECEIVED: 12/16/80 JA: TX	MCFADDIN (5700)	60.0	UNITED GAS PIPE LINE
8109348	25711	4236531042	103	WIENER NO 1 WELL #88484 RECEIVED: 12/16/80 JA: TX	PAXTON (PALUXY)	0.0	UNITED GAS PIPELINE
8109348	25711	4236531042	103	WIENER NO 1 WELL #88484 RECEIVED: 12/16/80 JA: TX	PAXTON (PALUXY)	0.0	UNITED GAS PIPELINE

JD NO	JA OKT	API NO	SEC D	WELL NAME	FIELD NAME	VOLUME	345	PROD	PAGE	006	PURCHASER
8109010	11119	4204900000	108	MACK HENRY NO 4 67565 RECEIVED: 12/16/80 JA: TX	BLAND (CADD0)	10.2	STOUX PIPELINE CO				
-KILLAM & HURO LTD	8109019	4247932312	102	J C MARTIN III WELL NO 1	DOLORES CREEK (WILCOX 92)	500.0	TRANSCONTINENTAL GAS				
8109048	20159	4247932455	102	J C MARTIN III WELL NO 3 RECEIVED: 12/16/80 JA: TX	DOLORES CREEK (WILCOX 92)	182.0	TRANSCONTINENTAL GAS				
-L JACK GROSS PRODUCTION	8109137	4206500000	108	BURNETT C-1	PANHANDLE	0.0	PHILLIPS PET CO				
8109138	23820	4206500000	108	BURNETT C-2	PANHANDLE	0.0	PHILLIPS PET CO				
8109140	23823	4206500000	108	BURNETT D-82	PANHANDLE	0.0	PHILLIPS PET CO				
8109139	23822	4206500000	108	BURNETT D-92	PANHANDLE	0.0	PHILLIPS PET CO				
-LEAR PETROLEUM CORPORATION	8109020	4229500000	102	BOMOLE NO 2	LEAR (MORROM UPPER)	91.0	NORTHERN NATURAL GAS				
8109021	16595	4229500000	102	MALTON NO 2	LEAR (MORROM UPPER)	183.0	NORTHERN NATURAL GAS				
-MARTIN OIL & GAS CO	8109023	4205100000	102	PIMONKA #3 RECEIVED: 12/16/80 JA: TX	CALDWELL (AUSTIN CHALK)	86.0	MAYNARD OIL CO				
-MEDDERS OIL COMPANY	8109214	4246931477	102	KEERAN RANCH NO 1 RECEIVED: 12/16/80 JA: TX	ARENSA CREEK (FRIO 7100)	180.0	FLORIDA GAS TRANSMIS				
-MESA PETROLEUM	8109317	4210532803	103	GRAVES 12 #1 RECEIVED: 12/16/80 JA: TX	OZONA (CANYON SAND)	310.0	DELHI GAS PIPELINE C				
-MEXIA GAS CO INC	8109237	4229300000	103	HESTER ROSS 87597	MEXIA (MACATOCH)	12.4	LOME STAR GAS CO				
8109238	24957	4229300000	103	WILLIAM KIMBELL 88235	MEXIA (MACATOCH)	12.4	LOME STAR GAS CO				
-MEYERS-LASHER INC	8109095	4208931093	102	PLOW REALTY COMPANY #1 RECEIVED: 12/16/80 JA: TX	SHERIDAN S (YEGUA) - PRO	250.0	TEXAS EASTERN TRANSM				
8109095	23512	4208931093	103	PLOW REALTY COMPANY #1 RECEIVED: 12/16/80 JA: TX	SHERIDAN S (YEGUA) - PRO	250.0	TEXAS EASTERN TRANSM				
-MITCHELL ENERGY CORPORATION	8109032	4231330248	103	HENRIETTA STONE #2	MADISONVILLE (DEXTER MOR	350.0	LOME STAR GAS CO				
8109024	17317	4249700000	108	JUNE L GRIFFEIN #1 45764	RHOME (CADD0)	8.0	SOUTHWESTERN GAS PIP				
8109036	18772	4249700000	108	MYRTLE MAY #1 28733	BOONSVILLE (BEND CONGL G	19.0	NATURAL GAS PIPELINE				
8109025	17718	4249700000	108	RUFUS GARRETT #1 42362	RHOME (CADD0)	12.0	SOUTHWESTERN GAS PIP				
-MITCHELL ENERGY OFFSHORE CORP	8109026	4270430084	102	STATE TRACT 442-L #1 INM RECEIVED: 12/16/80 JA: TX	BRAZOS BLOCK 442-L 1K SA	500.0					
-MOBIL PRDG TEXAS & NEW MEXICO INC	8109078	4220330501	108	BLOCKER UNIT NO 1 WELL NO 2	BLOCKER/COTTON VALLEY	21.1	UNITED GAS PIPELINE				
8109271	25431	4221100000	108	COTTER-PORTER #3	FELDMAN/TOKAWA	0.3	TRANSWESTERN PIPELIN				
8109272	25433	4221100000	108	COTTER-PORTER NO 1-L	FELDMAN/TOKAWA	0.8	TRANSWESTERN PIPELIN				
8109069	23449	4203931199	103	E A SWEET A NO 3	RATTLESNAKE MOUND (5200	471.0	AMOCO GAS CO				
8109274	25435	4203931199	103	E A SWEET A NO 4	RATTLESNAKE MOUND/5400	317.6	AMOCO GAS CO				
8109183	24546	4232930882	103	GERRANIA SPRABERRY UNIT NO 30	SPRABERRY (TREND AREA)	10.6	AMOCO PRODUCTION CO				
8109184	24547	4221932853	103	MAPLE WILSON NO 90	SLAUGHTER	10.6	AMOCO PRODUCTION CO				
8109185	24548	4221932844	103	MAPLE WILSON NO 94	SLAUGHTER	10.6	AMOCO PRODUCTION CO				
8109273	25434	4233531699	103	MARY FOSTER NO 134	TATAN EAST HOWARD	0.4	GETTY OIL CO				
8109182	24545	4221932804	103	NORTH CENTRAL LEVELLAND NO 330	LEVELLAND	7.7	AMOCO PRODUCTION CO				
8109085	23406	4219931390	102	PICA INVESTMENT VENTURE NO 2	SOUR LAKE E (YEGUA #4) R	613.5	TRANSCONTINENTAL GAS				
8109186	24550	4247532105	103	STATE AN NO 2	CAPRITO (DELAWARE MIDDLE	14.0	LOME STAR GAS CO				
-MONSANTO COMPANY	8109054	4237132727	102	RECEIVED: 12/16/80 JA: TX J N THIGPIN NO 1	STRAWN	119.0	INTRATEX				
-MORAN EXPLORATION INC	8109145	4237100000	108	RECEIVED: 12/16/80 JA: TX ATLANTIC 25 #1-L	TIPPETT S (WOLFCAMP DETR	16.3	MELCH GAS SYSTEM				
8109294	25532	4217331044	103	SCHAEFER #1	SPRABERRY (TREND AREA)	0.0	EL PASO NATURAL GAS				
-MOTE RESOURCES INC	8109277	4249700000	103	RECEIVED: 12/16/80 JA: TX CHARLES HOWARD JONES NO 1	ALYRD CADD0 CONGL	27.4	NATURAL GAS PIPE LIN				
8109276	25443	4249700000	103	GEORGE R WILSON	BOONSVILLE (BEND CONGL)	36.5	NATURAL GAS PIPE LIN				
8109275	25441	4249700000	103	GIBBON HEIRS NO 1	BOONSVILLE (BEND CONGL G	73.0	NATURAL GAS PIPE LIN				

JD NO	JA DKT	API NO	SEC D WELL NAME	RECEIVED:	DATE	JA	TX	FIELD NAME	PROD	PURCHASER
<b>-NATIONAL COOP REFINERY ASSOC</b>										
8109143	23919	4237132966	103	AAA #1	12/16/80	JA	TX	APCO-WARNER WEST (WICHT)	900.0	DELHI GAS PIPELINE C
<b>-NRM PETROLEUM CORPORATION</b>										
8109194	24621	4245130463	102	XQZ RANCH A #1	12/16/80	JA	TX	XQZ (PALO PINTO)	15.0	CRA INC
8109193	24617	4245130484	102	XQZ RANCH B #1	12/16/80	JA	TX	XQZ (PALO PINTO)	30.0	CRA INC
<b>-O B OIL INC</b>										
8109015	16384	42444131174	103	SPILL NO 1 - 82714	12/16/80	JA	TX	BRADSHAW E (GARDNER)	18.0	UNION TEXAS PETROLEU
<b>-OILWELL OPERATORS INC</b>										
8109202	24672	4217900000	108	KATE #1 - 04205	12/16/80	JA	TX	PANHANDLE	4.0	COLTEXO CORP
8109208	24680	4217900000	108	WILLIS #1 26474	12/16/80	JA	TX	EAST PANHANDLE	2.0	PHILLIPS PETROLEUM C
8109207	24679	4217900000	108	WILLIS A #1 26475	12/16/80	JA	TX	EAST PANHANDLE	3.0	PHILLIPS PETROLEUM C
8109206	24678	4217900000	108	WILLIS B #1 26476	12/16/80	JA	TX	EAST PANHANDLE	7.0	PHILLIPS PETROLEUM C
8109205	24676	4217900000	108	WILLIS D #1 26478	12/16/80	JA	TX	EAST PANHANDLE	12.0	PHILLIPS PETROLEUM C
8109204	24675	4217900000	108	WILLIS E #1 26479	12/16/80	JA	TX	EAST PANHANDLE	15.0	PHILLIPS PETROLEUM C
8109203	24673	4217900000	108	WILLIS G #1 26481	12/16/80	JA	TX	EAST PANHANDLE	9.0	PHILLIPS PETROLEUM C
<b>-PAN-TEX PRODUCTION CO</b>										
8109072	22826	4249700000	108	ELROD-CLOMER #09470	12/16/80	JA	TX	ALVORD (ATOKA COMBL)	6.0	CITIES SERVICE CO
<b>-PANHANDLE PRODUCING COMPANY</b>										
8109172	24436	4223300000	108	RECEIVED: 12/16/80	12/16/80	JA	TX	PANHANDLE WEST	14.2	COLORADO INTERSTATE
8109168	24421	4223300000	108	ALAMOS A-SANFORD NO 2 (27107)	12/16/80	JA	TX	PANHANDLE WEST	11.2	COLORADO INTERSTATE
8109166	24419	4223300000	108	AGUA DULCE - SANFORD IRC (62286)	12/16/80	JA	TX	PANHANDLE WEST	12.9	COLORADO INTERSTATE
8109173	24439	4223300000	108	CONTINENTAL-WHITTENBURG IRC (27108)	12/16/80	JA	TX	PANHANDLE WEST	0.0	COLORADO INTERSTATE
8109169	24422	4223300000	108	MERCHANT A #1 (23786)	12/16/80	JA	TX	PANHANDLE WEST	17.5	COLORADO INTERSTATE
8109170	24426	4223300000	108	NORTH AMERICAN-SANFORD IRC (27110)	12/16/80	JA	TX	PANHANDLE WEST	6.9	COLORADO INTERSTATE
8109171	24429	4223300000	108	RUBIN #4 (23798)	12/16/80	JA	TX	PANHANDLE WEST	5.1	COLORADO INTERSTATE
8109167	24420	4223300000	108	SHAFFER-SANFORD IRC (27112)	12/16/80	JA	TX	PANHANDLE WEST	5.6	COLORADO INTERSTATE
<b>-PENNZOIL PRODUCING COMPANY</b>										
8109133	23783	4250530973	102	RECEIVED: 12/16/80	12/16/80	JA	TX	JENNINGS W (WILCOX 7600)	131.0	NATURAL GAS PIPELINE
<b>-PHILLIPS PETROLEUM COMPANY</b>										
8109290	25514	4242100000	108	DELPHINE A #1	12/16/80	JA	TX	TEXAS HUGOTON	21.0	MICHIGAN WISCONSIN P
8109011	11893	4223300000	108	HERR NO 1	12/16/80	JA	TX	WEST PANHANDLE RED CAVE	17.0	EL PASO NATURAL GAS
8109014	15293	4223300000	108	JAY D NO 2	12/16/80	JA	TX	PANHANDLE WEST- RED CAVE	18.5	EL PASO NATURAL GAS
8109291	25516	4223300000	108	OTIS P #2	12/16/80	JA	TX	PANHANDLE WEST	18.4	EL PASO NATURAL GAS
8109243	25004	4235700000	108	ROGERS D #6	12/16/80	JA	TX	S E SHARE	6.0	PANHANDLE EASTERN PI
<b>-PLACID OIL COMPANY</b>										
8109228	24908	4236500000	108	T A GREER ET AL #1 #1	12/16/80	JA	TX	BETHANY	16.0	ARKANSAS LOUISIANA G
8109229	24909	4236500000	108	T L WESTMORELAND WELL NO 1	12/16/80	JA	TX	BETHANY	10.0	TENNESSEE GAS PIPELI
<b>-PRODUCTION MANAGEMENT ASSOC</b>										
8109300	25562	4206500000	108	A F BRYAN (00147) #3	12/16/80	JA	TX	PANHANDLE CARSON COUNTY	9.6	CABOT CORP
8109307	25572	4206500000	108	A F BRYAN (00147) #5	12/16/80	JA	TX	PANHANDLE CARSON COUNTY	0.4	CABOT CORP
8109306	25571	4206500000	108	A F BRYAN (00147) #7	12/16/80	JA	TX	PANHANDLE CARSON COUNTY	0.3	CABOT CORP
8109305	25570	4206500000	108	E F BRYAN (00148) #2	12/16/80	JA	TX	PANHANDLE CARSON COUNTY	15.6	CABOT CORP
8109304	25569	4206500000	108	E F BRYAN (00148) #6	12/16/80	JA	TX	PANHANDLE CARSON COUNTY	2.1	CABOT CORP
<b>-R LACY INC</b>										
8109077	23071	4220330667	103	VERHALEN WELL #10 #85875	12/16/80	JA	TX	SCOTTSVILLE SW (PAGE)	288.0	ARKANSAS LOUISIANA G
<b>-ROBERT E BYRNE</b>										
8109156	24146	4213332072	103	KING NO 1 - 15648	12/16/80	JA	TX	EASTLAND COUNTY REGULAR	21.9	LOWE STAR GAS CO
<b>-RODMAN PETROLEUM CORP</b>										
8109236	24955	4204932065	103	SCHLECKER NO 2	12/16/80	JA	TX	BROWN CO REGULAR	5.0	ODESSA NATURAL CORP
<b>-SANCHEZ-OBRIEN OIL &amp; GAS CORP</b>										
8109013	15012	4247924790	102	J C MARTIN III WELL NO 3	12/16/80	JA	TX	DELORES CREEK WILCOX 940	500.0	UNITED TEXAS TRANSMI
<b>-SED INC</b>										

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	VOLUME	PAGE	PURCHASER
8109134	23795	4202531257	102	CARL STEINMEYER NO 2 RECEIVED: 12/16/80	LITTLE JOHN (1350)	182.0	008	UNITED GAS PIPELINE
-SHELL OIL CO		4216530685	103	COLTHARP 4	ROBERTSON N (SAN ANDRES)	5.5		PHILLIPS PETROLEUM C
8109293	25523	4221131192	103	HOBBART RANCH #570	HEMPHILL (GRANITE WASH)	475.0		CITIES SERVICE GAS C
8109292	25522	4221131190	103	HOBBART RANCH #670	HEMPHILL (GRANITE WASH)	570.0		CITIES SERVICE GAS C
8109261	25067	4210332224	103	JOHNSON-STATE NO 1	SAND HILLS (TUBB)	30.0		WARREN PETROLEUM COR
8109091	23469	4247531925	103	SEALY SMITH FOUNDATION #171	MONAHANS (CLEAR FORK)	43.0		EL PASO NATURAL GAS
8109284	25284	4221530966	103	WOODS CHRISTIAN NO 21 RECEIVED: 12/16/80	MCALLEN RANCH (WICKSBURG)	400.0		TENNESSEE GAS PIPELI
-SPENCER & HUTSON		4214900000	103	ANITA LEASE WELL #1 RECEIVED: 12/16/80	GIDDINGS (AUSTIN CHALK)	54.8		RESERVE GAS SYSTEMS
8109086	23411	4205130594	102	EDWIN M DAVIS #1	GIDDINGS (AUSTIN CHALK)	50.0		CLAJON GAS CO
-STRATA ENERGY INC		4205130594	102	LUCY SHANKLIN #3	GIDDINGS (AUSTIN CHALK)	50.0		CLAJON GAS CO
8109242	24999	4205130594	102	WILLIAM LAW #1	GIDDINGS (AUSTIN CHALK)	50.0		CLAJON GAS CO
8109241	24998	4248131933	102	HUNDL GAS UNIT - WELL NO 1 RECEIVED: 12/16/80	WHARTON S (FRID 4900)-PR	350.0		HOUSTON PIPE LINE CO
8109240	24997	4228900000	108	M GOLTJE - RRC #15460 RECEIVED: 12/16/80	MCBEE/RODESSA	6.9		TEXAS UTILITIES FUEL
-SUE-ANN OPERATING COMPANY		4222100000	102	DANIEL MARRS #1 79847	WILDCAT	55.0		LOWE STAR GAS CO
-SULPHUR RIVER EXPLORATION INC		4222100000	102	T R WILHOIT #1 81526 RECEIVED: 12/16/80	WILDCAT	55.0		LOWE STAR GAS CO
8109358	26583	4227331192	103	A T CANALES NO 52	TIJERINA-CANALES-BLUCHER	711.0		FLORIDA GAS TRANSMITS
-SUN BELT PETROLEUM INC		4221530818	102	A M BEAURLINE NO 2	BEAURLINE	114.0		TENNESSEE GAS PIPELI
8109016	16424	4221900000	108	COBLE 8 NO 35	LEVELLAND	0.1		EL PASO NATURAL GAS
8109017	16425	4221900000	108	COBLE 8 WELL NO 32	LEVELLAND	0.1		AMOCO PRODUCTION CO
-SUN OIL COMPANY (DELAWARE)		4208100000	108	FRED JAMESON WELL NO 18	BLOODWORTH/5750	8.0		LOWE STAR GAS CO
8109018	16450	4213500000	108	J E PARKER -A- WELL NO 2	LAMSON	5.0		PHILLIPS PETROLEUM C
8109161	24324	4239131357	108	J M O'BRIEN -A- WELL NO 8	GRETA (1385)	6.0		UNITED TEXAS TRANSMI
8109216	24754	4208100000	108	JAMESON STRAWN SAND UNIT NO 3-1	JAMESON (STRAWN)	0.4		EL PASO NATURAL GAS
*8109046	19835	4208100000	108	JAMESON STRAWN SAND UNIT NO 5-22	JAMESON (STRAWN)	14.0		EL PASO NATURAL GAS
8109121	23699	4208100000	108	JAMESON STRAWN SAND UNIT NO 6-33	JAMESON (STRAWN)	2.0		EL PASO NATURAL GAS
8109127	23706	4208100000	108	JAMESON STRAWN SAND UNIT NO 6-35	JAMESON (STRAWN)	8.0		EL PASO NATURAL GAS
8109066	22274	4208100000	108	JAMESON STRAWN SAND UNIT NO 6-48	JAMESON (STRAWN)	0.4		LOWE STAR GAS CO
8109126	23704	4210500000	108	RUBY HELBING NO 2	OZONA (CANYON SAND)	10.0		NORTHERN NATURAL GAS
8109125	23703	4233500000	108	TUBB-OMEGA WELL NO 1 RECEIVED: 12/16/80	JAMES NORTH/STRAWN	17.0		LOWE STAR GAS CO
8109124	23702	4232900000	108	ANDREW FASKEN RECEIVED: 12/16/80	SPRABERRY TREND AREA	4.7		PHILLIPS PETROLEUM C
8109123	23701	4221932783	103	T P DELOACHE #5	LEVELLAND	0.7		AMOCO PRODUCTION CO
8109122	23700	4250530064	108	J D JENNINGS NO 327	JENNINGS M (QUEEN #10)	5.4		TENNESSEE GAS PIPELI
8109120	23694	4226330646	103	P L FULLER NCT-3 #238-A	COGDELL EAST (CANYON)	16.1		TEXACO INC
8109128	23709	4227532122	103	STATE OF TEXAS DC #3 RECEIVED: 12/16/80	CAPRITO (DELAWARE MIDDLE)	325.0		
-TAMCO OIL & CATTLE CO		4244330239	102	ELLEN A WOOD B #1	MCKAY CREEK (CABALLOS)	73.0		AMOCO PRODUCTION CO
8109223	24813	4221932705	103	SOUTHEAST LEVELLAND UNIT #245 RECEIVED: 12/16/80	LEVELLAND	4.4		AMOCO PRODUCTION CO
-TEXACO INC		4241330610	108	#1 BRAY	HENRY SPECK (CANYON)	26.0		PRODUCERS GAS CO
8109315	25603	4241330765	108	#1 CENTURA-COUPPE	HENRY SPECK (CANYON)	27.3		NORTHERN NATURAL GAS
8109278	25454	4241300000	108	#1 FUESSEL	HENRY SPECK (CANYON)	16.8		PRODUCERS GAS CO
8109050	20645	4241330586	108	#1 PARKER FOODS INC	HENRY SPECK (CANYON)	23.8		PRODUCERS GAS CO
8109316	25601	4241330581	108	#3 CARLENE KEEL	HENRY SPECK (CANYON)	11.0		PRODUCERS GAS CO
-TEXAS PACIFIC OIL COMPANY INC								
8109218	24786							
8109303	25568							
-TOM BROWN INC								
8109103	23547							
8109106	23582							
8109097	23538							
8109101	23543							
8109100	23541							

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8109105	23550	4241330620	108	BUSH THOMPSON #1	HENRY SPECK (CANYON)	14.3	PRODUCERS GAS CO
8109098	23539	4241330358	108	CARLENE KEEL #1	HENRY SPECK (CANYON)	0.2	PRODUCERS GAS CO
8109099	23540	4241330359	108	CARLENE KEEL NO 2	HENRY SPECK (CANYON)	7.7	PRODUCERS GAS CO
8109102	23544	4241330362	108	ELLIS G PARKER #1	HENRY SPECK (CANYON)	24.3	PRODUCERS GAS CO
8109107	23583	4241330612	108	FAULL #1	HENRY SPECK (CANYON)	12.3	PRODUCERS GAS CO
8109104	23549	4241330614	108	PARKER FOODS A #1	HENRY SPECK (CANYON)	20.7	PRODUCERS GAS CO
-TOM RASMUSSEN							
8109269	25429	4223530136	108	RECEIVED: 12/16/80 FARRINGTON #1	CHRISTI (CANYON 6800)	13.0	CRA INC
-TRAVELERS OIL CO							
8109289	25513	4217930713	103	RECEIVED: 12/16/80 MOLAR #1	EAST PANHANDLE	3.7	TRANSWESTERN PIPELIN
-UNIT DRILLING & EXPLORATION CO							
8109196	24650	4229530758	103	RECEIVED: 12/16/80 RANDALL #2	BRADFORD (TOKAWA)	26.0	PHILLIPS PETROLEUM C
-UPHAM OIL & GAS CO							
8109256	25031	4249700000	108	RECEIVED: 12/16/80 AMOS BARKSDALE #1 #29272	BOONSVILLE (BEND CONGL)	2.5	LOWE STAR GAS CO
8109258	25034	4249700000	108	BARKSDALE ESTATE #64484	BARROW (CADDOO)	8.1	LOWE STAR GAS CO
8109246	25021	4249700000	108	C BARKSDALE #2 RRC #38688	BOONSVILLE (STRAWN)	2.1	LOWE STAR GAS CO
8109257	25033	4249700000	108	C T HUNTER #1 RRC #42973	BOONSVILLE (BASAL ATOKA)	5.6	LOWE STAR GAS CO
8109254	25029	4249700000	108	EARL KELLEY #1 RRC #35358	BOONSVILLE (BEND CONGL)	11.9	LOWE STAR GAS CO
8109255	25030	4249700000	108	H JORDAN #1 RRC #29276	BOONSVILLE (BEND CONGL)	4.2	LOWE STAR GAS CO
8109252	25027	4249700000	108	HAROLD SHILLING #2 #51043	BOONSVILLE (BEND CONGL)	2.1	LOWE STAR GAS CO
8109253	25028	4249700000	108	HENRY-CASTLEBERRY #1 #36080	BOONSVILLE (CONSOLIDATED)	13.7	LOWE STAR GAS CO
8109249	25024	4249700000	108	J F HENRY #1 RRC #58973	BOONSVILLE (CONSOLIDATED)	12.6	LOWE STAR GAS CO
8109250	25025	4249700000	108	J O CASTLEBERRY A 1 #58972	BOONSVILLE (CONSOL CONG)	15.8	LOWE STAR GAS CO
8109251	25026	4249700000	108	MARY GUNN #1 RRC #35089	BOONSVILLE (CONSOL CONG)	8.4	LOWE STAR GAS CO
8109247	25022	4249700000	108	ORR #5-C RRC #36639	BOONSVILLE (STRAWN)	2.8	LOWE STAR GAS CO
8109259	25035	4249700000	108	T S MCCURDY #1 10788	BARROW (CADDOO)	2.8	LOWE STAR GAS CO
8109246	25019	4249700000	108	WHITTEN #3 RRC #54557	MORRIS (CONSOLIDATED CON)	15.4	LOWE STAR GAS CO
8109248	25023	4249700000	108	WHITTEN #4-C RRC #21229	BOONSVILLE (STRAWN)	5.3	LOWE STAR GAS CO
8109245	25020	4249700000	108	WHITTEN NO 1-T RRC #39475	MORRIS (CONSOLIDATED CON)	5.3	LOWE STAR GAS CO
-VAQUERO PETROLEUM CO							
8109006	01379	4217531118	102	RECEIVED: 12/16/80 T A TUCKERT #2 78976	ABR NE (2150)	53.0	CORONADO TRANSMISSIO
-VARN PETROLEUM CO							
8109200	24663	4235531480	103	LEVY NO 1	AGUA DULCE (5410)	0.0	ESPERANZA TRANSMISSI
8109199	24662	4235531483	103	WHEELER NO 1-A	AGUA DULCE N (6500 FRIO)	0.0	ESPERANZA TRANSMISSI
-VAUGHAN WELLS CORP							
8109155	24142	4248300000	108	BALTHROPE #1	EAST PANHANDLE	6.0	SHAMROCK GAS CO
8109154	24138	4248300000	108	GARDNER #1	EAST PANHANDLE	11.0	SHAMROCK GAS CO
8109153	24137	4248300000	108	GARDNER #2	EAST PANHANDLE	14.0	SHAMROCK GAS CO
8109151	24135	4248300000	108	HILL #1	E PANHANDLE	7.0	SHAMROCK GAS CO
8109150	24134	4248300000	108	SIMS #1	EAST PANHANDLE	2.0	SHAMROCK GAS CO
8109152	24136	4248300000	108	TINDALL #1	EAST PANHANDLE	8.0	SHAMROCK GAS CO
-W C S PETROLEUM INC							
8109144	23929	4205130712	102	RECEIVED: 12/16/80 PATRICIA SMITH UNIT NO 1	GIDDINGS (AUSTIN CHALK A	912.5	CLAJON GAS CO
-W H (BILL) HOFFMANN							
8109146	23986	4213300000	108	RECEIVED: 12/16/80 J S OOKO NO 1 TO NO 41218	EASTLAND COUNTY REGULAR	11.0	ENSERCH EXPLORATION
-W R EDWARDS JR							
8109215	24729	4223330783	103	BARNHILL WELL NO 15-1	PANHANDLE HUTCHINSON	0.0	PANHANDLE PRODUCING
8109217	24762	4223330823	103	BARNHILL WELL NO 54-1	PANHANDLE HUTCHINSON CO	0.0	PANHANDLE PRODUCING
-WAINCO OIL & GAS COMPANY							
8109012	13966	4231131010	102	CLIFTON L WHEELER NO 1	SAN CAJA SW (BLOCK 86 SD	100.0	LOVACA GATHERING CO
8109012	13966	4231131010	103	CLIFTON L WHEELER NO 1	SAN CAJA SW (BLOCK 86 SD	100.0	LOVACA GATHERING CO
8109022	16755	4237330420	102	OLA LOVE BERGMAN NO 1	LONG KING CREEK (COOK MT	120.0	UNITED GAS PIPE LINE
8109022	16755	4237330420	103	OLA LOVE BERGMAN NO 1	LONG KING CREEK (COOK MT	120.0	UNITED GAS PIPE LINE



VOLUME 345 PAGE 010 PURCHASER

FIELD NAME	PROD	3000.0	128.0	193.0	365.0	40.0	10.9	0.5	250.0	4000.0
MALES (4850)										
COALSON (CONGL 4750)										
LBC (CONGL 4550)										
COALSON (CONGLOMERATE 47										
PALO PINTO COUNTY REGULA										
MPF (YATES) FIELD										
BLOCK A-34 YATES										
MOBY DICK (MARBLE FALLS)										
PANHANDLE										

API NO	SEC	O WELL NAME	12/16/80	JA: TX
4236730974	103	RECEIVED: 12/16/80		
4236700000	103	DOM FEE #1		
4236731618	103	HARWELL #1		
4236731618	103	JOHNSTON UNIT NO 2-C		
4236731618	103	JOHNSTON UNIT NO 2-T		
4236332108	103	YEATS NO 2		
4237130301	108	RECEIVED: 12/16/80		
4200331029	108	E O REED 8 WELL NO 1		
4236731396	102	RECEIVED: 12/16/80		
4206500000	103	CREWS & MAST A #2 PRC #68152		
		RECEIVED: 12/16/80		
		LESTER BYRD #1		
		RECEIVED: 12/16/80		
		BURNETT #4 RRC #04270		

OTHER PURCHASERS

VOLUME NO 1345

8109011	PANHANDLE EASTERN P L CO
8109010	PANHANDLE EASTERN P L CO
8109020	PAEL GAS COMPANY
8109021	PAEL GAS COMPANY
8109033	TEXAS UTILITIES FUEL CO
8109037	KAY PIPELINE INC
8109038	KAY PIPELINE INC
8109039	KAY PIPELINE INC
8109046	PL PASO NATURAL GAS CO
8109051	NATURAL GAS P L CO OF AMER
8109072	NATURAL GAS P L CO OF AMER
8109129	HIGH PLAINS NAT GAS CO
8109140	AMOCO
8109178	AMEL OIL CO
8109187	TNTRATEX GAS CO
8109191	MID PLAINS P L CO
8109201	WINNIE PIPELINE CO
8109217	AMOCO PRODUCTION CO
8109226	NORTHERN NATURAL GAS CO
8109260	NORTHERN NATURAL GAS CO
8109267	ALLIED CHEMICAL
8109269	NORTHERN NATURAL GAS CO
8109291	PANHANDLE EASTERN PIPELINE CO

BILLING CODE 6400-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (\*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 11, 1981.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 81-2844 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-65-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 15, 1981.

[Vol. 348]

JD NO	JA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
*****						
COLORADO OIL & GAS COMMISSION						
*****						
-MALTER S FEES JR						
8109372	CC 121-0	0507708173	102 GOVT #1	EAST BAR X	109.5	NORTHWEST PIPELINE C
8109373	CC 122-0	0507708182	102 GOVT #2-A	EAST BAR X	1825.0	NORTHWEST PIPELINE C
8109374	CC 123-0	0507708198	102 GOVT #31-1	EAST BAR X	72.4	NORTHWEST PIPELINE C
*****						
FLORIDA DEPARTMENT OF NATURAL RESOURCES						
*****						
-EXXON CORPORATION						
8109360		0911320187	107 R D SCOTT NO 41-5	JAY/LEC	584.0	FLORIDA GAS TRANS CO
*****						
KANSAS CORPORATION COMMISSION						
*****						
-BENSON MINERAL GROUP						
8109601	K-79-1686	1505720013	102 BARNGROVER #1	WILLROADS	20.0	CITIES SERVICE
*****						
-TEXACO INC						
8109435	K-79-607	1505500000	108 H M RIFFEL NO 1	HUGOTON	6.6	NORTHERN NATURAL GAS
*****						
LOUISIANA OFFICE OF CONSERVATION						
*****						
-A A CO						
8109449	80-4034	1707321528	103 JOHN WILLIAMS #2	MONROE	33.0	IMC PIPELINE CO
*****						
8109448 80-4033						
-AMOCO PRODUCTION CO						
8109525	80-4111	1707321529	103 JOHN WILLIAMS #3	MONROE	33.0	IMC PIPELINE CO
8109526	80-4112	1702321441	103 GULF LAND A R/A 8 #216	EAST HACKBERRY	80.0	VALLEY GAS TRANSMISS
8109546	80-4132	1702321505	103 GULF LAND A R/A 8 #217	EAST HACKBERRY	20.0	VALLEY GAS TRANSMISS
8109511	80-4097	1702321506	103 GULF LAND A R/A 8 NO 218	EAST HACKBERRY	15.0	VALLEY GAS TRANSMISS
8109545	80-4131	1707720221	107 J M HESS ET AL NO 1	MORGANZA	3650.0	
8109524	80-4110	1702321465	103 MIAMI CORPORATION NO 36	SOUTH PECAN LAKE	1168.0	COLUMBIA GAS TRANSMI
*****						
-APOLLO PETROLEUM CORP						
8109491	80-4077	1702321498	103 STATE LEASE 42 NO 168	WEST HACKBERRY	32.0	VALLEY GAS TRANSMISS
8109492	80-4078	1705921393	103 LOUISIANA PACIFIC NO 2	OLLA	54.0	LOUISIANA INTRASTATE
*****						
-B C M OPERATING CO INC						
8109465	80-4050	1705921418	103 LOUISIANA PACIFIC WELL NO 5	OLLA	54.0	LOUISIANA INTRASTATE
*****						
-CEKA GAS CORP						
8109556	80-4142	1705320638	103 POOL #1 SER #167232	ROANDKE	370.0	UNITED GAS PIPELINE
8109555	80-4141	1711122003	108 HSC NO 11	MONROE GAS	0.1	INTERNATIONAL MINERA
8109479	80-4064	1711122785	103 HSD NO 11	MONROE GAS	0.2	INTERNATIONAL MINERA
8109480	80-4065	1711122764	103 HSD NO 2	MONROE GAS	0.2	INTERNATIONAL MINERA
8109477	80-4062	1711122765	103 HSD NO 3	MONROE GAS	0.2	INTERNATIONAL MINERA
		1711122770	103 HSD NO 4	MONROE GAS	0.1	INTERNATIONAL MINERA

VOLUME 346

PAGE 002

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8109554	80-4140	1711122771	103	HSD NO 5	MONROE GAS	0.1	INTERNATIONAL MINERA
8109478	80-4063	1711122773	103	HSD NO 6	MONROE GAS FIELD	0.1	INTERNATIONAL MINERA
8109481	80-4066	1711122774	103	HSD NO 7	MONROE GAS FIELD	0.1	INTERNATIONAL MINERA
-CHEVRON U S A INC							
8109562	80-4148	1708920388	103	RECEIVED: 12/10/80 JA: LA BYV 8300 RA SU S L 2704 #21-D	BAYOU VILLARS	48.0	SOUTHERN NATURAL GAS
8109561	80-4147	1708920388	103	8YV 8400 RA SU S L 2704 #21	BAYOU VILLARS	52.0	SOUTHERN NATURAL GAS
8109552	80-4138	1712120116	107	19800 TUSC RA SUI FARMELL #3	FALSE RIVER	3650.0	
-CITIES SERVICE COMPANY							
8109441	80-4019	1711920252	102	RECEIVED: 12/10/80 JA: LA INTERNATIONAL PAPER CO A NO 1	NORTH SHONGALOO - RED RO	150.0	UNITED GAS PIPE LINE
8109559	80-4145	1702720550	102	PET RA SU EE THATCHER H #1	PANTHER CREEK PETTET 720	1.0	
8109560	80-4146	1702720548	102	PET RA SU T THATCHER G #1	PANTHER CREEK PETTET 720	2.0	
-COTTON PETROLEUM CORPORATION							
8109439	80-4021	1703720011	107	RECEIVED: 12/10/80 JA: LA MORRIS HEIRS NO 1	FREELAND	15.0	TRANSCONTINENTAL GAS
-CRYSTAL OIL COMPANY							
8109493	80-4079	1701320408	103	RECEIVED: 12/10/80 JA: LA DENEY S KENDRICK JR ET AL #1	WEST ARCADIA	251.8	TEXAS GAS TRANSMISSION
-DAVIS-GOODMAN OIL CO							
8109557	80-4143	1702321503	103	RECEIVED: 12/10/80 JA: LA CUTLER OIL & GAS 3 (M22 RASUA)	TWIN ISLAND	0.0	LOUISIANA RESOURCES
-DORCHESTER EXPLORATION INC							
8109542	80-4128	1711920237	103	RECEIVED: 12/10/80 JA: LA BRANTON NO 1 - SERIAL NO 165868	SHONGALOO	73.0	TEXAS GAS TRANSMISSION
-EXCHANGE OIL & GAS CORPORATION							
8109543	80-4129	1770020164	103	RECEIVED: 12/10/80 JA: LA S L 6698 #1	WEST CAMERON BLOCK 13	2000.0	LOUISIANA RESOURCES
-EXXON CORPORATION							
8109578	80-4167	1704520645	107	RECEIVED: 12/10/80 JA: LA D-4 RF VU 8 PETIT ANSE CO NO 74	EVERY ISLAND	300.0	COLUMBIA GAS TRANS C
8109523	80-4109	1709920842	103	OL OPERC 6 RA SU GOODRICH C #15-0	DUCK LAKE	100.0	UNITED GAS PIPE LINE
8109520	80-4106	1709320166	103	E H KARSTIEN NO 2	COLLEGE POINT-ST JAMES	300.0	UNITED GAS PIPE LINE
8109574	80-4163	1711320908	103	EXXON FEE-PECAN ISLAND NO 74-D	PECAN ISLAND	1800.0	COLUMBIA GAS TRANS C
8109575	80-4164	1711320933	103	EXXON FEE-PECAN ISLAND NO 78	PECAN ISLAND	5000.0	COLUMBIA GAS TRANS C
8109573	80-4162	1705700067	108	ROB 3 RA SUI C J COULON NO 8-D	CHACHAHOULA	6.0	UNITED GAS PIPE LINE
-GREAT SOUTHERN OIL & GAS CO INC							
8109482	80-4068	1701920787	103	RECEIVED: 12/10/80 JA: LA CAM 1 RC SUIA ALBRECHT HEIRS #3	LAKE CHARLES SOUTH	165.0	CONOCO INC
-HADDIX PETROLEUM CORP							
8109459	80-4044	1711122768	103	RECEIVED: 12/10/80 JA: LA MCGOUGH #1	MONROE	0.0	IMC PIPELINE
8109454	80-4039	1711122769	103	MCGOUGH #2	MONROE	0.0	IMC PIPELINE
-HOOTKINS-SMITH LA LTD							
8109447	80-4032	1711122576	103	RECEIVED: 12/10/80 JA: LA J D VESTAL #1	MONROE	11.0	TEXAS GAS TRANSMISSION
8109445	80-4030	1711122575	103	J V MCVICKER #1	MONROE GAS FIELD	11.0	TEXAS GAS TRANSMISSION
8109446	80-4031	1711122582	103	MATTIE B DAVIS #1	MONROE	11.0	TEXAS GAS TRANSMISSION
8109553	80-4139	1711122844	103	RECEIVED: 12/10/80 JA: LA MANDA HEVRON #1	MONROE GAS	7.0	TEXAS GAS TRANSMISSION
-HOWELL PETROLEUM CORP							
8109563	80-4149	1707522703	103	RECEIVED: 12/10/80 JA: LA MID 118 RC SUIA OLB C #1-D	POTASH	0.0	UNITED GAS P L CO
8109558	80-4144	1707522703	102	ORLEANS LEVEE BOARD C 1-C	POTASH FIELD	86.0	UNITED GAS PIPELINE
-IMC EXPLORATION COMPANY							
8109497	80-4083	1711122837	103	RECEIVED: 12/10/80 JA: LA OLIN GAS TRANSMISSION CO #81	MONROE	36.5	IMC PIPELINE CO
-INEXCO OIL COMPANY							
8109514	80-4100	1702321460	103	RECEIVED: 12/10/80 JA: LA MIAMI CORP NO 2	LAKE MISERE	100.0	LOUISIANA RESOURCES
-JOHN D CARUTHERS JR							
8109462	80-4047	1702720537	102	RECEIVED: 12/10/80 JA: LA PET RA SU H-BUGGS #2	PANTHER CREEK	127.0	
8109461	80-4046	1702720533	102	PET RA SU Q BUGGS #1	PANTHER CREEK	47.0	
8109460	80-4045	1702720532	102	PET PA SU R LEWIS #1	PANTHER CREEK	27.0	
-JUSTISS-WEARS OIL CO INC							
8109438	80-4018	1702120695	103	RECEIVED: 12/10/80 JA: LA HADDEN RA SU B WORACK #1	NORTH CLARKS	0.0	LOUISIANA INTRASTATE
-LAHOMA GAS COMPANY							

JD NO	JA DKT	API NO	SEC D	WFL NAME	FIELD NAME	PROD	PURCHASER
8109488	80-4074	1707321500	103	ABE ARENT ET AL #6 - 170621	MONROE GAS ROCK		12.4 IMC PIPELINE CO IMC
8109487	80-4073	1707321484	103	UNION PRODUCING #13 - 170589	MONROE GAS ROCK		20.8 IMC PIPELINE CO IMC
8109486	80-4072	1707321501	103	UNION PRODUCING #14 - 170622	MONROE GAS ROCK		19.0 IMC PIPELINE CO IMC
8109485	80-4077	1707321502	103	UNION PRODUCING #15 - 170623	MONROE GAS ROCK		21.5 IMC PIPELINE CO IMC
8109484	80-4070	1707321503	103	UNION PRODUCING #16 170624	MONROE GAS ROCK		30.3 IMC PIPELINE CO IMC
				RECEIVED: 12/10/80 JA: LA			
8109551	80-4137	1711122302	108	BARR NO 3	MONROE		0.0 TEXAS GAS TRANSMISSION
8109549	80-4135	1711122411	108	CROW NO 1	MONROE		0.0 TEXAS GAS TRANSMISSION
8109550	80-4136	1711122282	108	HATLE NO 1	MONROE		0.0 TEXAS GAS TRANSMISSION
8109548	80-4134	1711122412	108	K D LANKFORD NO 5	MONROE		0.0 TEXAS GAS TRANSMISSION
				RECEIVED: 12/10/80 JA: LA			
				ANTHONY LULICH NO 1			
8109510	80-4096	17075222694	102	RECEIVED: 12/10/80 JA: LA	FORT JACKSON		730.0
				RECEIVED: 12/10/80 JA: LA			
				C N TAYLOR 1 167214			
				RECEIVED: 12/10/80 JA: LA			
				FBC RA SU 108 COVINGTON #2	LOGANSPOUT		0.0 TENNESSEE GAS PIPELINE
				FBC RA SU 131 MARY WALLACE #1	LOGANSPOUT		0.0 TENNESSEE GAS PIPELINE
				FBC RA SU 143 COVINGTON #5	LOGANSPOUT		0.0 TENNESSEE GAS PIPELINE
				FBC RA SU 146 A E ATWOOD #1	LOGANSPOUT		0.0 TENNESSEE GAS PIPELINE
				RAMSEY #5-D	LOGANSPOUT		38.0 TENNESSEE GAS PIPELINE
				RECEIVED: 12/10/80 JA: LA			
				MLGC FEE GAS NO 826	MONROE FIELD		25.9
8109534	80-4120	1711121956	103	MLGC FEE GAS NO 826	MONROE FIELD		36.0
8109531	80-4117	1711122570	103	MLGC FEE GAS NO 925	MONROE FIELD		36.0
8109532	80-4118	1711122586	103	MLGC FEE GAS NO 929	MONROE FIELD		36.0
8109535	80-4121	1711122600	103	MLGC FEE GAS NO 934	MONROE FIELD		36.0
8109536	80-4122	1711122603	103	MLGC FEE GAS NO 937	MONROE FIELD		27.0
8109537	80-4123	1711122609	103	MLGC FEE GAS NO 939	MONROE FIELD		51.8
8109538	80-4124	1711122645	103	MLGC FEE GAS NO 943	MONROE FIELD		24.1
8109533	80-4119	1711122657	103	MLGC FEE GAS NO 948	MONROE FIELD		9.3
8109539	80-4125	1711122659	103	MLGC FEE GAS NO 950	MONROE FIELD		24.4
8109529	80-4115	1711122676	103	MLGC FEE GAS NO 953	MONROE FIELD		7.2
8109530	80-4116	1711122677	103	MLGC FEE GAS NO 954	MONROE FIELD		7.2
8109476	80-4061	1707321445	103	MLGC FEE GAS NO 969	MONROE FIELD		26.2
8109474	80-4059	1707321446	103	MLGC FEE GAS NO 970	MONROE FIELD		32.7
8109473	80-4058	1707321463	103	MLGC FEE GAS NO 971	MONROE FIELD		21.6
8109472	80-4057	1707321462	103	MLGC FEE GAS NO 972	MONROE FIELD		32.4
8109471	80-4056	1707321461	103	MLGC FEE GAS NO 973	MONROE FIELD		27.3
8109470	80-4055	1707321460	103	MLGC FEE GAS NO 974	MONROE FIELD		25.2
8109540	80-4126	1707321459	103	MLGC FEE GAS NO 975	MONROE FIELD		27.0
8109469	80-4054	1707321458	103	MLGC FEE GAS NO 976	MONROE FIELD		21.6
8109468	80-4053	1707321464	103	MLGC FEE GAS NO 977	MONROE FIELD		25.5
8109467	80-4052	1707321464	103	MLGC FEE GAS NO 978	MONROE FIELD		12.2
8109541	80-4127	1711122707	103	MLGC FEE GAS NO 979	MONROE FIELD		29.2
8109502	80-4088	1711122708	103	MLGC FEE GAS NO 980	MONROE FIELD		21.6
8109503	80-4089	1711122712	103	MLGC FEE GAS NO 982	MONROE FIELD		36.0
8109504	80-4090	1711122713	103	MLGC FEE GAS NO 983	MONROE FIELD		36.0
8109505	80-4091	1711122729	103	MLGC FEE GAS NO 984	MONROE FIELD		36.0
8109506	80-4092	1711122732	103	MLGC FEE GAS NO 988	MONROE FIELD		32.4
8109507	80-4093	1711122733	103	MLGC FEE GAS NO 989	MONROE FIELD		27.0
8109508	80-4094	1711122734	103	MLGC FEE GAS NO 990	MONROE FIELD		28.0
8109509	80-4095	1711122745	103	MLGC FEE GAS NO 996	MONROE FIELD		28.8
8109466	80-4051	1711122746	103	MLGC FEE GAS NO 997	MONROE FIELD		14.4

JD NO	JA DKT	API NO	SEC	O WELL NAME	FIELD NAME	PROD	PURCHASER
8109475	80-4060	1711122747	103	MLGC FEE GAS NO 998 RECEIVED: 12/10/80	MONROE FIELD	14.4	
-MITCHELL ENERGY CORPORATION							
8109522	80-4108	1707321293	103	BRIMBERRY-HILL #1-0	C-SAND	175.0	
8109521	80-4107	1707321293	103	BRIMBERRY-HILLS #1	D-SAND	200.0	
-PAXTON PETROLEUM LTD							
8109440	80-4022	1707720094	108	W O WATSON NO 1 SERIAL NO 126 145 RECEIVED: 12/10/80	BAYOU LATENACHE	0.0	TEXAS EASTERN TRANSM
-PENNZOIL PRODUCING COMPANY							
8109515	80-4101	1710921966	103	CONT LAND & FUR CO SA NO 11 RECEIVED: 12/10/80	KENT BAYOU FIELD	800.0	UNITED GAS PIPE LINE
-PICKENS CO INC							
8109544	80-4130	1705320650	103	M A LEBLANC RECEIVED: 12/10/80	WEST TEPETATE	548.0	COMOCO INC
-PLACID OIL COMPANY							
8109569	80-4158	1701320453	103	VUE WIMBERLY NO 3	LUCKY	550.0	TEXAS EASTERN TRANSM
8109570	80-4159	1701320454	103	VUP IPB 15 NO 1	LUCKY	73.0	TEXAS EASTERN TRANSM
8109547	80-4133	1701320363	102	VUR TOBIN NO 1 RECEIVED: 12/10/80	LUCKY	3650.0	TEXAS EASTERN TRANSM
-RELANCE TR-JV							
8109494	80-4080	1711122157	108	BEN POST #1	MONROE	0.0	TEXAS GAS TRANSMISSI
8109498	80-4084	1711122812	103	D H MCVICKER #1	MONROE GAS	11.0	TEXAS GAS TRANSMISSI
8109495	80-4081	1711122167	108	HOPKINS ESTATE #2	MONROE	0.0	TEXAS GAS TRANSMISSI
8109496	80-4082	1711122181	108	HOPKINS ESTATE #3	MONROE	0.0	TEXAS GAS TRANSMISSI
8109499	80-4085	1711122161	103	OLINKRAFT #6	MONROE	11.0	TEXAS GAS TRANSMISSI
8109458	80-4043	1711122673	103	R L EDWARDS #2 RECEIVED: 12/10/80	MONROE GAS	11.0	TEXAS GAS TRANSMISSI
-RELANCE TRUSTS							
8109500	80-4086	1711122838	103	T L JAMES #1	MONROE GAS	11.0	TEXAS GAS TRANSMISSI
8109501	80-4087	1711122614	103	T L JAMES #3 RECEIVED: 12/10/80	MONROE GAS	11.0	TEXAS GAS TRANSMISSI
-RENUDA OIL & GAS CO							
8109453	80-4038	1706900278	108	BOONE NO 1 SER #155150	GROGAN	3.2	LUMAR GAS GATHERING
8109452	80-4037	1703120816	108	J T RAMSEY A NO 1	GROGAN	0.5	LUMAR GAS GATHERING
8109450	80-4035	1703120720	108	MINNIE LEE BOONE NO 1	GROGAN	7.3	LUMAR GAS GATHERING
8109451	80-4036	1703120756	108	MINNIE LEE BOONE NO 2 RECEIVED: 12/10/80	GROGAN	10.8	LUMAR GAS GATHERING
-RESOURCES INVESTMENT CORPORATION							
8109513	80-4099	1701920866	103	PRAIRIE CANAL CO INC #1	SOUTH LAKE CHARLES	0.0	LOUISIANA INTRASTATE
8109512	80-4098	1701920866	103	PRAIRIE CANAL CO INC #1-D RECEIVED: 12/10/80	SOUTH LAKE CHARLES	0.0	LOUISIANA INTRASTATE
-ROBERSON WELL SERVICE							
8109527	80-4113	1707321477	103	W A SMITH #1	MONROE	21.9	UNITED GAS PIPELINE
8109528	80-4114	1707321478	103	W A SMITH #2 RECEIVED: 12/17/80	MONROE	21.9	UNITED GAS PIPELINE
-SEVARG COMPANY INC							
8109437	80-3493	1709720501	102	ALLEN SMITH NO 1 RECEIVED: 12/10/80	SAVOY	185.0	TEXAS EASTERN TRANSM
-SHADRACK PRODUCTION CO							
8109443	80-4028	1711122751	103	R S ALLEN #1	MONROE	30.0	WEST MONROE GAS GATH
8109444	80-4029	1711122752	103	R S ALLEN JR ET AL #1 RECEIVED: 12/10/80	MONROE	30.0	WEST MONROE GAS GATH
-SUN OIL COMPANY (DELAWARE)							
*8109516	80-4102	1705721699	103	OIBERT STARK & BROWN NO 95 RECEIVED: 12/10/80	CHACHAHOULA	8.0	LOUISIANA INTRASTATE
-SUPERIOR OIL CO							
8109577	80-4166	1702321278	102	NORTH AMERICAN LAND CO NO 1 RECEIVED: 12/10/80	DEEP LAKE	2100.0	
-TEXACO INC							
8109519	80-4105	1709920802	103	FP 9 STRAY RA SU SL 293 138	FAUSSE POINTE	12.0	FLORIDA GAS TRANSMIS
*8109489	80-4075	1707522309	103	SL 214 GARDEN ISLAND BAY 844	GARDEN ISLAND BAY	7.0	SOUTHERN NATURAL GAS
8109442	80-4023	1707200807	103	SL 340 MOUND POINT NO 67 RECEIVED: 12/10/80	MOUND POINT	2372.0	TEXAS GAS TRANSMISSI
-TEXAS INTERNATIONAL PET CORP							
8109517	80-4103	1772720125	103	STATE LEASE 4147 #15	HALF MOON LAKE	1000.0	SOUTHERN NATURAL GAS
8109518	80-4104	1772720125	103	STATE LEASE 4147 #15-0 RECEIVED: 12/10/80	HALF MOON LAKE	1000.0	SOUTHERN NATURAL GAS
-TEXAS OIL & GAS CORP							
8109455	80-4040	1703121306	103	PET RA SUI5 GAMBLE A #2	BETHANY-LONGSTREET	183.0	ARKANSAS LOUISIANA G

500.0 TEXAS GAS TRANSMISSI  
1000.0 UNITED GAS PIPE LINE

79.6  
33.6  
456.0 UNITED GAS PIPELINE  
105.0 LOUISIANA INTRASTATE  
1934.0  
1095.0 LOUISIANA RESOURCES

3.0 DOW CHEMICAL CO  
1.0 DOW CHEMICAL CO  
12.0 DOW CHEMICAL CO  
9.0 DOW CHEMICAL CO  
3.0 DOW CHEMICAL CO  
8.0 DOW CHEMICAL CO  
11.0 DOW CHEMICAL CO  
18.0 DOW CHEMICAL CO  
7.0 DOW CHEMICAL CO  
5.0 DOW CHEMICAL CO  
25.0 CONSUMERS POWER CO

11.0 NORTHERN NATURAL GAS

180.0 SUN GAS CO  
200.0 PIONEER GAS PRODUCTS

185.0 DELHI GAS PIPELINE C  
185.0 DELHI GAS PIPELINE C  
185.0 DELHI GAS PIPELINE C  
0.0 DELHI GAS PIPELINE C

0.0 WELLHEAD ENTERPRISES  
0.0 PANHANDLE EASTERN PI  
951.0 MICHIGAN-WISCONSIN P

LAKE PAGIE  
HOUMA

PANTHER CREEK  
PANTHER CREEK  
VERNON  
CONVERSE  
LAPEYROUSE  
NORTH CREOLE

ST HELEN  
ST HELEN  
ST HELEN  
ST HELEN  
ST HELEN  
ST HELEN  
ST HELEN  
ST HELEN  
ST HELEN  
ST HELEN

BEAR LAKE 2A

SHEPARD

N WELLSTON  
SE LAMBERT

ATOKA

RECEIVED: 12/10/80 JA: LA  
TEX (W) 5 U RB SVA LATERRRE D 5  
8700 RB SVA C S GAIDRY 6  
RECEIVED: 12/10/80 JA: LA

PET RA SUN THATCHER A NO 1  
PET RA SUP THATCHER NO 3  
RECEIVED: 12/10/80 JA: LA  
CV C SUG GENERAL JONES 168142  
RECEIVED: 12/10/80 JA: LA  
JAMES RA SU J WHITNEY #2  
RECEIVED: 12/10/80 JA: LA  
D. BOURG NO 1  
PLAN 3 RA SVA QUINN NO 1

RECEIVED: 12/16/80 JA: MI  
ST HELEN UNIT TRACT 1 #5  
ST HELEN UNIT TRACT 15 #33  
ST HELEN UNIT TRACT 15 #37  
ST HELEN UNIT TRACT 15 #38  
ST HELEN UNIT TRACT 2 #17  
ST HELEN UNIT TRACT 11 #5  
ST HELEN UNIT TRACT 15 #36  
ST HELEN UNIT TRACT 15 #39  
ST HELEN UNIT TRACT 18 #5  
ST HELEN UNIT TRACT 18 #6  
RECEIVED: 12/16/80 JA: MI

MYERS-OLSON #1-2

RECEIVED: 12/19/80 JA: MT  
SLEMAKER 16-5-T26-RITE

RECEIVED: 12/17/80 JA: OK  
#1 CHANDLER 081-20737

RECEIVED: 12/17/80 JA: OK  
CASTLE 8 NO 1-14  
RECEIVED: 12/17/80 JA: OK  
ALF ADALE FARMS #2-2

RECEIVED: 12/18/80 JA: OK  
DAVIS-GILSON #19-1  
MALTON #11-1  
RECEIVED: 12/17/80 JA: OK  
K C CATTLE #2-3  
RECEIVED: 12/17/80 JA: OK

UNION OIL COMPANY OF CALIF  
8109571 80-4160  
8109572 80-4161  
--W A MONCIEF

8109463 80-4048  
8109464 80-4049  
--WESSELY ENERGY CORPORATION  
8109457 80-4042  
--WHITE & ELLIS DRILLING INC  
8109456 80-4041  
--WILLIAMS EXPLORATION COMPANY  
8109483 80-4069  
8109490 80-4076

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

2114331916 103  
2114331917 103  
2114333462 103  
2114333463 103  
2114331722 103  
2114333425 103  
2114333465 103  
2114333464 103  
2114333478 103  
2114333424 103  
2110133577 102  
MONTANA BOARD OF OIL & GAS CONSERVATION  
--TRICENTROL UNITED STATES INC  
8109600 2501521420 108  
OKLAHOMA CORPORATION COMMISSION

AL MCCORD INC

8109429 06519  
--ANADARKO PRODUCTION COMPANY  
8109385 06480  
--ANDOVER OIL COMPANY  
8109396 06878  
8109395 06954  
8109417 07033  
8109380 06512  
--ANDOVER OIL COMPANY  
8109588 06564  
8109589 06563  
--APACHE CORPORATION  
8109420 09555  
--BELAMA OIL CO

3508120737 102  
3500320669 103  
3501721492 103  
3501721444 102  
3501721528 103  
3501721446 103

3504722760 103  
3509321749 103  
3500920348 107

JO NO	JA DKT	APT NO	SEC D WELL NAME	RECEIVED	JA: OK	FIELD NAME	PROD	PURCHASER
8109379	06513	3509321720	103 TANNER NO 1 WELL	RECEIVED: 12/18/80	JA: OK	S AMES	---	0.0 CITIES SERVICE GAS C
-CACTUS ENERGY			DOON LANE #1			NEW FIELD		365.0 DIAMOND S GAS SYSTEM
8109579	07118	3513120871	102	RECEIVED: 12/17/80	JA: OK	SOONER TREND		50.0 CITIES SERVICE GAS C
-CLARK RESOURCES INC			BOENS #18-1			SOONER TREND		146.0 ARCO OIL & GAS CO
8109591	06559	3509300000	103	MILLER #20-1		SOONER TREND		50.0 COMOCO INC
8109590	06560	3504722078	103	TRFEE #16-1		SOONER TREND		
8109434	06558	3507322460	103	RECEIVED: 12/17/80	JA: OK	WEST ORIENTA		365.0 AMINOIL USA INC
-CLAYTON E LEE			MARSHALL #1					
8109412	06537	3506321019	103	MCKEE #1				78.0 ARKANSAS LOUISIANA P
8109411	06538	3506321006	103	RECEIVED: 12/18/80	JA: OK			78.0 ARKANSAS LOUISIANA P
-DEMCO OIL & GAS COMPANY			HENSLEY #2					
*8109582	06604	3507121938	103	KAHLE #1-1				32.8 CITIES SERVICE GAS C
8109581	06605	3507121993	103	PATTEN #2				215.0 CITIES SERVICE GAS C
8109583	06603	3507121988	103	RECEIVED: 12/17/80	JA: OK			60.0 CITIES SERVICE GAS C
-EARLSBORG OIL AND GAS CO INC			OTTO WAHL NO 1					
8109384	06490	3509321728	103	VEGAS #2				360.0 DIAMOND S GAS SYSTEM
-EDWARD L WOFFORD JR			RECEIVED: 12/17/80					
8109391	07005	3513121008	102	MASSEY UNIT #1				300.0 MICHIGAN WISCONSIN P
-GEORGE F CLEMENTS JR			RECEIVED: 12/17/80					
8109388	06385	3504520718	103	RECEIVED: 12/17/80	JA: OK	NORTH CHANEY		
-GETTY OIL COMPANY			J M ROBBERTSON WELL #9					
*8109408	06509	3513722184	103	SAMMYER GAS UNIT #2		SHO-VEL-TUM		292.0 LOME STAR GAS CO
8109383	06491	3504721590	103	RECEIVED: 12/18/80	JA: OK	SOONER TREND		237.0 OKLAHOMA GAS & ELECT
-GETTY OIL COMPANY			GLADYS MATHEWS #2					
*8109587	06569	3506120321	103	MADRON A-2		KINTA		366.0 OKLAHOMA GAS & ELECT
-GREAT SOUTHERN ENTERPRISES INC			MADRON A-3			MADRON LEASE		73.0 NUMBER ONE PIPELINE
*8109584	06574	3514721490	103	RECEIVED: 12/17/80	JA: OK	MADRON LEASE		73.0 NUMBER ONE PIPELINE
*8109585	06573	3514721489	103	RECEIVED: 12/17/80	JA: OK	SOONER TREND		2.0 PHILLIPS PETROLEUM C
-HARPER OIL COMPANY			RENSHAW #1					
8109382	06495	3507300000	108	POND NO 1-34				328.0 MICHIGAN WISCONSIN P
-HELMERICH & PAYNE INC			RECEIVED: 12/17/80					
8109397	07063	3501520882	102	EBERLY AND HEADE WASON #2-18		KINTA FIELD		146.0 ARKANSAS LOUISIANA G
-JAMES C READE			RECEIVED: 12/18/80			W LOWELL		29.0 EASON OIL CO
8109399	06785	3506100000	102	VADDER #1		BEGGS		30.0 PHILLIPS PETROLEUM C
-JET OIL COMPANY			RECEIVED: 12/17/80			BEGGS		55.0 PHILLIPS PETROLEUM C
8109586	06572	3507322284	103	RECEIVED: 12/17/80	JA: OK	ENID NORTHEAST		109.5 CITIES SERVICE GAS C
-KRUMME OIL CO			RABBIT NO 1			CHICKASHA		0.0 ARKANSAS LOUISIANA G
8109381	06511	3511121636	103	STAKE NO 1		CHICKASHA		0.0 ARKANSAS LOUISIANA G
8109409	06510	3511121630	103	BENKENDORF NO 2		ARNETT SW (MORROW)		547.0 PRODUCERS GAS CO
-LADDO PETROLEUM CORPORATION			RECEIVED: 12/17/80					
8109427	06535	3504722073	103	RECEIVED: 12/17/80	JA: OK	S M WAUKOMIS		4.7 OKLAHOMA NAT GAS CO
-LAMMASTER DRILLING CO			ARKLA #1			SHO-VEL-TUM		1.4 OKLAHOMA NATURAL GAS
8109414	06568	3505120934	103	FARWELL #1		CHITWOOD		9.5 NATURAL GAS PIPELINE
8109415	06571	3505121008	103	RECEIVED: 12/17/80	JA: OK	NORTH HEALDOOM		6.5 AMINOIL USA INC
-MAY PETROLEUM INC			RECEIVED: 12/17/80					
8109592	06607	3504520784	102	RECEIVED: 12/17/80	JA: OK			
-MOBIL OIL CORP			CHARLEY WILSON #1					
*8109421	06516	3504700000	108	ADOLPH MORAVE C #1				
8109422	06517	3513700000	108	M F WAGNER #2				
8109377	06515	3505100000	108	RECEIVED: 12/17/80	JA: OK			
-MORAN EXPLORATION INC			RECEIVED: 12/17/80					
8109423	06520	3501900000	108	RECEIVED: 12/17/80	JA: OK			
			KECK #1					





VOLUME 346 PAGE 008  
PURCHASER

FIELD NAME	PROD	PRODUCTION
GREASY CREEK	2.5	TRANSOK PIPE LINE CO
GREASY CREEK	19.0	TRANSOK PIPE LINE CO
WATONGA TREND N MINCO	78.0	ARKLA GAS CO
	55.0	PUBLIC SERVICE CO OF
CHANEY DELL S HELENA	22.0	PANHANDLE EASTERN PI
	61.0	PANHANDLE EASTERN PI
NE MUSTANG	300.0	MOBIL OIL CORP
ALINE	280.0	MICHIGAN - WISCONSIN
ANTIOCH N E THOMAS	700.0	WARREN PETROLEUM CO
	365.0	ARKANSAS LOUISIANA G
MATERIAL BUTTES UNIT	95.0	COLORADO INTERSTATE
ISLAND FIELD	365.0	PACIFIC GAS & ELECTR
ISLAND FIELD	200.0	PACIFIC GAS & ELECTR

J.D. NO.	JA. DKT.	API NO.	SEC. D. WELL NAME	RECEIVED	JA.	UT
8109406	06121	3506300000	ROGERS #1 063-27434	12/18/80	JA:	OK
-TRIDON OIL INC			CRAMFORD #4 063-43955	12/17/80	JA:	OK
8109597	06117	3501520715	SLEMP NO 1	12/17/80	JA:	OK
-TRIGG DRILLING COMPANY INC			TOMLIN #1	12/17/80	JA:	OK
8109416	07010	3500320704	JONES #17-1	12/17/80	JA:	OK
8109392	06980	3500320713	SOMERS #18-1	12/17/80	JA:	OK
-UNIT OPERATIONS			MCINTYRE #2	12/17/80	JA:	OK
8109400	06541	3501721452	RECEIVED: 12/18/80	12/17/80	JA:	OK
8109410	06540	3515121029	ZAHORSKY #1	12/17/80	JA:	OK
-WILLIS EXPLORATION INC			RECEIVED: 12/17/80	12/17/80	JA:	OK
8109386	06467	3504921257	DOBSON #12-1	12/17/80	JA:	OK
-M J OCCINOR			DOROTHY COOKE #16-1	12/17/80	JA:	OK
8109594	06524	3503920333	CASPER, NY	12/17/80	JA:	OK
-WOODS PETROLEUM CORPORATION			RECEIVED: 12/17/80	12/17/80	JA:	OK
8109401	06543	4304730478	RECEIVED: 12/17/80	12/17/80	JA:	UT 5
8109387	06466	4304730612	RECEIVED: 12/17/80	12/17/80	JA:	UT 5
U.S. GEOLOGICAL SURVEY - CASPER, NY						
-GAS PRODUCING ENTERPRISES INC						
8109371	UC 31-0	4304730266	RECEIVED: 12/17/80	12/17/80	JA:	UT 5
-MAPCO PRODUCTION COMPANY						
8109375	UC 1265-9	4304730266	RECEIVED: 12/17/80	12/17/80	JA:	UT 5
8109376	UC 1264-9	4304730266	RECEIVED: 12/17/80	12/17/80	JA:	UT 5

OTHER PURCHASERS

VOLUME NO 1346

8109400 PANHANDLE EASTERN PIPE LINE COMPANY  
 8109408 OKLA NATURAL GAS CO  
 8109421 PANHANDLE EASTERN PIPELINE CO  
 8109426 MICHIGAN WISCONSIN PIPELINE CO  
 8109489 TRANSCONTINENTAL GAS P L CORP  
 8109518 AMCO PRODUCTION CO  
 8109482 PHASE EXPLORATION CORPORATION  
 8109504 NUMBER ONE PIPELINE COMPANY  
 8109485 NUMBER ONE PIPELINE COMPANY  
 8109487 ARKANSAS LOUISIANA GAS CO

BILLING CODE 6453-65-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (\*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 11, 1981.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc 81-2645 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Vol. 347]

## Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 15, 1981.

JO NO	JA DKT	API NO	SEC D WFL NAME	FIELD NAME	PROD	PURCHASER
*****						
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES						
*****						
-ADDBE OIL & GAS CORPORATION	8109703	3706324908	103 RECEIVED: 12/22/80	ROCHESTER MILLS	21.0	TEXAS EASTERN TRANSMISSION
-AMOCO PRODUCTION CO	8109691	3711120095	102 RECEIVED: 12/22/80	INDIANTOWN	150.0	COLUMBIA GAS TRANSMISSION
-APPALACHIAN ENERGY INC	8109664	3704921010	102 RECEIVED: 12/22/80	UPPER DEVONIAN SANDS	30.0	COLUMBIA GAS TRANSMISSION
-ARMCLAR GAS CO	8109701	3700522495	103 RECEIVED: 12/22/80	HOGBACK	18.0	COLUMBIA GAS TRANSMISSION
-ARTHUR L & EVELYN M HUFFMAN	8109696	3705900000	108 RECEIVED: 12/22/80	JACKSON TOWNSHIP CENTER	10.0	COLUMBIA GAS TRANSMISSION
-ATLAS RESOURCES INC	8109692	3706325582	103 RECEIVED: 12/22/80	GRANT	5.0	COLUMBIA GAS TRANSMISSION
-BOYD & SHRIVER	8109694	3700500000	108 RECEIVED: 12/22/80	WAYNE	4.9	APOLLO GAS CO
-CARL E MCCALL	8109702	3703120643	103 RECEIVED: 12/22/80	PANTER	15.0	COLUMBIA GAS TRANSMISSION
-DORAN & ASSOCIATES INC	8109669	3706325046	103 RECEIVED: 12/22/80	UPPER DEVONIAN SANDS	30.0	CONSOLIDATED GAS SUPPLY
-FELMONT OIL CORPORATION	8109676	3706324834	103 RECEIVED: 12/22/80	UPPER DEVONIAN SANDS	30.0	INDUSTRIAL ENERGY SERVICES
-FOX OIL & GAS INC	8109674	3706320034	108 RECEIVED: 12/22/80	PIPE	10.5	COLUMBIA GAS TRANSMISSION
-HUFFMAN-MILLER	8109693	3711120022	108 RECEIVED: 12/22/80	BOSWELL FIELD	3.5	PEOPLES NATURAL GAS
-J & J ENTERPRISES INC	8109705	3711120011	108 RECEIVED: 12/22/80	BOSWELL FIELD	8.3	PEOPLES NATURAL GAS
-MERICAN OIL & GAS ENT INC	8109657	3711120017	108 RECEIVED: 12/22/80	LIMCOLN	19.3	PEOPLES NATURAL GAS
-MERIDIAN OIL & GAS ENT INC	8109659	3706325672	103 RECEIVED: 12/22/80	MONTGOMERY	25.5	COLUMBIA GAS TRANSMISSION
-MORANK OIL CORPORATION	8109658	3706325066	103 RECEIVED: 12/22/80	MONTGOMERY	25.5	COLUMBIA GAS TRANSMISSION
	8109659	3700320978	103 RECEIVED: 12/22/80	PLUM BOROUGH	25.5	T W PHILLIPS GAS & OIL
	8109704	3705100000	108 RECEIVED: 12/22/80	NICHOLSON	1.7	COLUMBIA GAS TRANSMISSION
	8109680	3706325623	103 RECEIVED: 12/22/80	WHITE CANOE	200.0	COLUMBIA GAS TRANSMISSION
	8109660	3706322759	108 RECEIVED: 12/22/80	YOUNG	17.5	CONSOLIDATED GAS SUPPLY
	8109658	3706322777	108 RECEIVED: 12/22/80	YOUNG	6.0	PEOPLES NATURAL GAS
	8109659	3706321499	108 RECEIVED: 12/22/80	YOUNG	2.5	PEOPLES NATURAL GAS
	8109658	3706321500	108 RECEIVED: 12/22/80	YOUNG	6.0	PEOPLES NATURAL GAS
	8109659	3706321637	108 RECEIVED: 12/22/80	YOUNG	4.0	PEOPLES NATURAL GAS

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8109667	6042	3703920124	108	CONSTANTINOVICH #1	HAYFIELD	0.5	NATIONAL FUEL GAS SU
8109673	6041	3703920098	108	HANSEN #1	HAYFIELD	5.5	NATIONAL FUEL GAS SU
8109672	6040	3703920125	108	HOUCK #1	HAYFIELD	0.1	NATIONAL FUEL GAS SU
8109671	6039	3703920085	108	MARTIN #1	HAYFIELD	0.1	NATIONAL FUEL GAS SU
8109670	6038	3703920091	108	SCHLOSSER #1	HAYFIELD	1.0	NATIONAL FUEL GAS SU
--PHILLIPS PRODUCTION CO							
8109688	5984	3706325553	103	RECEIVED: 12/22/80 JA: PA A R KESLAR #1	RAYNE	45.0	
8109698	6017	3706325585	103	FRANK J AND JOHN A ARCHIBALD #1	BLACKLICK	25.0	
8109684	5986	3706325533	103	GENE HANKINSON ET UX #1	WASHINGTON	25.0	
8109700	6020	3706325556	103	GLENN H BARRON ET UX #1	BURRELL	25.0	
8109687	5983	3706325586	103	PATRICIA A LUCIK ET AL #1	RAYNE	25.0	
8109689	5985	3706325493	103	PAUL E ROOF ET UX #2	WASHINGTON	25.0	
8109699	6019	3706325547	103	RAYMOND GLASSER ET UX ET AL #1	EAST WASHINGTON	35.0	
8109685	5987	3706325559	103	ROBERT BOYD SPENCE #1	WASHINGTON	35.0	
--ROBERT H BRACE							
8109665	6061	3704920960	102	BRACE #2	WATERFORD SOUTHEAST	25.0	NATIONAL FUEL GAS DI
--UNION DRILLING INC							
8109663	6066	3712521239	108	RECEIVED: 12/22/80 JA: PA CLARENCE K HESS 0627	BEALLSVILLE TOWNSHIP	2.0	BROCKWAY GLASS CO IN
8109662	6065	3712521240	108	WILLIAM GASHER #1 0628	BEALLSVILLE TOWNSHIP	2.0	BROCKWAY GLASS CO IN
--VINEYARD OIL & GAS CO							
8109678	6037	3704921089	103	RECEIVED: 12/22/80 JA: PA BARNHART #1- E-906	FRANCES BARNHART-NORTH E	30.0	NATIONAL FUEL GAS SU
8109656	5563	3704920799	102	D BINDLEY #1 E-712	BINDLEY #1-NORTH EAST	96.0	NATIONAL FUEL GAS SU
8109677	6036	3704921111	102	MARTENS #3 - E-923	GUENTHER MARTENS-LEBOEUF	30.0	NATIONAL FUEL GAS SU
8109690	5570	3704920798	102	D MCINTOSH #1 E-711	MCINTOSH #1 - NORTH EAST	5.3	NATIONAL FUEL GAS SU
8109655	5561	3704920962	102	D WHEELER #1 E-864	WHEELER #1-NORTH EAST	12.0	NATIONAL FUEL GAS SU
--WAINCO OIL & GAS COMPANY							
8109661	6064	3703920731	103	RECEIVED: 12/22/80 JA: PA GEORGE BANCROFT NO 2 (W-74)	ATHENS	40.0	COLUMBIA GAS TRANSMI
8109681	6029	3703920573	102	J W BOWMAN & J COBLENTZ #1 (M9)	ATHENS	40.0	COLUMBIA GAS TRANSMI
8109666	6063	3703920573	103	J M BOWMAN & J COBLENTZ #1 (M9)	ATHENS	40.0	COLUMBIA GAS TRANSMI
8109686	6001	3703920733	102	MILDRED R MERRY NO 1 (W-76)	ATHENS	40.0	COLUMBIA GAS TRANSMI
8109682	6030	3703920702	102	ROBERT FRANKENFIELD NO 1 (W-58)	ATHENS	40.0	COLUMBIA GAS TRANSMI
*****							
WEST VIRGINIA DEPARTMENT OF MINES							
*****							
--ALLEGHENY LAND & MINERAL COMPANY							
8109614		4708300317	103	RECEIVED: 12/18/80 JA: WY A-873	ROARING CREEK DISTRICT	0.0	COLUMBIA GAS TRANSMI
--CHASE PETROLEUM							
8109643		4701702341	102	RECEIVED: 12/18/80 JA: WY LEGGETT #1	STRAIGHT FORK-BLUESTONE	50.0	
--CONSOLIDATED GAS SUPPLY CORPORATION							
8109654		4707700204	103	RECEIVED: 12/18/80 JA: WY CHARLES TRICKETT 12585	GREER-GLADESVILLE 290235	37.0	GENERAL SYSTEM PURCH
8109650		4703301061	103	E C TETRICK 12296	WEST VIRGINIA OTHER A857	27.0	GENERAL SYSTEM PURCH
8109639		4703301934	103	GEORGE H BERRY 12566	WEST VIRGINIA OTHER A857	25.0	GENERAL SYSTEM PURCH
--GENE STALNAKER INC							
8109616		4700101257	103	RECEIVED: 12/18/80 JA: WY HARRIS 8-43-1	DICKIE HARRIS	21.6	COLUMBIA GAS TRANSMI
--HUGH SPENCER							
8109605		4701702831	108	RECEIVED: 12/18/80 JA: WY BARKER #1 WELL	WEST UNION	5.0	EQUITABLE GAS CO
8109615		4704102943	108	CECELIA HAYDEN A-1 WELL	FREEMANS CREEK DISTRICT	4.0	CONSOLIDATED GAS SUP
8109606		4701702830	108	J BUNNELL #1	MCCLELLAN DISTRICT	1.0	CONSOLIDATED GAS SUP
8109603		4701702833	108	J SMITH #1 WELL	W UNION	2.0	EQUITABLE GAS CO
8109653		4704102944	108	JOHN KENNY A-1 WELL	FREEMANS CREEK DISTRICT	2.0	CONSOLIDATED GAS SUP
8109604		4701702832	108	NUTTER #1 WELL	SOUTHWEST	1.5	EQUITABLE GAS CO
8109641		4708504927	108	PRATHER #1 WELL	HAZEL GREEN	7.0	CONSOLIDATED GAS SUP

JD NO	JA DKT	API NO	SEC D	WELL NAME	RECEIVED	JA	FIELD NAME	PROD	PURCHASER
8109642		4704102945	108	R A KRAUS B-1			FREEMANS CREEK DISTRICT		2.0 CONSOLIDATED GAS SUP
8109602		4703302472	108	SPENCER-WILSON GAS CO			CLARK DISTRICT		1.0 CONSOLIDATED GAS SUP
8109607		4701702829	108	THOMAS HICKMAN #1 WELL			COVE DISTRICT		5.0 CONSOLIDATED GAS SUP
- J & J ENTERPRISES INC				RECEIVED: 12/18/80	JA: WV				
8109646		4701702587	103	J-128			CENTRAL		40.0 CARNEGIE NATURAL GAS
8109645		4701702487	103	J-93			CENTRAL		40.0 CARNEGIE NATURAL GAS
- LAUDERMAN OIL & GAS DRILLING				RECEIVED: 12/18/80	JA: WV				
8109644		4709500745	103	RALPH HAUGHT #2 WELL			UNION		182.5 UNION CARBIDE CORP
- MONITOR PETROLEUM CORP				RECEIVED: 12/18/80	JA: WV				
8109648		4700121276	103	MONITOR #2 LUCILLE RAMSEY			BARKER		54.0 COLUMBIA GAS TRANSMI
- PENNZOIL COMPANY				RECEIVED: 12/18/80	JA: WV				
8109647		4708703032	108	CHAMBERS MEIRS #7			SMITHFIELD		1.6 CONSOLIDATED GAS SUP
- R & B PETROLEUM INC				RECEIVED: 12/18/80	JA: WV				
8109611		4709701745	108	C MAHONEY #1			UNION		3.1 PETRO-LEWIS FUNDS IN
8109633		4709701746	108	C MAHONEY #2			UNION		3.1 PETRO-LEWIS FUNDS IN
8109634		4709701747	108	C MAHONEY #3			UNION		3.1 PETRO-LEWIS FUNDS IN
8109632		4709701744	108	E MATTS #1			UNION		1.7 PETRO-LEWIS FUNDS IN
8109613		4700100931	108	JACKSON #1			UNION		1.9 PARTNERSHIP PROPRTI
8109636		4709701472	108	R MATTS #1			UNION		3.3 PETRO-LEWIS FUNDS IN
8109637		4709701791	108	REEDER #1			UNION		5.9 PARTNERSHIP PROPRTI
8109638		4700100934	108	RIITTER #1			UNION		5.5 PARTNERSHIP PROPRTI
8109649		4708302254	103	SKINDRE #1			ROARING CREEK		10.8 PARTNERSHIP PROPRTI
8109612		4700100932	108	WILSON #1			VALLEY		18.8 PARTNERSHIP PROPRTI
- RDC KWELL PETROLEUM COMPANY				RECEIVED: 12/18/80	JA: WV				
8109620		4701702638	103	GUM #1A			ST CLAIR		25.0 COLUMBIA GAS TRANSMI
8109617		4702103631	103	JAMES #1			BIG ELLIS		30.0 CONSOLIDATED GAS SUP
8109619		4702103603	103	RADCLIFF #2			LICK RUN		25.0 CARNEGIE NATURAL GAS
8109623		4701702665	103	SEVERIN #1A			ST CLAIR		30.0 CONSOLIDATED GAS SUP
8109621		4701702666	103	SEVERIN #2A			ST CLAIR		25.0 CONSOLIDATED GAS SUP
8109618		4701702476	103	SEVERIN #3A			ST CLAIR		25.0 CONSOLIDATED GAS SUP
8109622		4701702577	103	SMITH #2A			ST CLAIR		15.0 COLUMBIA GAS TRANSMI
- ROSS-WHARTON GAS CO				RECEIVED: 12/18/80	JA: WV				
8109635		4701700570	108	EVA TALKINGTON #2			MCLROY CREEK		3.0 CONSOLIDATED GAS SUP
- ROY G HILDRETH JR				RECEIVED: 12/18/80	JA: WV				
8109609		4708700948	108	CARL J NUTTER WELL #2	55-6030991		TRIPLETT		4.2 CONSOLIDATED GAS SUP
8109608		4708702414	108	FOSTER UGF			SPENCER		11.4 COLUMBIA GAS TRANS C
- S & S GAS & OIL CO				RECEIVED: 12/18/80	JA: WV				
8109610		4704301513	108	D G MCCALLISTER #1			DUVAL		3.8 PENNZOIL CO
- UNION DRILLING INC				RECEIVED: 12/18/80	JA: WV				
8109630		4700100609	108	CHARLES HOFFMAN #2 1281			PLEASANT DISTRICT		19.0 CONSOLIDATED GAS SUP
8109624		4709702069	103	GASTON GROCERY CO ET AL #1 1543			WASHINGTON DISTRICT		0.0 COLUMBIA GAS TRANSMI
8109626		4700100968	108	JOHN A & MARY K MOSESSE #1 1437			PLEASANT DISTRICT		15.0 CONSOLIDATED GAS SUP
8109627		4700100969	108	JOHN A & MARY K MOSESSE #2 1438			PLEASANT DISTRICT		19.0 CONSOLIDATED GAS SUP
8109628		4700100893	108	LILLIAN W POST #6 1411			PLEASANT DISTRICT		22.0 CONSOLIDATED GAS SUP
8109631		4709701859	108	LOUISE R MCCOOK #1 1454			MEADE DISTRICT		17.0 COLUMBIA GAS TRANS C
8109651		4708300316	103	LUCILLE TALLMAN AGENT #1 1524			ROARING CREEK DISTRICT		0.0 COLUMBIA GAS TRANSMI
8109652		4708300315	103	LUCILLE TALLMAN AGENT #2 1525			ROARING CREEK DISTRICT		0.0 COLUMBIA GAS TRANSMI
8109625		4709701956	103	MILDRED POTTER #1 1534			WASHINGTON DISTRICT		0.0 COLUMBIA GAS TRANSMI
8109629		4700100702	108	W B CLEAVENGER #3 1339			PLEASANT DISTRICT		22.0 CONSOLIDATED GAS SUP
8109640		4700101023	108	WILLIAM SHERM #2 1446			PLEASANT DISTRICT		21.0 CONSOLIDATED GAS SUP

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (\*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 11, 1981.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2049 Filed 1-26-81; 8:45 am]  
BILLING CODE 6450-65-M

[Docket No. CP81-139-000]

### Southern Energy Co. et al.; Order Clarifying and Granting Waivers of Emergency Regulations

Issued: January 16, 1981.

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes.

On January 14, 1981, Southern Energy Company (Southern Energy),<sup>1</sup> Southern Natural Gas Company (Southern Natural)<sup>2</sup> and Boston Gas Company (Boston Gas) (hereinafter collectively referred to as "the applicants") filed in Docket No. CP81-139-000 a petition pursuant to § 1.7(b) and § 157.52 of the Commission's Regulations for a waiver

<sup>1</sup> Southern Energy, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in the order of June 28, 1972, in Docket Nos. CP78-01, et al. (47 FPC 1624).

<sup>2</sup> Southern Natural, a Delaware Corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in the order of October 24, 1973, in Docket No. CP73-318 (50 FPC 1192).

and clarification of certain requirements of Subpart C, part 157, of the Commission's Regulations regarding emergency sales of natural gas, all as more fully described in the petition.

The applicants seek a waiver and clarification of the emergency gas sale Regulations to enable Southern Energy and Boston Gas<sup>3</sup> to go forward with an agreement whereby Southern Energy would provide emergency volumes of LNG to Boston Gas in exchange for thermally equivalent volumes of LNG to be redelivered by Boston Gas at a later date.<sup>4</sup>

Boston Gas and other customers of DOMAC are currently facing an emergency supply shortage on their systems in part because of the abnormally cold weather in New England and in part because of the current unavailability of Algerian LNG deliveries to DOMAC. Boston Gas' efforts to seek other alternative sources of gas have been unsuccessful. Boston Gas states that the proposed LNG shipment is the only available major gas supply and is essential to serve the peak day requirements of Boston Gas and the DOMAC customers it represents.

Under the proposed exchange agreement, Southern Energy will deliver approximately 1.3 Bcf equivalent of LNG from storage to an LNG tanker chartered by Boston Gas at Southern Energy's LNG terminal at Elba Island, Georgia. The LNG will then be transported and delivered to DOMAC's LNG terminal and redelivered to Boston Gas and the other affected DOMAC customers. Boston Gas will return to Southern Energy at Elba Island, by tanker or other mutually agreeable means, a thermally equivalent volume of LNG plus an amount equivalent to that consumed and lost by Southern Energy in delivering or receiving redelivery of the LNG. These volumes will be returned as soon as possible, but in no event later than May 1, 1981.

Southern Energy is to be compensated by Boston Gas for providing the LNG at a negotiated rate of \$5.00 per MMBtu plus the cost of any additional facilities necessary for the delivery and redelivery of the LNG and any expenses incurred by Southern Energy in effecting the delivery and redelivery of the LNG to and from Boston Gas. The \$5.00 per

<sup>3</sup> Boston Gas is acquiring liquefied natural gas (LNG) for its own use and for the use of other customers of Distrigas of Massachusetts (DOMAC) who have elected to receive a portion of the LNG shipment herein permitted.

<sup>4</sup> § 157.46(h) defines a "sale of emergency gas" to include an "exchange of natural gas to alleviate an emergency . . . between a qualified seller and a qualified purchaser, provided that the volumes exchanged are paid back within 180 days after the termination of deliveries of emergency natural gas."

MMBtu charge is intended to compensate Southern Natural and its customers for rates paid with respect to Southern Energy's holding of LNG at Elba Island.

In addition to the redelivery of an equivalent volume of LNG, it is contemplated that Boston Gas may return some additional quantities of LNG to Southern Energy's Elba Island terminal, subject to the capacity and operating requirements of Southern Energy and Southern Natural's facilities. In such event, Southern Natural would deliver for Boston Gas' account an amount of natural gas thermally equivalent to the additional volumes to a third-party transporter connected with Southern Natural's pipeline system. Boston Gas will reimburse Southern Natural and Southern Energy for their actual costs incurred in handling the additional LNG.

Execution of the proposed exchange requires certain clarification and waivers of the Commission's emergency gas sale Regulations. First, there is the issue of whether Southern Energy is a "qualified seller" under § 157.46(b) of the Regulations. That section defines a qualified seller to mean "any intrastate pipeline, interstate pipeline, distribution company or person described in section 1(c) of the Natural Gas Act." Although Southern Energy is a natural gas company by virtue of its sales to Southern Natural (its sole customer, with the exception of the proposed transaction), it believes it may not fit within the definition of a "qualified seller." Therefore, Southern Energy requests a waiver of the definition of "interstate pipeline" in § 157.46(d) which speaks of natural gas companies engaged in the transportation of gas "by pipeline." To the extent necessary, we shall waive the definitional requirements of §§ 157.46(d) and (b) to permit Southern Energy's participation in this emergency transaction.

Second, Southern Energy requests any necessary waivers of the rate provisions of § 157.49(a) of the Regulations. Section 157.49(a) provides that emergency sales by interstate pipelines are to be made at rates prescribed in their tariffs. Section 157.49(a) is not readily applicable to this exchange because Southern Energy had no sale or transportation rate schedule on file for such a transaction. Thus, the charge to be paid Southern Energy has been negotiated. For rate purposes, we find that Southern Energy may be treated in this transaction as though it was an interstate pipeline and that a waiver of § 157.49(a) should be granted. The Commission is satisfied that the

negotiated rate is in the public interest and should be permitted.

Third, Southern Energy and Southern Natural request a waiver and clarification of § 157.50(a) of the Regulations which requires that all revenues received from emergency transactions in excess of the sum of the cost of purchased gas (which does not apply here), less one cent per Mcf allowance for out of pocket costs, be credited to account No. 191, "Unrecovered Purchased Gas Costs." The applicants propose that Southern Natural credit the \$5.00 per MMBtu received by Southern Energy to Southern Natural's Account No. 191, on condition that all amounts so credited shall be applied to reduce refunds, if any, which Southern Natural or Southern Energy may be required to make by a final and non-appealable order in *Southern Natural Gas Co.*, Docket No. RP80-136. The proceeding in Docket No. RP80-136 involves, *inter alia*, an investigation of the activities of Southern Natural and Southern Energy regarding the minimum bill provision of Southern Energy's tariff governing LNG supplies sold to Southern Natural. The issue there is whether, under the terms of Southern Energy's tariff, deliveries of LNG to Southern Natural have ceased, thereby triggering the minimum bill provision. We find in these circumstances that § 157.50(a) should be waived to permit Southern Natural to credit the \$5.00 per MMBtu rate received by Southern Energy to Southern Natural's Account No. 191. While we will permit crediting of the full amount, we cannot now find that refunds may not ultimately be required in the proceeding in Docket No. RP80-136. We will, nevertheless, assure Southern Energy and Southern Natural that recognition will be given to the fact that these revenues were credited.

Because of the emergency circumstances presented by the applicants' filing of January 14, 1981, and the need for prompt action on the part of the Commission, good cause exists for issuance of this order without prior notice. In these circumstances, we shall direct the Secretary to cause prompt publication of this order in the Federal Register.

*The Commission finds:*

Pursuant to § 157.52 of the Commission's Regulations, the public interest requires the waivers provided for herein.

*The Commission orders:*

(A) Consistent with the foregoing discussion, the applicants' request for clarification and waiver, as required, of the Commission's Emergency

Regulations (§ 157.45, *et seq.*) is hereby granted.

(B) The Secretary shall cause prompt publication of this order in the Federal Register.

By the Commission,

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-2949 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3646-000]

**Suncook Power Corp.; Application for Preliminary Permit**

January 14, 1981.

Take notice that the Suncook Power Corporation (Applicant) filed on November 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3646 to be known as the Quinebaug Project located on the Quinebaug River in Windham County, Connecticut. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Peter C. Kasch, Suncook Power Corporation, 1330 Boylston Street, Suite 512, Chestnut Hill, Massachusetts 02167. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

*Project Description*—The proposed project would consist of: (1) the existing dam, consisting of a spillway 130 feet long and 14 feet high and an overflow structure 120 feet long; (2) two manually operated gates and a headrace 1,200 feet long; (3) a new powerhouse containing a turbine/generator unit rated at 1,450 kW; (4) a 1.1-mile long transmission line leading to an existing substation; (5) transformers and switch gear, metering and control equipment and (6) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 9,585,120 kWh.

*Purpose of Project*—Project power would be sold to the Connecticut Light and Power Company.

*Proposed Scope and Cost of Studies under Permit*—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local

government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be \$25,000.

*Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, in will be presumed to have no comments.

*Competing Applications*—Anyone desiring to file a competing application must submit to the Commission, on or before March 20, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 19, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

*Comments, Protests, or Petitions to Intervene*—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene



in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 20, 1981.

**Filing and Service of Responsive Documents**—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protests", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3646. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-2050 Filed 1-26-81; 9:45 am]  
BILLING CODE 6450-95-M

#### Office of Energy Research

#### Geothermal Panel, Energy Research Advisory Board; Meeting

Notice is hereby given of the following meeting:

Name: Geothermal Panel of the Energy Research Advisory Board (ERAB). ERAB is a committee constituted under the Federal Advisory Committee Act (Pub. L. 92-463, 88 Stat. 770)

Date and time: February 4, 1981, 9:00 am to 5:00 pm

Place: Department of Energy, Forrestal Building, Room 4A-104, 1000 Independence Avenue, SW., Washington, D.C. 20585

Contact: Eudora M. Taylor, Staff Assistant, Energy Research Advisory Board, Department of Energy, Forrestal Building, MS 3F-032, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: 202/252-8933

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department

Tentative agenda:

- Discussion on Water Assisted Heat Pumps
- Update on Geopressed Resources
- Acceptance and Discussion of Letter from Direct Heat Subpanel re Market Penetration
- Discussion on R&D Priorities

**Public participation:** The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Energy Research Advisory Board at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

**Transcripts:** Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 am and 4:00 pm Monday through Friday, except Federal Holidays.

Issued at Washington, D.C. on January 19, 1981.

Edward A. Frieman,  
Director of Energy Research.

[FR Doc. 81-2050 Filed 1-26-81; 9:45 am]  
BILLING CODE 6450-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

[AH-FRL 1736-4]

#### Approval and Promulgation of Implementation Plans; Air Quality Control Regions, Criteria and Control Technologies; Certification Under Regulatory Flexibility Act

AGENCY: Environmental Protection Agency.

**ACTION:** Notice of Certification.

**SUMMARY:** Pursuant to the provisions of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1184, each proposed regulation issued on or after January 1, 1981 is to be accompanied either by a regulatory flexibility analysis or by a certification that no such analysis is necessary because the regulation will not if promulgated have a significant economic impact on a substantial number of small entities. The Environmental Protection Agency (EPA) routinely takes two kinds of regulatory actions that qualify for certification. These actions are approvals or conditional approvals of State Implementation Plans (SIPs) under Sections 110 and 172 of the Clean Air Act and revisions of attainment status designations under Section 107(d) of the Clean Air Act. Because there are such a

large number of these actions and because a certification can be made categorically, I am issuing a general certification that will apply to each regulation (proposed and final) that approves or conditionally approves a SIP or revises an attainment status designation. The public will be able to comment on the certification of proposals during the public comment period on the proposals. For all other proposed regulations, EPA will make a case-by-case determination of the application of the Regulatory Flexibility Act.

**FOR FURTHER INFORMATION CONTACT:** Bruce Diamond, Deputy Associate General Counsel, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-0766.

**SUPPLEMENTARY INFORMATION:** Congress recently enacted the Regulatory Flexibility Act, Pub. L. 96-354, 5 U.S.C. 601-612. The purpose of the Act is to assure that agencies analyze the effect of regulatory requirements on small businesses, governmental jurisdictions and organizations (collectively referred to as "small entities"). The law requires that all agency rulemakings, both proposed and final, be accompanied by a regulatory flexibility analysis or by a certification that no such analysis is necessary because the regulation will not have a significant economic impact on a substantial number of small entities.

Two categories of rulemaking actions that EPA takes on a frequent basis qualify for certification under the Act. These regulatory categories are approvals or conditional approvals of State Implementation Plans (SIPs) under Section 110 and 172 of the Clean Air Act and revisions of attainment status designations under Section 107(d) of the Clean Air Act. In both cases, these actions do not have a significant economic impact on a substantial number of small entities.

SIP approvals do not create any new requirements but simply approve requirements that are already state law. SIP approvals, therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Accordingly, this inquiry would serve no practical purpose and could well be an improper federal intrusion into matters reserved to the states.

Redesignation of the attainment status of an area under Section 107(d) of the Clean Air Act similarly does not impose any requirements on small entities. The action only revises the air quality designation of an area. Any regulatory requirements that may become necessary as a result of the redesignation would be dealt with in separate actions.

For the above reasons, I hereby certify that SIP approvals under Section 110 and 172 of the Clean Air Act and attainment status redesignations under Section 107(d) of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This certification applies to any proposed or final rules in the above described categories issued on or after January 1, 1981 to which the Regulatory Flexibility Act applies. The public will have the opportunity to comment on the certification of proposals at the time they are proposed. For all other regulatory actions, EPA will make a case-by-case determination of the need for a Regulatory Flexibility Act analysis.

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

[FR Doc. 81-2004 Filed 1-26-81; 9:45 am]  
BILLING CODE 6550-26-M

[OPTS-51203; TSH-FRL 1737-7]

### Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the *Federal Register* certain information about each PMN within 5 working days after receipt. This Notice announces receipt of three PMN's and provides a summary of each.

**DATES:** Written comments by:

PMN 80-336—January 30, 1981  
PMN 80-344—January 30, 1981  
PMN 80-353—February 8, 1981

**ADDRESS:** Written comments to:  
Document Control Officer (TS-793),  
Management Support Division, Office of  
Pesticides and Toxic Substances,  
Environmental Protection Agency, Rm.  
E-447, 401 M St. SW, Washington, DC  
20460, (202-755-8050).

**FOR FURTHER INFORMATION CONTACT:**

Rick Green, Chemical Control Division  
(TS-794), Office of Toxic Substances,  
Environmental Protection Agency, Rm.  
E-208, 401 M St., SW., Washington, D.C.  
20460, (202-426-8815).

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Inventory were published in the *Federal Register* of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 505444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the *Federal Register* issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the *Federal Register* of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the *Federal Register* nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(d). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identify or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the

potential exposure descriptions in the *Federal Register*.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended *Federal Register* notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) *Federal Register* notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the *Federal Register*.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "DATES", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51203]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 16, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-336

The following information is taken from data submitted by the importer in the PMN.

Close of Review Period. February 22, 1981.

Importer's Identity. Claimed confidential business information.

Organizational information provided: Importer's location—Mid-Atlantic U.S. Standard Industrial Classification Code—286, "Industrial Organic Chemicals".

Specific Chemical Identity. Claimed confidential business information.

Generic name provided: 1,2,4 substituted anthraquinone.

Use. Claimed confidential business information. Generic use description provided: textile fiber additive.

Import Estimates. Claimed confidential business information.

#### Physical/Chemical Properties

Appearance—Red powder.

Melting point—291-292 C.

pH—2.5, 10 g/l in water.

Solubility—Highly soluble in dimethylformamide, ethanol, and propylene glycol. Very slightly soluble in water.

#### Toxicity Data

Acute oral toxicity LD<sub>50</sub> (rats)—5,000 mg/kg.

Skin irritation (rabbits)—Non-irritating.

Eye irritation (rabbits)—Non-irritating.

Exposure. Claimed confidential business information. The importer states that use may involve potential skin exposure and exposure by inhalation.

Environmental Release/Disposal. The importer states that risk to the environment is minimal during processing since the only release that could occur is in the weighing out of the substance. This release is estimated to be less than 30 kilograms (kg) per year.

PMN 80-344

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 1, 1981.

Manufacturer's Identity. Claimed confidential business information.

Organizational information provided: Annual sales—In excess of \$500 million. Manufacturing site—South Atlantic, U.S. Standard Industrial Classification

Code—2861 "Gum and Wood Chemicals".

Specific Chemical Identity. Claimed confidential business information.

Generic name provided: Metal resinate. Use. Publication gravure printing inks.

Production Estimates. Claimed confidential business information.

#### Physical/Chemical Properties

Melting point of solid resin, Fisher-Johns—165°C.

Acid number of solution—40

Resin solids, % by weight—54-56

Vapor density of solvent—Approx. 3.65

Viscosity, Gardner Holdt—U-X.

Gardner Color—15 max.

Specific Gravity 25°C/25°C—0.93

Toxicity Data. The manufacturer states that no biological tests have been conducted on this new substance, however, the physical and chemical properties of the PMN substance and its intended use in publication gravure printing inks suggest that there would be no risk to health or the environment. The manufacturer also states that overexposure may cause severe eye irritation and drying of skin; excessive inhalation may cause headache, dizziness, and nausea.

Exposure. The manufacturer states that during the manufacturing process, 2 workers may be exposed dermally, 2 hr/da; 136 da/year.

#### Environmental Release/Disposal

Manufacture:

Media—Amount/Duration of

Chemical Release (kg/yr).

Air—< 10. 24 hr/da; 136 da/yr.

Water—< 10.

Land—> 10,000.

Solid wastes are disposed by landfill; water of reaction is condensed then to water treatment system.

PMN 80-353

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 10, 1981.

Manufacturer's Identity. Claimed confidential business information. No generic information were submitted.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of an isocyanate and mixture of aliphatic polyols.

Use. Coating.

Production Estimates. No data were submitted.

#### Physical/Chemical Properties

Solution viscosity—150-350 cps.

Percent NCO (free isocyanate groups)—3.5-4.5 percent.

Appearance—White to golden yellow.

Density—8.5 lb/gal.

Solubility—Soluble in cellosolve acetate, xylene, and acetone; insoluble in water.

#### Toxicity Data

Acute oral LD<sub>50</sub>—> 10 gm/kg.

Primary skin irritation index—1.96.

Eye irritation—Mildly irritating.

The manufacturer states that acute toxicity tests on the polymer indicate no particular hazard properties.

#### Exposure

Activity and exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
		Hours/day	Days/year	Average	Peak
Manufacture: Dermal, inhalation	1	8	48		
Use: Dermal, inhalation	2	8	33		

Environmental Release/Disposal. No data were submitted.

[FR Doc. 81-2693 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51204; TSH-FRL 1737-5]

#### Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture

or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of four PMN's and provides a summary of each.

DATES: Written comments by:

PMN 80-333, 334, 335—February 9, 1981.  
PMN 80-352—February 9, 1981.

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

**FOR FURTHER INFORMATION CONTACT:** Robert Jones, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-208, 401 M St., SW., Washington, DC 20460, (202-426-8815).

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544- Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim

confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and

complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If the EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Activity	Exposure route(s)	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
			Hours/day	Days/year	Average unit	Peak
Manufacture	Skin	21	6	10	0-1	0-1
Do	Eye					
Do	Inhalation					
Typical User	Skin	14	7	225	0-1	0-1
Do	Eye					
Do	Inhalation					

Interested persons may, on or before the dates shown under "DATES", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51204]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 16, 1981.

Edward A. Klein,  
Director, Chemical Control Division.

PMN 80-333

The following information is taken from data submitted by the manufacturer in the PMN.

*Close of Review Period.* February 22, 1981.

*Manufacturer's Identity.* Claimed confidential business information. Organizational information provided: Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

*Special Chemical Identity.* Claimed confidential business information. Generic name provided: Polymer of substituted alkanediol, alkanedioic acid, and alkenedioic acid.

*Use.* Claimed confidential business information. Generic use information provided: The manufacturer states that this product will be used in an open use that will release more than 50 but less than 500 kilograms (kg) of the substance into the environment per year.

Production Estimates:

First year—46,000 kg.  
Second year—363,000 kg.  
Third year—500,000 kg.

Physical/Chemical Properties:

Acid value—25-35 KOH/gm.  
Percent total solids—70-80% (of mass).

Flash point—85°F (P-M).

*Toxicity Data.* No data were submitted.

*Exposure.*

The manufacturer states that exposure to the new substance should only occur during the filling of storage or shipping containers and during extraction of small samples of quality control, and that due to high molecular weight and expected high vapor pressure, inhalation exposure would occur only minimally at very high temperatures and only potentially during quality control sampling.

*Environmental Release/Disposal.*

Manufacture:

Media—Amount/Duration of

Chemical Release (kg/yr).

Air—< 10.

Land—100-1,000.

Water—< 10.

User's site:

Air—10.16 hr/da; 250 da/yr.

Land—10-100.

Water—< 10.

The manufacturer states that there is potential for air release during conversion of the substance to the article. Industrial wastes and sludges containing the new substance would be incinerated.

*PMN 80-334*

The following information is taken from data submitted by the manufacturer in the PMN.

*Close of Review Period.* February 22, 1981.

*Manufacturer's Identity.* Claimed confidential business information.

Organizational information provided: Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

*Specific Chemical Identity.* Claimed confidential business information.

Generic name provided: Polymer of substituted alkanediol, alkanedioic acid, and alkenedioic acid.

*Use.* Claimed confidential business information. Generic use information provided: The manufacturer states that this product will be used in an open use that will release more than 50 but less than 500 kilograms (kg) of the substance into the environment per year.

*Production Estimates:*

First year—46,000 kg.

Second year—363,000 kg.

Third year—500,000 kg.

*Physical/Chemical Properties:*

Acid value—25-35 KOH/gm.

Percent total solids—70-80% (of mass).

Flash point—85°F (P-M).

*Toxicity Data.* No data were submitted.

*Exposure.*

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
			Hours/day	Days/year	Average unit	Peak
Manufacture	Skin	21	6	10	0-1	0-1
Do	Eye					
Do	Inhalation					
Typical User	Skin	14	7	225	0-1	0-1
Do	Eye					
Do	Inhalation					

The manufacturer states that exposure to the new substance should only occur during the filling of storage or shipping containers and during extraction of small samples for quality control, and that due to high molecular weight and expected high vapor pressure, inhalation exposure would occur only minimally at very high temperatures and only potentially during quality control sampling.

*Environmental Release/Disposal.*

Manufacture:

Media—Amount/Duration of Chemical Release (kg/yr).

Air—< 10.

Land—100-1,000.

Water—< 10.

User's site:

Air—< 10.16 hr/da; 250 da/yr.

Land—10-100.

Water—< 10.

The manufacturer states that there is potential for air release during conversion of the substance to the article. Industrial wastes and sludges containing the new substance would be incinerated.

*PMN 80-335*

The following information is taken from data submitted by the manufacturer in the PMN.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
			Hours/day	Days/year	Average unit	Peak
Manufacture	Skin	21	6	10	0-1	0-1
Do	Eye					
Do	Inhalation					
Typical user	Skin	14	7	225	0-1	0-1
Do	Eye					
Do	Inhalation					

*Close of Review Period.* February 22, 1981.

*Manufacturer's Identity.* Claimed confidential business information.

Organizational information provided: Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

*Specific Chemical Identity.* Claimed confidential business information.

Generic name provided: Polymer of substituted alkanediol, alkanedioic acid, and alkenedioic acid.

*Use.* Claimed confidential business information. Generic use information provided: The manufacturer states that this product will be used in an open use that will release more than 50 but less than 500 kilograms (kg) of the substance into the environment per year.

*Production Estimates:*

First year—46,000 kg.

Second year—363,000 kg.

Third year—500,000 kg.

*Physical/Chemical Properties:*

Acid value—25-35 KOH/gm.

Percent total solids—70-80% (of mass).

Flash point—85°F (P-M).

*Toxicity Data.* No data were submitted.

*Exposure.*

The manufacturer states that exposure to the new substance should only occur during the filling of storage or shipment containers and during extraction of small samples for quality control, and that due to high molecular weight and expected high vapor pressure, inhalation exposure would occur only minimally at very high temperatures and only potentially during quality control sampling.

**Environmental Release/Disposal.**

**Manufacture:**

Media—Amount/Duration of  
Chemical Release (kg/yr).

Air—< 10.  
Land—100–1,000.  
Water—< 10.

**User's site:**

Air—< 10, 16 hr/da; 250 da/yr.  
Land—10–100.  
Water—< 10.

The manufacturer states that there is potential for air release during conversion of the substance to the article. Industrial wastes and sludges containing the new substance would be incinerated.

**PMN 80-352**

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period, March 8, 1981.

Manufacturer's Identity. Claimed confidential business information.

Organizational information provided:  
Manufacturing site—Middle Atlantic U.S.  
Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information.

Generic name provided: Polymer of: Acrylic acid, styrene, substituted alkyl acrylates, alkyl mercaptan.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the substance will be used in an open use that will release more than 50 but less than 5,000 kilograms (kg) per year of the substance into the environment.

**Production Estimates**

	Kilograms per year	
	Minimum	Maximum
1st year	260,000	520,000
2d year	520,000	1,040,000
3d year	520,000	1,040,000

**Physical/Chemical Properties:**

Acid value—46.0 mg KOH/gm.  
Percent total solids—70.0.  
Viscosity—U.  
Color—< 1.

\*[Values are on a typical solution at percent total solids shown.]

Toxicity Data. No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture <sup>1</sup> (2 sites)	Eye	122	6	20-25	0-1	0-1
	Skin					
Processing <sup>2</sup>	Eye	40	6	100	0-1	0-1
	Skin					
Typical user <sup>3</sup>	Eye	12	8	240	1-10	1-10
	Skin					
	Inhalation					

<sup>1</sup> The submitter states that during manufacture exposure to the new substance will occur only during extraction of small samples for quality control and during filling of shipping containers.

<sup>2</sup> The submitter states that during processing workers will be exposed to the new substance during the filling of the thinning tank and the shipping containers as well as during the cleaning of filtration equipment.

<sup>3</sup> The manufacturer states that there will be no exposure to the consumer and commercial user.

**Environmental Release/Disposal.**

Manufacture and processing, total sites:

Media—Amount/Duration of  
Chemical Release (kg/yr).

Air—< 30.  
Land—10–2,100.  
Water—< 30.

The manufacturer states that release will be primarily in the form of trace

amounts of various solvents used with this formulation. Cleanup sludges are incinerated.

**Typical User:**

Air—10–100, 16 hr/da; 250 da/yr.  
Land—> 10,000.  
Water—< 10.

[FR Doc. 81-2691 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51209; TSH-FRL 1737-3]

**Certain Chemicals; Premanufacture Notices**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATE: Written comments by February 9, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460 (202-755-8050).

**FOR FURTHER INFORMATION CONTACT:**

Kathy Smith/Rick Green, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-608, 401 M St., SW., Washington, DC 20460 (202-472-1270)/(202-426-8815).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 1212 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50444-Revised). The requirement to submit a PMN for new chemical substances

manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issue of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the PMN submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under

section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must

report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

#### Exposure

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
		Hours/day	Days/year	Average	Peak
Manufacture (total sites): Skin and eye	172	3-6	2-50	0-1	0-1

The submitter states that workers at the manufacturing sites will be exposed to the new substance during quality control sampling, and while filling shipping containers.

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
		Hours/day	Days/year	Average	Peak
Processing: Skin and eye	17	6	100	0-1	0-1

The submitter states that workers at the processing site will be exposed to the new substance during routine maintenance and cleaning of equipment and filling of mixing tanks and shipping containers.

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
		Hours/day	Days/year	Average	Peak
Typical user: Skin and eye	12	8	250	0-1	0-1

Interested persons may, on or before February 9, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51209]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 16, 1981.  
Edward A. Klein,  
Director, Chemical Control Division.

PMN 80-358.  
The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period: March 11, 1981.

**Manufacturer's Identity.** Claimed confidential business information. Organizational description provided: Manufacturing site—Middle Atlantic U.S.

**Standard Industrial Classification** Code—285; e.

**Specific Chemical Identity.** Claimed confidential business information. Generic name provided: Neutralized polymer of substituted polypropylene oxide and an epoxy resin.

**Use.** Claimed confidential business information. Generic use information provided: PMN substance will be used in an open use that will release more than 50 but less than 5,000 kilograms (kg) to the environment per year, with potential exposure to both chemical and non-chemical industry employees.

**Production Estimates.** Claimed confidential business information. **Physical/Chemical Properties.** Percent total solids—36.2 percent (by mass).

Density—8.675 lb/gal.  
Flash point—80°F (P-M).  
**Toxicity Data.** No data were provided.

**Environmental Release/Disposal.** The submitter states that at the manufacturing sites, less than 90 kg/yr of the new substance will be released to the air, land, and water. Sludge would be incinerated. At the processing site, less than 20 kg/yr will be released into the air and water, and from 1,000 to 10,000 kg/yr as sludge will be released into the land as landfill or sold as fuel.

The submitter also states that: a typical user would release less than 10 kg/yr of the new substance into the air 8 hr/da, 250 da/yr; 1,000 to 10,000 kg/yr into the land; and 10 to 100 kg/yr into the water of a plant-owned treatment facility.

**PMN 80-359.**

The following information is taken from data submitted by the manufacturer in the PMN.

**Close of Review Period.** March 11, 1981.

**Manufacturer's Identity.** Claimed confidential business information. Organizational description provided:

Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285, e.

**Specific Chemical Identity.** Claimed confidential business information.

Generic name provided: Neutralized polymer of substituted polypropylene oxide and an epoxy resin.

**Use.** Claimed confidential business information. Generic use information provided: PMN substance will be used in an open use that will release more than 50 but less than 5,000 kg to the environment per year with potential exposure to both chemical and non-chemical industry employees.

**Production Estimates.** Claimed confidential business information.

**Physical/Chemical Properties.**

Percent total solids—37.0 percent (by mass).

Density—8.87 lb/gal.

Flash point—80°F (P-M).

**Toxicity Data.** No data were provided.

[OPTS-51205; TSH-FRL 1737-4]

**Formaldehyde, Polymer With N-(3-Aminopropyl)-1,3-Propanediamine, (Chloromethyl) Oxirane, and Phenol; Premanufacture Notice**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the *Federal Register* certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

**DATE:** Written comments by February 13, 1981.

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

**FOR FURTHER INFORMATION CONTACT:** Carolyn Brown, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460, (202-426-3980).

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the *Federal Register* of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the *Federal Register* issues of January 10, 1979 (44 FR 2242) and October 6, 1979 (44

**Exposure**

Activity and exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
		Hours/day	Days/year	Average	Peak
Manufacture (total sites): Skin and eye.....	172	3-8	2-50	0-1	0-1

The submitter states that workers at the manufacturing sites will be exposed to the new substance during quality control sampling, and while filling shipping containers.

Activity and exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
		Hours/day	Days/year	Average	Peak
Processing: Skin and eye.....	17	6	100	0-1	0-1

The submitter states that workers at the processing site will be exposed to the new substance during routine maintenance and cleaning of equipment and filling of mixing tanks and shipping containers.

Activity and exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m <sup>3</sup> )	
		Hours/day	Days/year	Average	Peak
Typical user: Skin and eye.....	12	8	250	0-1	0-1

**Environmental Release/Disposal.** The submitter states that at the manufacturing sites, less than 90 kg/yr of the new substance will be released to the air, land, and water. Sludge would be incinerated. At the processing site, less than 20 kg/yr will be released into the air and water, and from 1,000 to 10,000 kg/yr as sludge will be released into the land as landfill or sold as fuel.

The submitter also states that: a typical user would release less than 10 kg/yr of the new substance into the air 8 hr/da, 250 da/yr; 1,000 to 10,000 kg/yr into the land; and 10 to 100 kg/yr into the water of a plant-owned treatment facility.

[FR Doc. 81-2694 filed 1-20-81; 8:45 am]

BILLING CODE 8560-31-M



FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The

section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determined that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before February 13, 1981, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW., Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51205]". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 16 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-381

The following information is taken from data submitted by the manufacturer in the PMN.

**Close of Review Period.** March 15, 1981.

**Manufacturer's Identity.** Diamond Shamrock Corporation, 717 North Harwood Street, Dallas, TX 75201.

**Specific Chemical Identity.** Formaldehyde, polymer with N-3(aminopropyl)-1,3-propanediamine, (chloromethyl)oxirane, and phenol.

**Use.** The submitter states that the new substance will be used in the deashing and decolorization of sugar solutions

(90% of production) and in the dionization of water (10% of production).

#### Production Estimates

	Kilogram per year	
	Minimum	Maximum
1981	40,000	200,000
1982	60,000	250,000
1983	100,000	300,000

#### Physical/Chemical Properties

Resin matrix	Crosslinked phenolic macroporous
Principal functional group	Tertiary amine
Physical form, as shipped	Semi-dry, tan granules
Specific gravity	1.12, free-base form
Bulk density, fully hydrated	640-720 g/l (40-48 lbs/ft <sup>3</sup> )
Shipping weight, partially dried	350-450 g/l (22-28 lbs/ft <sup>3</sup> )
Particle size, fully hydrated	16-50 mesh, U.S. Standard Sieve
Moisture retention capacity	50-55%
Ionic form shipped	Free-base
Total capacity	1.9 Eq/l (28.4 Kgr/ft <sup>3</sup> , as CaCO <sub>3</sub> )
Operating capacity	1.3 Eq/l
Chemical resistance	Resistant to acids, alkalis, and most solvents

**Toxicity Data.** No data were submitted. The manufacturer states that literature searches have revealed no references to hazard or safety of this new substance.

**Exposure.** The submitter states that during manufacture of the new substance a maximum of three employees will be exposed for 12 hr/da, 150 da/yr to airborne concentrations of the product at 0-1 mg/m<sup>3</sup> average, and 1-10 mg/m<sup>3</sup> peak.

#### Environmental Release/Disposal—Manufacture

Media	Hr/da	Da/yr	Amount (kg/yr)
Air	24	150	1,000-10,000
Land (EPA and State approved landfill site)			> 10,000
Water (POTW)	24	150	1,000-10,000

[FR Doc. 81-2055 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51212; TSH-FRL 1737-8]

#### Monoethanol Amide of Long Chain Fatty Acid; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the *Federal Register* certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

**DATE:** Written comments by February 13, 1981.

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, (202-755-8050).

**FOR FURTHER INFORMATION CONTACT:** Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-206, 401 M St., SW., Washington, D.C. 20460, (202-426-2601).

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the *Federal Register* of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the *Federal Register* issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the *Federal Register* of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under

section 5(d)(2) EPA must publish in the *Federal Register* nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the *Federal Register*.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended *Federal Register* notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) *Federal Register* notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the *Federal Register*.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of

the data taken from the PMN is published herein.

Interested persons may, on or before February 13, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51212]". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. (Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 16, 1981.

Edward A. Klein,  
Director, Chemical Control Division.

**PMN 80-364**

The following information is taken from data submitted by the manufacturer in the PMN.

*Close of Review Period.* March 15, 1981.

*Manufacturer's Identity.* Emco Chemical Inc., 4470 Lawton Avenue, Detroit, MI 48208.

*Specific Chemical Identity.* Claimed confidential business information. Generic name provided. Monoethanol amide of long chain fatty acid.

*Use.* Claimed confidential business information.

*Production Estimates.* Claimed confidential business information.

*Physical/Chemical Properties.* No data were submitted.

*Toxicity Data.* No data were submitted.

*Exposure.* The submitter states that a maximum of 28 employees will be exposed approximately 2 hr/da, 250 da/yr with an average concentration of > 100 parts per million (ppm) during the weighing and transfer of the PMN substance.

*Environmental Release/Disposal.* No data were submitted. Submitter states that water is the only byproduct.

[FR Doc. 81-2092 Filed 1-20-81; 8:45 am]

BILLING CODE 5590-31-M

[TSH-FRC 1737-2; OPTS-51201]

**Certain Chemicals; Premanufacture Notices**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires

any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

**DATES:** Written comments by:

PMN 80-346, February 6, 1981.

PMN 80-351, February 6, 1981.

**ADDRESS:** Written comments to:

Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

**FOR FURTHER INFORMATION CONTACT:**

George Bagley, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, DC 20460, (202-426-3936).

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement is to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information

listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any new information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without

providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "DATES", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51201]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 16, 1981.

Edward A. Klein,

Director, Chemical Control Division.

**PMN 80-346**

The following information is taken from data submitted by the manufacturer in the PMN.

*Close of Review Period.* March 2, 1981.

*Manufacturer's Identity.* Claimed confidential business information.

*Organizational information provided:*

Annual sales—Between \$100 million and \$499,999,999.

Standard Industrial Classification Code—286.

*Specific Chemical Identity.* Ferrous complexed sulfonated tannin.

*Use.* Drilling fluid additive.

*Production Estimates.*

	Kilograms per year	
	Minimum	Maximum
1st year	2,721	3,265,966
2d year	272,156	3,265,966
3d year	907,195	3,265,966

**Physical/Chemical Properties.**

Physical state—Solid (powder).

Density—1.4 gm/ml.

Solubility (aqueous)—100 pct.

pH of 3.0 pct. solution—5.7.

*Toxicity Data.* The manufacturer states that the material may act as an irritant to the respiratory system, eyes, or skin.

*Exposure.*

Activity and exposure route	Maximum number exposed	Maximum duration		Concentration	
		Hours/day	Days/year	Average	Peak
Manufacture: Dermal	9	6	250	1-10 mg/m <sup>3</sup>	1-10 mg/m <sup>3</sup>
Use: Dermal	8	2	30-120	1-10 mg/m <sup>3</sup>	1-10 mg/m <sup>3</sup>
Disposal: Dermal	3			>100 ppm	>100 ppm

**Environmental Release/Disposal.** The manufacturer states that less than 10 kg/yr will be released to the air in the form of water vapor from aqueous solution drying, 24 hr/da, 250 da/yr. Between 100 and 1,000 kg/yr will be released on land in the form of insoluble pecan shell, sand, and soil (containing residual amounts of sulfite extract of pecan shell) released upon separation of soluble and insoluble fractions of sulfite extraction.

PMN 80-351

The following information is taken from data submitted by the manufacturer in the PMN.

**Close of Review Period.** March 8, 1981.

**Manufacturer's Identity.** Claimed confidential business information.

**Specific Chemical Identity.** Claimed confidential business information.

Generic name provided: Substituted alkanic acid, alkyl ester.

**Use.** New site-limited chemical intermediate to be used to manufacture another chemical intermediate. The reaction product will be incorporated in an article for consumer use.

**Production Estimates.**

	Kilograms per year	
	Minimum	Maximum
1st year	70	100
2d year	150	225
3d year	300	500

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration (ppm)	
		Hours/day	Day/year	Average	Peak
Manufacture: Dermal and Inhalation	1	0.25	2	0-1	0-1
Use: Dermal and Inhalation	1	.25	3	0-1	0-1

**Environmental Release/Disposal.** The manufacturer states that there will be a negligible amount of the new substance released into the air and none released into land or water. All wastes from the manufacture and in-plant use of the new material are incinerated.

[FR Doc. 81-2063 Filed 1-26-81; 8:45 am]

BILLING CODE 6560-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463,

**Physical/Chemical Properties.****Solubilities:**

Water—< 0.1%  
 Dimethyl sulfoxide—>10.0%  
 Acetone—>10.0%  
 Corn oil—>10.0%  
 Octanol—>10.0%  
 Boiling point—> 255°C at 760 mm Hg (decomposes).  
 Vapor pressure—No measurable vapor pressure at room temperature.

**Toxicity Data.**

Acute oral LD<sub>50</sub>—500 mg/kg.  
 Acute dermal LD<sub>50</sub>—22 > 20 ml/kg.  
 Skin irritation—Moderate.  
 Skin absorption—May be absorbed.

Repeated 10-day skin application—Strong exacerbation with eschar formation.  
 Skin sensitization potential—None.  
 Eye irritation—Slightly irritant.

**14-Day repeated daily oral doses:**

1,000 mg/kg—Weight loss, reduced feed intake, death.  
 300 mg/kg—Slight reduction in weight gain.  
 100 mg/kg—Feed intake and weight gain normal.

**Exposure.** The Manufacturer states that there will be minimal exposure to workers during manufacture and none to consumers of eventual product because the new substance is consumed in processing.

"Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 74, "Digital Selective Calling", Notice of 18th Meeting  
 Tuesday, February 10, 1981—9:00 a.m.  
 Wednesday, February 11, 1981—9:00 a.m.  
 Conference Room 9230/32, Nassif (DOT) Building, 400 Seventh Street SW. (at D Street) Washington, DC

**Agenda**

1. Call to Order; Chairman's Report.

2. Administrative matters.
3. Meeting of Ship Station Safety Working Group and Coast Station Working Group and Working Group Reports.
4. Future work assignments.

T. de Haas, Chairman, SC-74, National Telecommunications & Infor. Admn., 325 Broadway; Bldg. 22, Boulder, CO 80303, Phone: (303) 497-3728

Special Committee No. 76, "Maritime Advisory Committee in Preparation for the 1982 Mobile Services World Administrative Radio Conference (1982 Mobile Services WARC)"

Notice of 7th Meeting: Wednesday, February 11, 1981—9:30 a.m.

1st Floor Auditorium, Comsat Building, 940 L'Enfant Plaza SW., Washington, D.C.

**Agenda**

1. Call to Order; Chairman's Report.
2. Administrative matters.
3. Discussion of Proposals and review of work program.
4. Establishment of future meeting schedule.

Charles Dorian, Chairman, SC-76, Comsat Corporation, Washington, D.C., Phone: (202) 554-6756

Special Committee No. 75, "MPS—Automatic Coordinate Conversion Systems"

Notice of 9th Meeting: Wednesday, February 25, 1981—9:00 a.m.

Conference Room 6336, Nassif (DOT) Building, 400 Seventh Street SW at D Street, Washington, DC.

**Agenda**

1. Call to order; Chairman's Report.
2. Administrative matters.
3. Reviewing comments of draft specifications.

Mortimer Rogoff, Chairman, SC-75, 4201 Cathedral Avenue NW., Apartment 91W, Washington, DC 20016, Phone: (202) 362-5462.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission,  
William J. Tricarico,  
Secretary.

[FR Doc. 81-2155 Filed 1-26-81; 8:45 am]  
BILLING CODE 6712-01-M

[BC Docket No. 80-779; File No. BPCT-5025 et al.]

### Trinity Broadcasting of Seattle et al.; Hearing Designation Order

In re Applications of Trinity Broadcasting of Seattle, Seattle, Washington, [BC Docket No. 80-779, File No. BPCT-5025], Seattle STV Company, Seattle, Washington, [BC Docket No. 80-780, File Mp/ BPCT-5105], Tavitac Corporation, Seattle, Washington, [BC Docket No. 80-781, File No. BPCT-5106]; For a Television Construction Permit.

Adopted: December 31, 1980.

Released: January 16, 1981.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Trinity Broadcasting of Seattle (TBS), Seattle STV Company (Seattle STV), and Tavitac Corporation (Tavitac) for a new commercial television station to operate on Channel 22, Seattle, Washington; informal objections filed by the Western Washington Cooperative Interference Committee (WWCIC) and Ratelco, Inc. (Ratelco) against the applications of Trinity and Seattle STV;<sup>1</sup> and related pleadings.<sup>2</sup>

2. Both WWCIC and Ratelco object to the location of any high power transmitter in close proximity to the transmitters of numerous FM broadcast stations, two-way base stations, community repeaters, and microwave systems located atop Cougar Mountain.

<sup>1</sup>In the strictest sense, both informal objections were filed only against Trinity; however they will be construed as applying to Seattle STV as well, because the objectors oppose the location of any high power transmitter atop Cougar Mountain, the proposed transmitter site of both Trinity and Seattle STV.

<sup>2</sup>The application of Seattle STV contemplates operating subscription television (STV) over its proposed facilities. Its application for STV authorization (BSTV-37) will not be consolidated for hearing in this proceeding. STV is essentially an entertainment format undistinguishable from other entertainment packages except that it is supported directly by viewers' subscriptions; rather than by advertising revenues. The Commission has already demonstrated a reluctance to compare applicants on the basis of entertainment formats. *George E. Cameron Jr. Communications*, 71 FCC 2d 460 (1979). Consequently, STV proposals will not be considered in otherwise routine hearings on applications for television construction permits; rather, only if Seattle STV is determined to be the successful applicant for the construction permit, will its STV proposal be analyzed.

Ratelco argues that such a facility would cause problems of desensitization, interference, ambient RF levels, and possible electromagnetic radiation danger to persons working on the equipment. In addition Ratelco asserts that the proposed towers would create hazards to air navigation and that the transmitter would consume valuable electricity. WWCIC requests that should an application proposing a site atop Cougar Mountain be granted, it be subject to a condition similar to that placed on the construction permit of KRAB(FM), Seattle in 1972.<sup>3</sup>

3. Inherent in the Commission's application processing procedures are engineering standards and criteria intended to avoid objectionable interference to existing facilities. The location of several communications facilities in the same vicinity is commonplace and presents little difficulty to well engineered systems. In the event an interference problem should be found to exist, the Commission's long-standing policy is that the "newcomer" will be responsible, financially and otherwise, for taking whatever steps that may be necessary to eliminate objectionable interference to an existing facility.

*Sudbrink Broadcasting of Georgia, Inc.*, 65 FCC 2d 691 (1977). In that the Federal Aviation Administration has approved Trinity's and Seattle STV's proposed tower heights and locations, we will not question the hazard to air navigation. Further, other than a general conclusory statement, Ratelco has provided no specifics as to how the applicants' proposed transmitters would cause radiation danger to persons working on the equipment, nor have the objectors shown how the proposed towers would be hazards to air navigation or why a "KRAB(FM)-type" condition would be necessary to supplement present policies and rules. Accordingly, both informal objections will be denied.

4. It appears that TBS would require more than \$723,677 to construct its proposed facility and to operate it for three months:

Equipment (downpayment) _____	\$435,250
(3 mo.) _____	108,657
Building _____	40,000
Legal, engineering, installation, and other costs ...	63,000

<sup>3</sup>The condition placed on the construction permit of KRAB(FM) was "(t)hat initial engineering and program tests by station KRAB(FM) shall be conducted at 1/2 power until all substantial problems of interference to two-way receivers are overcome; that KRAB shall cooperate fully with the Western Washington Cooperative Interference Committee in suggested installation of facilities to mitigate any substantial interference to existing two-way radio receivers; and that KRAB shall offer all possible technical help in overcoming any problem of desensitized receivers."

Operating costs, including transmitter site rental (3 mo.) _____	76,779
Total _____	728,677

To meet this requirement, TBS intends to rely on a loan of \$750,000 from Trinity Broadcasting Network, Inc. (TBN). TBN's balance sheet indicates net liquid assets of \$780,000, and TBN has a line of credit for \$3,000,000 from the Mitsubishi Bank of California; however, TBN has already committed \$8,151,000 for the construction and operation of other broadcast ventures.<sup>4</sup> Because TBN's commitments exceed the capital available, it cannot be determined that TBN has the net liquid assets to provide any capital for the proposed Seattle station. Accordingly, an appropriate financial issue will be specified.

Television Stations:		
Miami, Fla. _____	BALCT-80G212KE (WHFT(TV))	\$3,466,000
Santa Ana, Calif. _____	BPCT-5154 (KTBN(TV))	375,000
Oklahoma City, Okla. _____	BPCT-5052 (KTBO(TV))	800,000
Richmond, Tex. _____	BPCT-5110	700,000
Denver, Colo. _____	BPCT-5057	650,000
Translators:		
Lamont & Arvin, Calif. _____	BPTT-791105ID	25,000
Richmond, Tex. _____	BPTT-790123H	50,000
Bakersfield, Calif. _____	BPTT-800107IO	20,000
Austin, Tex. _____	proposed	25,000
Buellton & Solvang, Calif. _____	BPTT-800516IA	20,000
Seattle, Wash. _____	BPTT-790123K	20,000
Total _____		6,151,000

5. It appears that Seattle STV would require \$170,250 to construct its proposed facility and to operate it for three months:

Equipment, land, and building lease: <sup>1</sup>	
Operating costs (3 mo.) _____	\$120,250
Legal, engineering, and other costs _____	50,000
Total _____	170,250

<sup>1</sup>Seattle STV proposes to lease its equipment, land, and building from American Subscription Television of Washington, Inc. (ASTV-Washington), the proposed franchise holder for subscription television operation on Seattle STV. Rent for the first year would equal the amount normally due Seattle STV as a percentage of the monthly gross revenues that ASTV-Washington would collect from subscription television subscribers.

To meet this requirement, Seattle STV intends to rely on \$10,000 in existing capital<sup>2</sup> and approximately \$150,000 during the first three months of operation from the sale of program time

<sup>2</sup>TBN has committed funds for the following other applications:

<sup>3</sup>TBS states that TBN's commitment to WHFT(TV), Miami, has been offset by more than \$3,800,000 in pledges, a \$700,000 loan from Trinity Broadcasting of Arizona, Inc., \$235,000 in documented station receipts during 1979 and \$550,000 in sales of program time. TBS has not demonstrated the availability of these sources of revenue to TBN, and it is unclear to what extent they could be relied on if demonstrated. Consequently, we have no basis by which we can lower TBN's \$8,151,000 commitments.

<sup>4</sup>Seattle STV has demonstrated net liquid assets of only \$5,000.

to ASTV-Washington.<sup>7</sup> The availability of any funds from ASTV-Washington is contingent upon the grant of Seattle STV's application for STV authorization. At this point, the applicant cannot depend on such a grant (see footnote 2), and even if the STV application were granted, ASTV-Washington would not be obligated for the funds until subscription television service is instituted, which could be months after Seattle STV commences operation. Further, even if the STV service were operational, ASTV-Washington might not meet its projected and committed revenues. Consequently, Seattle STV cannot rely on such uncertain financing. Because the lease of equipment, land, and buildings is also conditioned on the grant of the application for STV authorization, Seattle STV would require an additional \$1,245,538 to construct the station.<sup>8</sup> It has not demonstrated its ability to meet these costs. Accordingly, an appropriate financial issue will be specified.

6. All three applicants propose operation of a UHF television station from transmitters located within 250 miles of the Canadian border and with maximum visual effective radiated power (ERP) exceeding 1,000 kilowatts. The proposals pose no interference threat to United States television stations; however, they do contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1,000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). Since the Commission lacks authority to waive international agreements, any construction permit granted in this proceeding will be conditioned to preclude station operation with maximum visual ERP in excess of 1,000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

7. Since TBS's, Seattle STV's, and Tavitac's applications are mutually exclusive, the Commission is unable to make the statutory finding that grant of the applications will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues set out below.

<sup>7</sup> Specifically ASTV-Washington, in its Subscription Television Affiliation Agreement with Seattle STV, agrees to purchase from the applicant a minimum of \$600,000 in broadcast hours over the period of a year.

<sup>8</sup> Seattle STV estimates that ASTV-Washington would require \$1,245,538 to purchase the equipment, land, and building that it intends to lease to the applicant.

8. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to TBS's financial showing:

(a) Whether TBS has \$723,677 available for construction and three months operating costs.

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine with respect to Seattle STV's financial showing:

(a) Whether Seattle STV has \$1,415,788 available for construction and three months operating costs.

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the informal objections filed by the Western Washington Cooperative Interference Committee and by Ratelco, Inc. are denied.

10. It is further ordered, That, in the event of a grant of the application of Trinity, Seattle STV, or Tavitac, the construction permit shall contain the following condition:

Operation with maximum visual effective radiated power in excess of 30.0 dBk (1,000 kW) is subject to consent by Canada.

Further, in the event of a grant of Seattle STV's application, the construction permit shall contain the additional condition:

The visual transmitter output power shall be measured at the input to the diplexer.

11. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and

shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division,  
Broadcast Bureau.

[PR Doc. 81-2712 Filed 1-26-81; 8:45 am]

BILLING CODE 6712-01-M

#### [Report No. A-22]

#### TV Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Cut-Off Date: March 6, 1981.

Released: January 23, 1981.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. They will be considered to be ready and available for processing after March 6, 1981. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on March 6, 1981, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. no later than the close of business on March 6, 1981.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on March 6, 1981.

Applications for new stations may not be filed against any application on the attached list which is designated by an asterisk (\*).

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPET-800114 F (new), Williston, North Dakota, Prairie Public Television, Inc., Channel 4, ERP: Vis. 100 kW; HAAT: 912 feet

\*BPCT-801023KJ (WGSE (TV)), Myrtle Beach, South Carolina, Carolina Christian Broadcasting, Inc., Channel 43, Decrease ERP Vis. to 156 kW; increase HAAT to 607 feet

BPCT-801114KE (new), Ocala, Florida, Big Sun Television, Inc., Channel 51, ERP: Vis. 1117 kW; HAAT: 945 feet

BPCT-801114KF (new), Flagstaff, Arizona, Manning Telecasting, Inc., Channel 13, ERP: Vis. 318 kW; HAAT: 1031 feet

\*BPCT-801114KG (KQTV (TV)), St. Joseph, Missouri, Eiba Development Corporation, Channel 2, Change site; increase HAAT to 2000 feet

BPCT-801121KK (new), Scranton, Pennsylvania, SWH Associates, Channel 38, ERP: Vis. 31kW; HAAT: 1287 feet

BPCT-801121KL (new), Hazleton, Pennsylvania, Hazleton TV Associates,

Channel 56, ERP: Vis. 9.8 kW; HAAT: 628 feet

BPCT-801126KH (new), Reno, Nevada, Family Stations, Inc., Channel 27, ERP: Vis. 95 kW; HAAT: 2300 feet

\*BMPCT-801208KK (WDDD-TV), Marion, Illinois, Dennis F. Doelitzsch, Channel 27, Change site; increase ERP Vis. to 2570 kW; increase, HAAT to 772 feet.

\*BPCT-801210KG (KPTX (TV)), Odessa, Texas, Permian Basin Television Corp., Channel 9, Change city of license from Monahans, Texas.

[FR Doc. 81-2711 Filed 1-26-81; 8:45 am]

BILLING CODE 6712-01-M

#### [Report No. B-7]

### AM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Cut-off Date: March 2, 1981.

Released: January 22, 1981.

Notice is hereby given that the following applications have been accepted for filing. Because they are in conflict with applications previously accepted for filing and listed as subject to cut-off dates for conflicting applications, no application which would be in conflict with these applications will be accepted for filing.

Petitions to deny these applications must be on file with the Commission not later than the close of business on March 2, 1981.

Minor amendments to these applications, and to the applications they are in conflict with, may be filed as a matter of right not later than the close of business on March 2, 1981. Amendments filed pursuant to this notice are subject to the provisions of § 73.3525(b) of the Commission's Rules.

BP-801002AB—Siefker Broadcasting Corp., WMLM, St. Louis, Michigan, Has: 1540 kHz, 1 kW, Day, Req: 1520 kHz, 1 kW, DA-2, U

BP-801003AK—JEM Broadcasting Company, KJEM, Bentonville, Arkansas, Has: 1190 kHz, 500 W, Day, Req: 1190 kHz, 5 kW (1 kW-CH), Day

BP-801104AF (new), Willits, California, The Henry Radio Company, Req: 1250 kHz, 1 kW, 2.5 kW-LS, DA-2, U

BP-801105AD (new), South Glens Falls, New York, Premier Broadcasting Corporation, Req: 1230 kHz, 250 W, 1 kW-LS, U.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-2710 Filed 1-26-81; 8:45 am]

BILLING CODE 6712-01-M

### FEDERAL COMMUNICATIONS COMMISSION

#### Radio Technical Commission for Marine Services; Meeting

In accordance with Public Law 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 78  
Notice of 1st Meeting, Tuesday, February 10, 1981—9:30 a.m.  
Conference Room 4234/36/38, Nassif (DOT) Building, 400 Seventh Street, SW, at D Street, Washington, DC

#### Agenda

1. Call to order and administrative matters.
2. Presentation/discussion concerning Federal Radionavigation Plan.
3. Special Committee organization.
4. Establish next meeting date and adjourn.

John C. Fuechsel, Chairman SC-78, National Ocean Industries Assoc., 1100 17th St. NW., Washington, DC., Phone: (202) 785-5116.

Executive Committee Meeting  
Notice of February Meeting, Thursday, February 19, 1981—9:30 a.m.  
Conference Room 6332, Nassif (DOT) Building, 400 Seventh Street SW., at D Street, Washington, DC

#### Agenda

1. Administrative Matters
2. Special Committee Reports.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

William J. Tricarico,  
Secretary.

[FR Doc. 81-2707 Filed 1-26-81; 8:45 am]

BILLING CODE 6712-01-M

### FEDERAL ELECTION COMMISSION

[Notice 1981-1]

#### Clearinghouse on Election Administration Clearinghouse Advisory Panel; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A-63, as revised, the Federal Election

Commission announces the following Advisory Panel meeting:

Name: Clearinghouse Advisory Panel  
Date: February 23-24, 1981  
Place: Senate Room, Capitol Hilton Hotel, 16th and K St., NW, Washington, DC  
Time: 1000-1200; 1400-1600 on February 23, 1981; 0900-1200; 1400-1600 on February 24, 1981

Proposed Agenda: Welcoming remarks, discussion and review of 1980 Elections. Election issues and the role of the Clearinghouse in the 1980's. New trends and technological developments in elections. Review of present and future Clearinghouse research projects. Purpose of the meeting: The Panel will review past Clearinghouse research efforts, discuss present problems in the administration of federal elections and formulate recommendations to the Federal Election Commission Clearinghouse for its future research program.

The Advisory Panel meeting is open to the public depending on available space. Any member of the public may file a written statement with the Panel before, during or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding this Advisory Panel should be addressed to Dr. Gary Greenhalgh, Clearinghouse on Election Administration, Federal Election Commission, 1325 K St., NW Washington, DC 20463.

Dated: January 19, 1981.

John Warren McGarry,  
Chairman, Federal Election Commission.

[FR Doc. 81-2708 Filed 1-26-81; 8:45 am]

BILLING CODE 6715-01-M

### FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-4-A-1-1]

#### Alabama Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government plans, the State of Alabama has submitted its radiological emergency plans to the FEMA Regional office. These plans support nuclear power plants which impact on Alabama, and include those of local governments near the Alabama Power Company's

Farley Plant located in Houston County, and the TVA's Browns Ferry Plant located in Limestone County, Alabama.

DATE: November 10, 1980.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Frank Newton, Regional Director, FEMA Region IV, 1375 Peachtree Street, NW, Atlanta, Georgia 30309, (404) 831-2400.

**NOTICE:** In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of State and local government's radiological emergency response plans. Pursuant to this proposed FEMA Rule (44 CFR Part 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," 45 FR 42341, the State Radiological Emergency Response Plan for the State of Alabama was received by the Federal Emergency Management Agency Region IV Office.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zones of the nuclear plants. For the Farley Plant, plans are included for Houston and Henry Counties. For the Browns Ferry Plant, plans are included for Lauderdale, Lawrence, Limestone, Madison and Morgan Counties.

Copies of the Plan are available for review at the FEMA Region IV Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 505 pages in the document; reproduction fees are \$.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Frank Newton, Regional Director, at the above address within thirty days of this Federal Register notice.

FEMA proposed Rule 44 CFR 350.10 also calls for a public meeting prior to approval of the plans. Details of this meeting will be announced in The Dothan Eagle at least two weeks prior to the scheduled meeting. Local radio and television stations will be requested to announce the meeting.

Dated: January 14, 1981.

Frank Newton,  
Regional Director.

(FK Doc. 81-2860 Filed 1-26-81; 8:45 am)

BILLING CODE 6716-01-M

**Joint Department of Defense, Department of Energy and Federal Emergency Management Agency Agreement for Response to Nuclear Weapon Accidents and Nuclear Weapon Significant Incidents**

January 15, 1981.

The Department of Defense and Energy and the Federal Emergency Management Agency have entered into an agreement in which they agree to take all possible measures to protect the public from the hazards associated with accidents involving nuclear weapons. The agreement specifies the responsibilities, organizational relationships and types of activities that will govern the response of the three agencies in the event of a nuclear weapon accident or significant incident. The agreement commits the three agencies to further joint planning to mitigate the effects of a nuclear weapon accident.

The text of the Memorandum of Agreement follows.

Frank A. Camm,  
Associate Director for Plans and Preparedness.

*Preamble*

The Department of Defense (DOD) and the Department of Energy (DOE), in carrying out the responsibilities vested in them by the Atomic Energy Act of 1954, as amended, have diligently pursued a development program to insure that the maximum degree of safety attainable is designed into nuclear weapons. Dealing with the consequences to the civilian populace of a nuclear weapon accident or significant incidence is part of the Federal Emergency Management Agency's responsibilities. In carrying out these responsibilities, FEMA will establish policies for, and coordinate, all civilian emergency planning, management, and assistance by, executive agencies. The signatories, recognizing the unlikely nature of a nuclear weapon accident, nevertheless commit their respective organizations to this Memorandum of Agreement. The intention is to ensure that all possible measures are taken to protect the public of the United States of America, to the greatest degree possible, from the hazards associated with an accident involving nuclear weapons. The signatories agree to the conduct of thorough joint planning on the various aspects of nuclear weapon accidents to mitigate the effects of such an accident.

1. *Purpose and Scope.* To delineate general areas of responsibility, and set forth a joint policy for an effective and coordinated response by Department of Defense (DOD), Department of Energy

(DOE), and the Federal Emergency Management Agency (FEMA) within the United States and its territories, to peacetime Nuclear Weapon Accidents and Nuclear Weapon Significant Incidents where one or more of the signatory agencies is responsible for providing assistance. For DOD and DOE, the responsibilities and scope of this agreement are extended worldwide subject to the provisions of applicable international agreements.

2. *Cancellation.* This agreement supercedes the "Joint Department of Defense and Energy Research and Development Administration Agreement in Response to Accidents Involving Radioactive Material or Nuclear Weapons", dated March 1, 1977.

3. *Policy.* The DOE is generally responsible for protecting the public from hazards involving the development, use, or control of DOE-owned radioactive materials in its custody. The DOD and DOE are responsible for protecting the public from hazards associated with, and for planning for and mitigating the health and safety problems connected with, the development, storage, transportation, use or control of nuclear weapons and radiological nuclear weapon components within their respective custodies. The DOE will participate in the consideration of these problems as a matter of continuing responsibility. FEMA is responsible for coordinating Federal response actions, within the United States and its territories, for a nuclear weapon accident or significant incident affecting the civilian population and ensuring that Federal actions are coordinated with state and local governments.

4. *Implementation.* The DOD, DOE, and FEMA will issue appropriate internal instructions and operating procedures to implement this agreement.

5. *Definitions.* a. *Nuclear Weapon Accident.* An unexpected event involving nuclear weapons or radiological nuclear weapon components that results in any of the following:

(1) Accidental or unauthorized launching, firing, or use by U.S. forces or U.S. supported Allied forces, or a nuclear-capable weapons system which could create the risk of an outbreak of war.

(2) Nuclear detonation.

(3) Non-nuclear detonation or burning of a nuclear weapon or radiological nuclear weapon component.

(4) Radioactive contamination.

(5) Seizure, theft, loss or destruction of a nuclear weapon or radiological nuclear weapon component, including jettisoning.



(6) Public hazard, actual or implied.

b. *Nuclear Weapon Significant*

*Incident.* An unexpected event involving nuclear weapons or radiological nuclear weapon components which does not fall in the nuclear weapon accident category but:

(1) Results in evident damage to a nuclear weapon or radiological nuclear weapon component to the extent that major rework, complete replacement, or examination or recertification by the DOE is required.

(2) Requires immediate action in the interest of safety or nuclear weapons security.

(3) May result in adverse public reaction (national or international) or premature release of classified information.

(4) Could lead to a nuclear weapon accident and warrants that high officials of the signatory agencies be informed or take action.

c. *Nuclear Weapon Accident/*

*Significant Incident Assistance.* That

assistance provided after an accident or significant incident involving nuclear weapons or radiological nuclear weapon components to:

(1) Evaluate the radiological hazard.

(2) Accomplish emergency rescue and first aid.

(3) Minimize safety hazards to the public.

(4) Minimize exposure of personnel to radiation and/or radioactive material.

(5) Establish security, as necessary, to protect classified Government material.

(6) Minimize the spread of radioactive contamination.

(7) Minimize damaging effects on property.

(8) Disseminate technical information and medical advice to appropriate authorities.

(9) Inform the public (as appropriate) to minimize public alarm and to promote orderly accomplishment of emergency functions.

(10) Support recovery operations of damaged weapons or weapon components.

(11) Support the removal of radiological hazards.

d. *National Defense Area (NDA).* An

area established on non-Federal lands located within the United States, its possessions or territories, for the purpose of safeguarding classified defense information, or protecting DOD equipment and/or material.

Establishment of a NDA temporarily places such non-Federal lands under the effective control of DOD and results only from an emergency event. The senior DOD representative at the scene will define the boundary, mark it with a physical barrier, and post warning signs.

The landowner's consent and cooperation will be obtained whenever possible; however, military necessity will dictate the final decision regarding location, shape and size of the NDA.

e. *National Security Area (NSA).* An area established on non-Federal lands located within the United States, its possessions, or territories, for the purpose of safeguarding classified and/or restricted data information, or protecting DOE equipment and/or material. Establishment of a NSA temporarily places such non-Federal lands under the effective control of the DOE and results only from an emergency event. The senior DOE representative having custody of the material at the scene will define the boundary, mark it with a physical barrier, and post warning signs. The landowner's consent and cooperation will be obtained whenever possible; however, operational necessity will dictate the final decision regarding location, shape, and size of the NSA.

f. *On-Site.* That area around the scene of a nuclear weapon accident or significant incident that is under the operational control of the installation commander, facility manager, DOD on-scene commander, or DOE Team Leader. The on-site area includes any area which has been established as a NDA or NSA.

g. *Off-Site.* That area beyond the boundaries of a DOD installation or DOE facility, including the area beyond the boundary of a NDA or NSA, that has been, or may become affected by a nuclear weapon accident or significant incident.

h. *Initial Response Force.* A force, identified in the Nuclear Accident Response Capabilities Listing (NARCL), belonging to DOD or DOE installations, facilities, or activities, within the United States and its territories, tasked with taking emergency response actions necessary to maintain command and control on-site pending arrival of the Service or Agency Response Force. Functions which the Initial Response Force are tasked to perform, within their capabilities are:

(1) Rescue operations

(2) Accident site security

(3) Firefighting

(4) Initial weapon emergency safing

(5) Radiation monitoring

(6) Establishment of command, control and communications

(7) Public affairs activities

i. *Service/Agency Response Force.* A DOD or DOE response force that is appropriately manned, equipped, and capable of performing the Initial Response Force tasks and coordinating all actions necessary to effectively

control and recover from an accident or significant incident. The specific purpose of a Service/Agency Response Force is to be able to provide nuclear weapon accident/significant incident assistance. Service/Agency Response Forces are organized and maintained by those Services or Agencies which have custody of nuclear weapons or radioactive nuclear weapon components.

j. *Lead FEMA Official.* The designated senior FEMA representative at the scene of a nuclear weapon accident or significant incident responsible for implementing FEMA's responsibilities. In the event the accident/significant incident results in the President declaring the accident or significant incident a major disaster under the authority of Pub. L. 93-288, these responsibilities will be assumed by the designated Federal Coordinating Officer (FCO) for that major disaster.

6. *Responsibilities.* a. *General.* (1) Primary responsibility for command and control on-site at the scene of a nuclear weapon accident or significant incident rests with:

(a) The Service or Agency in charge or command of a DOD installation, DOE facility, ship at sea, or geographic area on which the accident or incident occurs. The installation, facility, ship, or geographic area commander will coordinate his actions with the Service or Agency having custody of the weapon at the time the accident or significant incident occurs.

(b) The Service or Agency having custody of the weapon at the time the accident or significant incident occurs, should the accident occur off or beyond the boundaries described in 6a(1)(a) above.

(2) FEMA will coordinate the off-site response actions of all Federal agencies to assure that all necessary assistance is being provided and that all off-site actions are consistent with the on-site activities of DOD and DOE and the response activities of state and local officials.

(3) FEMA will coordinate all Federal emergency response activities with state and local emergency response efforts.

(4) The military on-scene commander or the DOE Team Leader will inform FEMA of all on-site response activities which could have an impact off-site.

(5) FEMA will receive all requests from state and local officials for assistance from the Federal Government and will coordinate these requests with the appropriate agency.

(6) If an accident or significant incident involving nuclear weapons should result in a Presidential declaration of a major disaster or

emergency (Public Law 93-288), the Secretary of the Army will become the DOD Executive Agent for providing additional military support to the Federal Coordinating Officer (FCO) as required, subject to the military missions and priorities of DOD.

(7) The DOD or DOE official first to arrive at the scene of a nuclear weapon accident or significant incident will take initial emergency actions required to establish control of the accident site and to safeguard classified material, and to advise military and DOE personnel of the possible radiological hazard. Prior to the arrival of a FEMA representative, this DOD or DOE official will also seek the assistance and cooperation of State and local authorities and will advise them of the possible radiological hazards. This DOD or DOE official will remain on the scene until arrival of the identified Service on-scene commander, or DOE Team Leader having the primary responsibility as set forth in para 6a(1).

(8) The commander of the Initial Response Force or the DOE Team Leader will assume responsibility for control of on-site emergency operations when directed to do so by the appropriate Service or DOE operations center. A NDA or NSA will be established if required at the appropriate time using appropriate authority. The Initial Response Force commander will remain in control until relieved by the DOD on-scene commander or DOE Team Leader of the Service/Agency Response Force.

(9) The National Military Command Center (NMCC) will be responsible for initial national-level command and control and response of DOD resources and personnel until conditions have stabilized, at which time command and control will be transferred to the responsible Service operations center. The NMCC will continue to provide information and support facilities as may be required. The equivalent DOE focal point will be the HQ DOE Emergency Operations Center (EOC). The equivalent FEMA focal point will be the FEMA National Operations Center (NOC). Liaison representatives will be exchanged between these focal points if the situation so dictates.

(10) The NDA/NSA will be dissolved after all nuclear weapons, nuclear weapon components, and classified materials have been removed. Any continuing Federal assistance within this former NDA or NSA will be coordinated directly by FEMA. Within the Federal Government, the responsibility for site clean up will

normally remain with the responsible DOD or DOE Agency.

(11) DOD and DOE will operate a Joint Nuclear Accident Coordinating Center (JNACC) to assist in performing the functions set forth in this agreement.

(12) The DOD, DOE, and FEMA will establish procedures to ensure that the JNACC is advised promptly of all accidents or significant incidents involving nuclear weapons. Coordination should be maintaining throughout the response activity to assure all applicable command centers are properly informed.

(13) The Military Services and the DOE will provide JNACC with information necessary for the maintenance of current records reflecting the location of identified Initial and Service/Agency Response Forces and other specialized units and teams which can be used to provide nuclear weapon accident assistance.

(14) The Military Services, Defense Nuclear Agency, and the DOE will respond to requests from the JNACC for mutual assistance.

(15) The DOD, DOE, and FEMA will develop and publish guidance in the area of nuclear weapon accident assistance. Signatory agencies will insure that information contained in computerized data bases pertinent to the requirements of this agreement is readily available to the other signatories.

(16) A Joint Information Center (JIC) will be established near the scene of an accident or significant incident involving nuclear weapons which results, or appears likely to result, in effects outside DOD or DOE facility boundaries. This JIC will include public affairs representatives from the DOD, DOE and FEMA, as well as provisions for other Federal Agency, state and local participation. The JIC will effect coordination of all public information prior to release. Details and procedures will be worked out as a result of experience gained in exercises and further discussion among the agencies.

*b. Department of Defense.* (1) The DOD will immediately notify the DOE and FEMA of the occurrence of an accident or significant incident involving nuclear weapons. In addition, the NMCC or the appropriate Military Service will advise the DOE and FEMA of the name of the designated on-scene commander and a point of contact for coordinating the DOD/DOE nuclear weapon accident assistance.

(2) Upon request, the DOD will provide worldwide military transportation, aerial photographic

support, airborne survey platforms, logistic support services, and other support as requested to the DOE for its response to either DOD or DOE nuclear weapon accidents or significant incidents.

(3) The DOD will provide required administrative, medical, and logistic support (including communications and military transportation) for a DOE response organization supporting a DOD nuclear weapon accident assistance effort.

(4) The DOD on-scene commander will provide public affairs liaison to the JIC.

(5) The DoD on-scene commander will provide liaison to the senior FEMA official at the scene.

(6) The DoD on-scene commander will formally recognize the DoD Team Leader as a member of his personal staff. Further, the on-scene commander will consult with the DoE Team Leader on technical matters involving weapons operations and radioactive hazards.

(7) The DoD response organization will be under the control of the DoE Team Leader for on-site activities while at a DoE nuclear weapon accident or significant incident scene.

*c. Department of Energy.* (1) The DoE will immediately notify the DoD and FEMA of the occurrence of a nuclear weapon accident or significant incident. In addition, DoE will advise DoD and FEMA of the name of the designated DoE Team Leader and a point of contact for coordinating the DoD/DoE nuclear weapon accident assistance.

(2) The DoE response capability will be comprised of technical specialists with equipment on continuous alert and ready for dispatch to provide nuclear weapon accident assistance. They will advise and assist in collecting and evaluating data, and mitigating radioactive and nuclear weapon hazards.

(3) The DoE will dispatch the appropriate response organizations to the scene of a DoE/DoE nuclear weapon accident or significant incident. The specific composition of the organization (e.g., Accident Response Group (ARG) or Nuclear Emergency Search Team (NEST)), to include any necessary specialized equipment, will be designed to best meet the requirements of the accident or incident, and will be coordinated with the DoE/DoE JNACC.

(4) The DoD response organization will be under the control of the DoD on-scene commander for on-site activities while at a DoD nuclear weapon accident or significant incident scene.

(5) The DoE response organization's

mission will include provision of the following support to a DoD on-scene commander:

- (a) Technical advice and assistance for determining the extent of any radioactive hazards.
- (b) Technical advice to minimize hazards to the public.
- (c) Technical advice and assistance in the collection, identification and disposition of weapon components, weapon debris, and the resulting radioactive material.
- (d) Technical advice and assistance in the identification and protection of nuclear weapon design information and other restricted data.

(e) Support of discussions with foreign, state, or local government officials on matters within areas of special DoE competence.

(f) Technical advice and assistance to DoD Explosive Ordnance Disposal (EOD) teams in render safe and recovery procedures.

(8) The DoE response organization for supporting the DoD will be headed by a DoE Team Leader. The DoE Team Leader will:

- (a) Direct the activities of the DoE response organization.
- (b) Ensure coordinated DoE support for the DoD on-scene commander.
- (c) Advise the DoD on-scene commander of any requirement for additional DoE response capabilities and provide for such additional response as may be mutually agreed upon.

(7) The response organization will normally include a Senior Scientific Advisor. The Senior Scientific Advisor, reporting to the DoE Team Leader, serves as the chief advisor to the response group on weapons technical matters.

(8) The DoE Team Leader will provide public affairs liaison to the JIC.

(9) The DoE Team Leader will provide liaison to the senior FEMA official at the scene.

(10) When directed, Headquarters DoE will coordinate off-site radiological monitoring and assessment activities of Federal Agencies.

*d. Federal Emergency Management Agency.* (1) FEMA will immediately notify the DoD and DoE of the occurrence of a nuclear weapon accident or significant incident.

(2) FEMA will dispatch a coordinator and public affairs representative to the scene of a nuclear weapon accident or significant incident when it has or may have an effect outside of the DoD or DoE facility boundaries.

(3) FEMA will provide a liaison representative to the DoD or DoE official

responsible for on-site activities.

(4) FEMA will make any necessary recommendations to state and local officials regarding protective actions. FEMA will rely upon the technical expertise of DoD, DoE, and other Federal agencies in making these recommendations.

(5) FEMA will take actions to ensure that all necessary Federal assistance available from any Federal agency is being provided and will coordinate these activities with the response activities of state and local governments.

(6) FEMA will supply coordinated information on the Federal response role to the state and/or local government officials.

#### *7. Joint Nuclear Accident Coordinating Center.* JNACC will:

a. Maintain current information as to the location of specialized DoD and DoE teams or organizations capable of providing nuclear weapon accident assistance.

b. Upon notification of a nuclear weapon accident or significant incident, select and notify specialized teams capable of responding to the accident or significant incident, inform the NMCC, Services, and DoE operations centers of actions taken, and when requested by the Services, coordinate deployment of specialized teams.

c. Refer public inquiries to the JIC.

*8. Reimbursement for Emergency Assistance Expense.* The Military Service or agency providing the necessary assistance will fund such costs initially within existing fund availability. The Military Service or agency having physical possession of the nuclear weapon or nuclear weapon component at the time of the accident or significant incident will be responsible for reimbursing, upon request, the Military Service or agency providing the necessary assistance for those costs which are in addition to normal operating expenses and which are directly chargeable to, and caused by, the accident/incident.

*9. Biennial Review.* This agreement will be updated every two years at a Biennial Review Conference by representatives from each of the signatory agencies. The Office of the Assistance to the Secretary of Defense for Atomic Energy will chair and make arrangements for the review conference.

For the Department of Defense,  
James P. Wade, Jr.,

*Assistant to the Secretary of Defense (Atomic Energy).*

For the Department of Energy,  
Duane C. Sewell,

*Assistant Secretary for Defense Programs.*

For the Federal Emergency Management Agency,

Frank A. Camm,

*Associate Director for Plans and Preparedness.*

January 8, 1981.

[FR Doc. 81-2865 Filed 1-26-81; 8:46 am]

BILLING CODE 6718-01-M

[Docket No. FEMA-REP-4-NC-1]

### **North Carolina Radiological Emergency Plan**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of receipt of plan.

**SUMMARY:** For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government plans, the State of North Carolina has submitted its radiological emergency plans to the FEMA Regional office. These plans support nuclear power plants which impact on North Carolina, and include those of local governments near Duke Power Company's McGuire Nuclear Station located in Mecklenburg County, North Carolina.

**DATE PLANS RECEIVED:** November 6, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Newton, Regional Director, FEMA Region IV, 1375 Peachtree Street, NW, Atlanta, Georgia 30309, (404) 881-2400.

**NOTICE:** In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this proposed FEMA Rule (44 CFR Part 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," 45 FR 42341, the State Radiological Emergency Plan for the State of North Carolina was received by the Federal Emergency Management Agency Region IV Office.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zones of the nuclear plant. For the McGuire Nuclear Station, plans are included for

Mecklenburg, Lincoln, Iredell, Gaston and Catawba Counties.

Copies of the Plan are available for review at the FEMA Region IV Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 1250 pages in the document; reproduction fees are \$.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Frank Newton, Regional Director, at the above address within thirty days of this Federal Register notice.

FEMA proposed Rule CFR 350.10 also calls for a public meeting prior to approval of the plans. Details of this meeting will be announced in the *Charlotte Observer*, Charlotte, North Carolina at least two weeks prior to the scheduled meeting. Local radio and television stations will be requested to announce the meeting.

Dated: January 14, 1981.

Frank Newton,  
Regional Director.

[FR Doc. 81-2807 Filed 1-26-81; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL HOME LOAN BANK BOARD

[Res. No. 81-31]

### Notice of Prices for Processing and Settlement Services by Federal Home Loan Banks

January 21, 1981.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice of prices for processing and settling.

**SUMMARY:** Pursuant to 12 CFR 534.6(d)(2), the Federal Home Loan Bank Board is publishing the approved prices that the various Federal Home Banks will charge for collection, processing, and settlement of payment instruments. This notice is required under 12 CFR 534.6(d)(2).

**FOR FURTHER INFORMATION CONTACT:** Daniel P. Chase, Assistant to Director, Office of District Banks, (202) 377-6654, or Jerry Hartzog, Senior Economist, Office of Policy and Economic Research, (202) 377-6782, 1700 G Street, N.W., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:** The Depository Institutions Deregulation and Monetary Control Act of 1980 authorizes the Board to permit the twelve Federal Home Loan Banks to provide for the collection, settlement, and processing of NOW drafts and other negotiable and

non-negotiable instruments drawn on, or issued by, depository institutions and to provide other support services incident to this authority.

On September 18, 1980, by Resolution No. 80-591 (45 FR 64161, September 29, 1980), the Federal Home Loan Bank Board ruled that these services must be explicitly priced and adopted final regulations (12 CFR Part 534) which require the Federal Home Loan Banks to follow four basic pricing principles. First, services shall be priced explicitly. Second, services shall be available to member and non-member depository institutions on an equal basis. Third, over the long run, fees shall cover all direct and indirect costs actually incurred in providing support services and must cover an imputed cost which includes the taxes paid and the return on capital that would have been earned had the service been provided by a private firm. Fourth, items credited prior to collection shall be charged an interest fee based on the federal funds rate.

The final regulation authorizes the Director of the Office of District Banks or his/her designee, with the concurrence of the Director of the Office of Policy and Economic Research or his/her designee to review and approve prices for services provided by the Federal Home Loan Banks in connection with the processing of payment instruments such as NOW drafts. Under delegated authority, the Office of District Banks and Office of Policy and Economic Research approved NOW service prices, which were determined to be consistent with statutory and regulatory requirements, for ten Federal Home Loan Banks on September 25, October 22, and October 28, 1980. A description of the NOW processing services to be offered by the Federal Home Loan Banks and the approved prices are provided herein.

Two Federal Home Loan Banks are not shown on the NOW service fee schedule. The Federal Home Loan Bank of Boston has not proposed to process NOW items and the Federal Home Loan Bank of Pittsburgh has contracted with two commercial banks to provide NOW services and thus will not provide in-house processing.

The services to be provided by the banks are as follows:

#### I. Standard Services

The following services are provided under all four Standard Services:

(1) Pick-up of NOW items and cash letters from Federal Reserve Offices or clearing houses and transportation of items (NOW drafts) to the Federal Home Loan Bank;

(2) Payment data capture and microfilming of items, balancing the cash letters and settlement with the Federal Reserve;

(3) Transmission of NOW transaction file to on-line data processor or to the association with in house, on-line services;

(4) Item delivery, including fine sorting of items by account number, except under truncation or safe-keeping of items as requested by the association and item retrieval, facsimile and photocopy service (Special Services) as requested; and

(5) Return item handling as requested by the association.

In addition to the above, the Standard Services include distinguishing features as follows:

#### A. Daily Delivery of Items

NOW items are returned to the association (cost of delivery paid by the association) on a daily basis. The association may elect to handle return items or have the Federal Home Loan Bank handle return items, in which case the availability of paid items may be delayed by one day.

#### B. Truncation

Service includes the microfilming, storage and destruction of paid items by the Federal Home Loan Bank and item retrieval, photocopy and inquiry service (additional fees shown under Special Services).

#### C. Cycle or Month-end Delivery

Service includes Federal Home Loan Bank retention of items in accordance with associations' statement cycles, at which time the items will be delivered to the association or its designee for matching with statements (delivery expense paid by the association). Service also includes Federal Home Loan Bank handling of return items, Federal Home Loan Bank handling of on-us items as requested, facsimile transmission of items, and delivery of reports to the association.

#### D. Cycle or Month-End Delivery With Statement Matching

Service includes features discussed under Standard Service C plus Federal Home Loan Bank matching of statements received from on-line servicers with paid items and mailing of statements to the association or directly to customers. Delivery cost paid by the association.

#### II. Special Services

In connection with the Standard Services, a number of other services are available and priced separately,

although they are integral to the complete Standard Services offered.

The Special Services include features as follows:

*A. Return Items*

Upon instructions received from the association, the Federal Home Loan Bank will initiate the return of an item presented for payment in its possession to the source of receipt.

*B. Stop-Payment Entry*

Information such as stop payments pertaining to an item may be placed in the file or automated system based on instructions provided by the association. Items will be automatically available for return or special handling.

*C. Facsimile Transmission*

Utilizing facsimile transmission equipment, the Federal Home Loan Bank will furnish to the association a copy of a particular item presented for payment pursuant to the association's request or prearranged procedures.

*D. Over the Counter On-Us Items*

Associations may forward on-us items to the Federal Home Loan Bank for inclusion with other items received through regular clearing channels.

*E. Photocopy*

The Federal Home Loan Bank, upon the association's request, will locate an item or microfilm copy and furnish a photocopy to the association.

*F. Check Retrieval*

Original items will be retrieved and mailed to the association or customer as requested by the association.

*G. Informational Inserts*

Under the statement matching service, Federal Home Loan Bank will include inserts as requested by the association.

By the Federal Home Loan Bank Board.

J. J. Finn,  
Secretary.

I. STANDARD SERVICES	New York	Atlanta	Cincinnati		Indianapolis	
			Items/Month		Items/Month	
A. Daily Delivery of Items	.020	\$ .025	a. 0-2,000	\$ .040	a. 0-5,000	\$ .0480
			b. 2,001-5,000	.035	b. 5,001-10,000	.0440
			c. 5,001-15,000	.030	c. 10,001-15,000	.0400
			d. 15,001-25,000	.025	d. 15,001-25,000	.0340
			e. 25,001 and over	.020	e. 25,001-50,000	.0300
				f. 50,001-75,000	.0270	
				g. 75,001-100,000	.0240	
				h. 100,001-125,000	.0220	
				i. 125,001-150,000	.0200	
				j. 150,001 and up	.0180	
B. Truncation	.015	\$ .030	a. 0-2,000	\$ .040	a. 0-5,000	\$ .0410
			b. 2,001-5,000	.035	b. 5,001-10,000	.0340
			c. 5,001-15,000	.030	c. 10,001-15,000	.0330
			d. 15,001-25,000	.025	d. 15,001-25,000	.0285
			e. 25,001 and over	.020	e. 25,001-50,000	.0270
				f. 50,001-75,000	.0240	
				g. 75,001-100,000	.0210	
				h. 100,001-125,000	.0190	
				i. 125,001-150,000	.0170	
				j. 150,001 and up	.0150	
C. Cycle or Month-end Delivery	.020	\$ .035	a. 0-2,000	\$ .050	a. 0-5,000	\$ .0480
			b. 2,001-5,000	.045	b. 5,001-10,000	.0440
			c. 5,001-15,000	.040	c. 10,001-15,000	.0400
			d. 15,001-25,000	.035	d. 15,001-25,000	.0340
			e. 25,001 and over	.030	e. 25,001-50,000	.0300
				f. 50,001-75,000	.0270	
				g. 75,001-100,000	.0240	
				h. 100,001-125,000	.0220	
				i. 125,001-150,000	.0200	
				j. 150,001 and up	.0180	
D. Cycle or Month-end Delivery with Statement Matching	N/A	\$ .050	a. 0-2,000	\$ .070	a. 0-5,000	\$ .0700
			b. 2,001-5,000	.067	b. 5,001-10,000	.0680
			c. 5,001-15,000	.065	c. 10,001-15,000	.0660
			d. 15,001-25,000	.060	d. 15,001-25,000	.0650
			e. 25,001 and over	.055	e. 25,001-50,000	.0630
				f. 50,001-75,000	.0600	
				g. 75,001-100,000	.0590	
				h. 100,001-125,000	.0580	
				i. 125,001-150,000	.0570	
				j. 150,001 and up	.0560	

II. SPECIAL SERVICES	New York	Atlanta	Cincinnati	Indianapolis
A. Return Items	\$2.50	\$2.00	No Charge	\$2.50
B. Stop Payments Entry	1.00	\$1.50	N/A	N/A
C. Facsimile	1.00	\$1.50	No Charge	\$1.00
D. Over the Counter On-Us Items	.020 Microfilm Items .005 Bulkfilling Items	\$ .005	\$ .025	\$ .025 Microfilming-add \$ .010
E. Photocopy	2.00	\$2.00	\$1.00	\$1.00
F. Check Retrieval	4.00	No Charge	\$1.50	\$1.00
G. Informational Inserts	N/A	No Charge	\$ .0025	No Charge

Under Daily Delivery of Items, return items are to be handled by the association.

Pricing is whole unit, decremental.

Under Daily Cycle or Month-end Delivery of Items, the cost of delivery of the items to the association is covered by the fee shown for the Standard Service. Under statement matching, if the FRB Rank mails statements to customers, the association pays postage.

Pricing is marginal, decremental.

There is no charge for facsimile of items over \$7,500 on day of presentation.

A truncated statement charge of \$.25 is applied if an association's customer wishes to have the NOW items included in the statement on an exception basis.

Chicago	Des Moines	Little Rock	Topeka	San Francisco	Seattle
\$ .0150	\$ .025	\$ .030	\$ .035 .020 unsorted	Items/Month a. Less than 50,000 b. 50,000 or more	\$ .035 \$ .025 \$ .025 on one-day delayed basis
\$ .0145	\$ .015	\$ .025	\$ .020	Items/Month a. Less than 50,000 b. 50,000 or more Statements for accounts on truncation (per statement)	\$ .030 \$ .020 .250
\$ .0150	\$ .025 cycle .030 month-end	\$ .030 cycle \$ .035 month-end	\$ .035	N/A	\$ .035
\$ .030	N/A	N/A	N/A	a. Bar encoded statements \$.35 b. Non bar encoded statements \$.45	\$ .060

Chicago	Des Moines	Little Rock	Topeka	San Francisco	Seattle
\$2.00 \$1.00 \$2.00 Microfilming- \$.015 encoded \$.025 unencoded	\$2.00 \$2.00 No Charge \$.025 plus .01 for microfilming	\$2.00 \$2.00 \$1.50 \$.030	\$2.50 No Charge \$1.50 \$.030	\$2.00 N/A No Charge \$.030	\$2.50 N/A \$2.50 \$.030 truncation \$.035 cycle \$.060 statement stuffing \$2.50 \$2.50 No Charge
\$2.00 \$2.00 \$.015	\$2.75 \$2.75 N/A	\$1.50 \$1.50 N/A	\$2.00 \$2.00 N/A	\$3.00 No Charge \$.030	\$2.50 \$2.50 No Charge

Costs for electronic transmission of payment data over telephone lines or magnetic tape courier will be charged to the association. \$ .005.

Under Cycle or Month-end delivery, the Bank will provide to the association a segregated, microfilmed record of cycle transaction activity for

No charge for facsimile signature verification. Facsimile charge covers other hard copy facsimile such as paid journal listing

No charge for facsimile signature verification. Facsimile charge covers other hard copy facsimile such as paid journal listing.

A \$.005/Item surcharge will be applied for institutions outside the Seattle Federal Reserve clearing zone to cover transportation to Seattle from the Federal Reserve Offices.

Daily delivery on a delayed basis will be charged at the cycle delivery rate of \$.035/Item.

Fees for Over the Counter On-Us Items are based on the standard service provided the association.

Special service charges apply to any items over 2.0 percent of volume requiring special handling such as return items, facsimile, photocopy and check retrieval.

## FEDERAL MARITIME COMMISSION

## Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico.

Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 6, 1981. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No. T-3941.

Filing party: G. C. Fulton, Esquire, Anderson, Fulton, Lavis & Van Thiel, 908 Commercial Street, Astoria, Oregon 97103.

Summary: Agreement No. T-3941, between the Port of Astoria (Port) and McCall Oil and Chemical Corp. (McCall), provides that the Port will lease to McCall certain terminal property to be used to maintain and operate a storage and distributing station for petroleum products and such ancillary activities related to the operation of such business. The agreement also provides for the right of way through portions of the Port area for construction, operation and maintenance of pipelines required for McCall's operations. McCall will compensate the Port for the use of the premises at the rate of \$1,000 per month plus a schedule of toll charges as agreed upon. The term of the agreement is 5 years with renewal options.

Agreement No. T-3813-1.

Filing party: Ryokichi Higashionna, Ph. D., Director of Transportation, State of Hawaii, 869 Punchbowl Street, Honolulu, Hawaii 96813.

Summary: Agreement No. T-3813-1, between the State of Hawaii (State) and Matson Terminals, Inc. (Matson), amends

approved agreements Nos. T-3813 and T-3813-A with regard to the obligation to construct a Special Terminal at Sand Island. The amendment provides that State, rather than Matson, will construct the facility and pay the cost with proceeds from bond anticipation notes. The amended lease will replace Harbor Lease No. H-79-5 between the parties, (FMC Agreement No. T-3813-A), applicable to the usage of certain exclusive use parcels, easement areas and common use land areas described therein. The amendment will incorporate the basic terms of Agreement No. T-3813-A, along with provisions for lease of the Special Facility, and for payment by Matson of the debt service required to pay the principal, premium, if any, and interest when due on the Special Facility revenue bonds. The amended lease is for a 35-year period.

Dated: January 22, 1981.

By order of the Federal Maritime Commission.

Francis C. Hurney,  
Secretary.

[FR Doc. 81-3017 Filed 1-26-81; 8:45 am]  
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

## Bank Holding Co.; Proposed "De Novo" Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to this application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or

at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than February 17, 1981.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045;

Citicorp, New York, New York (consumer and commercial finance and insurance activities; Utah and Arizona); to expand the service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, to include the entire state of Arizona. The previously approved service area of the office is comprised of the entire state of Utah. The previously approved activities of the office are: the purchasing for its own account and servicing sales finance contracts; the sale of credit related life and accident and health, decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; and the making of loans to individuals and businesses secured by real and personal property, the proceeds of which may be for purposes other than personal, family or household usage; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Person-to-Person Financial Center, and to the extent permissible under applicable state insurance laws and regulations; and the making of loans to individuals and businesses to finance the purchase of mobile homes, modular units or related manufactured housing together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loan. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center.

B. Other Federal Reserve Banks: None.

Board of Governors of the Federal Reserve System, January 16, 1981.

Jefferson A. Walker,  
Assistant Secretary of the Board.

[FR Doc. 81-2790 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M



**Benz Holding Co.; Formation of Bank Holding Company**

Benz Holding Company, Melvin, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 89 per cent or more of the voting shares of Melvin Savings Bank, Melvin, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 18, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 19, 1981.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 81-2791 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

**Consolidated Bank Corp.; Formation of Bank Holding Co.**

Consolidated Bank Corporation, Waco, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Rosebud, Texas, The First National Bank, Hillsboro, Texas, and First State Bank of Hewitt, Hewitt, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 18, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 19, 1981.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 81-2791 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

**Metro Bank Corp.; Formation of Bank Holding Company**

Metro Bank Corp., Denver, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Metro National Bank, N.A., Denver, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 16, 1981.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 81-2788 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

**Peoples Savings and Investment, Inc.; Formation of Bank Holding Company**

Peoples Savings and Investment, Inc., Muskogee, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 58.06 per cent or more of the voting shares of Exchange Bancshares, Inc., Skiatook, Oklahoma, and thereby acquire The Exchange Bank, Skiatook, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Peoples Savings and Investment, Inc., Skiatook, Oklahoma, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the

Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Exchange Bancshares Insurance Agency, Inc., Muskogee, Oklahoma and PSBO, Inc., Muskogee, Oklahoma.

Applicant states that the proposed subsidiaries would engage in the activities of selling credit related insurance and making or acquiring, for its own account or for the account of others, loans and other extensions of credit, such as would be made by a consumer and sales finance company. These activities would be performed from offices of Applicant's subsidiary in Muskogee, Tulsa, Oklahoma City and Skiatook, Oklahoma serving Muskogee, Tulsa and Oklahoma City, Oklahoma and the surrounding areas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 17, 1981.

Board of Governors of the Federal Reserve System, January 16, 1981.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 81-2788 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

### Texas Commerce Bancshares, Inc.; Acquisition of Bank

Texas Commerce Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Gulfway National Bank of Corpus Christi, Corpus Christi, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 16, 1981.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 81-2785 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

### Texas Commerce Bancshares, Inc.; Acquisition of Bank

Texas Commerce Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of the Mercantile National Bank of Corpus Christi, Corpus Christi, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing

the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 16, 1981.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 81-2786 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

### Weatherford Bancshares, Inc.; Formation of Bank Holding Company

Weatherford Bancshares, Inc., Weatherford, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Security State Bank, Weatherford, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than February 17, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 16, 1981.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 81-2787 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

### Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether

consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than February 20, 1981.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

Citicorp, New York, New York (consumer finance and insurance activities; Texas and Oklahoma); to expand the service area of an existing office of its indirect subsidiary, Nationwide Financial Corporation, located in Irving, Texas, to include McCurtain County in the state of Oklahoma. The previously approved service area of the office is comprised of the entire state of Texas. The previously approved activities of the office are: purchasing for its own account and servicing sales finance contracts; sale of credit-related life, accident and health, decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; making of loans to individuals and businesses secured by real and personal property, the proceeds of which may be for purposes other than personal, family or household usage; extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; and sale of credit-related property and casualty insurance protecting real and personal property subject to a security agreement with Nationwide Financial Corporation, to the extent permissible under applicable state insurance laws and regulations. Credit-related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an

affiliate of Nationwide Financial Corporation.

**B. Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

The Marine Corporation, Milwaukee, Wisconsin (mortgage banking; Wisconsin): to engage *de novo* in making, selling, and servicing conventional residential mortgage loans through its proposed subsidiary, the Marine Mortgage Company, Inc., Milwaukee, Wisconsin. The geographic scope of the proposed activities encompasses all of the State of Wisconsin and the northern quarter of Illinois. Comments on this application must be received by February 15, 1981.

**C. Other Federal Reserve Banks:** None.

Board of Governors of the Federal Reserve System, January 21, 1981.

James McAfee,

*Assistant Secretary of the Board.*

[FR Doc. 81-2880 Filed 1-26-81; 8:48 am]

BILLING CODE 6210-01-M

#### **First Financial Corp.; Formation of Bank Holding Company**

First Financial Corp., Providence, Rhode Island, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First Bank and Trust Company, Providence, Rhode Island. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 20, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 21, 1981.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 81-2881 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

#### **Jayhawk Bancshares, Inc., Formation of Bank Holding Company**

Jayhawk Bancshares, Inc., Kansas City, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Lawrence Bancshares, Inc., Kansas City, Missouri, and to acquire indirectly 94.09 per cent of the voting shares of Lawrence Bank and Trust Co., N.A., Lawrence, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 18, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 19, 1981.

James McAfee,

*Assistant Secretary of the Board.*

[FR Doc. 81-2882 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

#### **NBC Bancshares, Inc.; Formation of Bank Holding Company**

NBC Bancshares, Inc., Austin, Texas, has applied for the board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of National Bank of Commerce, Austin, Texas, and 100 per cent of the voting shares of National Bank of Commerce-South, Austin, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 18, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing,

identifying any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 19, 1981.

James McAfee,

*Assistant Secretary of the Board.*

[FR Doc. 81-2883 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

#### **Northern Indiana Bancshares, Inc., Formation of Bank Holding Company**

Northern Indiana Bancshares, Inc., Valparaiso, Indiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares (less director's qualifying shares) of Northern Indiana Bank and Trust Company, Valparaiso, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 18, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 19, 1981.

James McAfee,

*Assistant Secretary of the Board.*

[FR Doc. 81-2884 Filed 1-26-81; 8:45 am]

BILLING CODE 6210-01-M

#### **Mercantile Bancorporation, Inc., Acquisition of Bank**

Mercantile Bancorporation, Inc., St. Louis, Missouri, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 90 per cent or more of the voting shares of First National Bank of Monett, Monett, Missouri. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the

application should submit views in writing to the Reserve Bank to be received not later than February 20, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 21, 1981.

**Jefferson A. Walker,**  
*Assistant Secretary of the Board.*

[FR Doc. 81-2990 Filed 1-26-81; 8:45 am]  
BILLING CODE 6210-01-M

### Whiting Bankshares, Inc.; Formation of Bank Holding Company

Whiting Bankshares, Inc., Whiting, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The State Bank of Whiting, Whiting, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 20, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 21, 1981.

**Jefferson A. Walker,**  
*Assistant Secretary of the Board.*

[FR Doc. 81-2991 Filed 1-26-81; 8:45 am]  
BILLING CODE 6210-01-M

### Chittenden Corp.; Acquisition of Bank

Chittenden Corporation, Burlington, Vermont, has applied for the Board's approval under section 3(a)(33) of the Bank Holding Company Act (12 U.S.C. 1842(a)(33)) to acquire 80 percent or more of the voting shares of Mountain Trust

Company, Stowe, Vermont. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 26, 1981.

**Jefferson A. Walker,**  
*Assistant Secretary of the Board.*

[FR Doc. 81-3257 Filed 1-26-81; 11:20 am]  
BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### National Archives and Records Service

#### Advisory Committee on Preservation; Meeting

Notice is hereby given that the National Archives and Records Service Advisory Committee on Preservation Subcommittee on Preservation of Extant Documents and Artifacts will meet on February 9, 1981, from 10:00 a.m. to 4:00 p.m., The Newberry Library, Chicago, Illinois. The meeting will be devoted to preservation methods, modeling, standards for materials of archival quality, and liaison with other organizations interested in preservation.

Fifteen days advance notice of this meeting could not be made because of difficulties in completing arrangements for the meeting any earlier.

The meeting will be open to the public. For further information, call Alan Calmes, 202-523-3160.

Dated: January 23, 1981.

**Robert M. Warner,**  
*Archivist of the United States.*

[FR Doc. 81-3205 Filed 1-26-81; 8:45 am]  
BILLING CODE 6820-26-M

## Public Buildings Service

### [Draft Environmental Impact Statement (DEIS)]

#### Proposed Annex Construction and Repair and Alteration of U.S. Post Office and Courthouse (PO and CT), Charleston, S.C.; Public Meeting and Availability of DEIS

A Draft Environmental Impact Statement (DEIS) concerning the proposed annex construction and repair and alteration of the U.S. Post Office and Courthouse in Charleston, South Carolina, has been prepared by the General Services Administration in accordance with Section 102(2)(C) of the National Environmental Policy Act. The DEIS was released on January 16, 1981, to Federal, State, and local agencies, interested individuals and community groups. Participation by all interested public agencies, community groups and individuals in review and comment on the DEIS is invited.

A public meeting is scheduled to provide the community the opportunity to submit comments. The details of the meeting are described below. In addition, written comments on the DEIS may be submitted until March 2, 1981, and should be addressed: W. H. Capes, Public Buildings Service (4PG), General Services Administration, Region 4, 75 Spring Street, SW., Atlanta, GA 30303.

#### Public Meeting

Date: February 5, 1981.

Time: 2:00 p.m.

Place: Room 333, L. Mendel Rivers Federal Building, 334 Meeting Street, Charleston, South Carolina

Purpose: To receive comments concerning the Draft Environmental Impact for the proposed project.

Instructions: Interested parties desiring to present oral comments at the meeting will be recognized by the chair and extended an opportunity to do so. Oral comments must be limited to no more than five minutes but in addition written comments will be accepted.

Dated: January 7, 1981.

**Wesley L. Johnson, Jr.,**  
*Regional Administrator.*

[FR Doc. 81-2957 Filed 1-26-81; 8:45 am]  
BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 81M-0002]

**Burton, Parsons and Co., Inc.;**  
**Premarket Approval of Combiflex Hydrophilic Contact Lens Solution**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Combiflex Hydrophilic Contact Lens Solution, sponsored by Burton, Parsons & Co., Inc., Washington, DC. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic, Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

**DATE:** Petitions for administrative review by February 26, 1981.

**ADDRESS:** Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Henry Goldstein, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

**SUPPLEMENTARY INFORMATION:** The sponsor, Burton, Parsons & Co., Inc., Washington, DC, submitted an application for premarket approval of Combiflex Hydrophilic Contact Lens Solution to FDA on January 11, 1980. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic, Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On December 17, 1980, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), soft contact lens solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)) soft contact lens solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the *Federal Register* of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs. Furthermore, FDA requires as a condition to approval, that sponsors of applications for premarket approval

of soft contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above), and is available upon request from that office. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the Burton, Parsons & Co., Inc.'s Combiflex Hydrophilic Contact Lens Solution states that the solution is designed for daily use with soft (hydrophilic) contact lenses or with lenses made from other new polymers listed on the product labeling. Sponsors of any soft hydrophilic contact lenses that have been approved for marketing are advised that whenever FDA publishes a notice in the *Federal Register* of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution, at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360(e)(1)(F)).

#### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and

shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 26, 1981, file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-2825 Filed 1-26-81; 9:45 am]

BILLING CODE 4110-03-M

#### [FDA-225-80-2001]

#### Clams; Memorandum of Understanding With the Department of Health and Social Security of the United Kingdom

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has executed a memorandum of understanding (MOU) with the Department of Health and Social Security of the United Kingdom. The purpose of the memorandum is to set forth cooperative working arrangements to ensure that fresh and fresh frozen clams exported to the United States are safe and wholesome and meet U.S. requirements.

**DATE:** The memorandum of understanding became effective September 25, 1980.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Kustka, Intergovernment and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

**SUPPLEMENTARY INFORMATION:** FDA's policy is to publish in the *Federal Register* all agreements and memoranda of understanding between FDA and others (21 CFR 20.108(c)). Therefore, the

agency is publishing the following memorandum of understanding:

#### Memorandum of Understanding

Between The

Food and Drug Administration, United States Department of Health and Human Services

And The

Department of Health and Social Security, of the United Kingdom

The Department of Health and Social Security (DHSS) and the Food and Drug Administration (FDA) affirm by this memorandum their intention to cooperate in seeking to assure that fresh and fresh frozen clams exported to the United States from England are safe, wholesome, and have been harvested, transported, processed, and labeled in accordance with the provisions of the National Shellfish Sanitation Program (NSSP) and the requirements of the Federal Food, Drug, and Cosmetic Act.

#### I. Terms

For the purposes of this memorandum, the following definitions apply:

*Advisory agencies* means Fisheries Research Laboratory, Burnham-on-Crouch, and the Laboratories of the Public Health Laboratory Service at Southampton and Portsmouth.

*Clams* means the hard clam, *Mercenaria mercenaria*.

*Enforcement agencies* means the District Councils of New Forest and the Borough of South Wight and the Southampton Port Health Authority.

*Lot* means a collection of primary containers or units of the same size, type, and style, produced under conditions as nearly uniform as possible, designated by a common container code marking, and in any event, no more than a day's production.

#### II. Background

The harvesting, relaying, and cleansing of clams in England and Wales are controlled by the Food and Drugs Act, 1955, and the Public Health (Shellfish) Regulations, 1934 and 1948. These legal requirements are enforced by local authorities and apply equally to all clams, irrespective of whether they are intended for domestic consumption or export. The clams which are the subject of this memorandum originate from layings controlled by an Order issued by the Council of the City of Southampton in 1971 under the Public Health (Shellfish) Regulations, 1934 and 1948. This Order requires that "a person shall not sell, or export or distribute or offer for sale or have in his possession for the purpose of sale for human

consumption any \* \* \* clams taken from within the prescribed area, unless such \* \* \* clams have been relaid for such period and in such places as may from time to time be approved by this said Council \* \* \*."

#### III. Liaison Between Food and Drug Administration and Department of Health and Social Security

A. Both parties agree to an exchange of information concerning proposed changes in the following:

1. Methods and procedures for sampling.
2. Methods of analysis.
3. Methods of confirmation.
4. Administrative guidelines, tolerance, specification standards, and nomenclature.
5. Reference standards.
6. Inspection, procedures.

In the above respects, the DHSS Liaison Officer will be responsible for passing on information to the FDA from the Enforcement and Advisory Agencies. The FDA Liaison Officer will be responsible for passing relevant information to DHSS.

B. Both parties agree to inform each other of proposed changes in the national legislation in their respective countries affecting this memorandum.

C. Liaison Officer on behalf of the DHSS will be Mr. Michael Jacob, Environmental Health Officer, or his successors, Department of Health and Social Security, Room A322, Alexander Fleming House, Elephant and Castle, London SE1. Telephone: 01-407-5522 Ext. 7315.

The FDA Liaison Officer will be Mr. J. David Clem, Chief, Fisheries Technology Branch, or his successors, Bureau of Foods, Food and Drug Administration, 200 C St., SW., Washington, DC 2024. Telephone: 202-245-1557.

Immediate notification will be made of any changes in Liaison Officer appointments.

#### IV. Department of Health and Social Security

A. DHSS signs this memorandum on the basis that:

1. The Ministry of Agriculture, Fisheries and Food has agreed that the Fisheries Research Laboratory at Burnham-on-Crouch will participate to the maximum extent possible in the FDA's laboratory quality assurance programs. The Laboratories of the Public Health Laboratory Service at Southampton and Portsmouth have also agreed to participate. These programs may include:

- a. Participation in the analysis of split samples of:

- i. Seawater and shellfish meats for indicator bacteria or pathogens.
- ii. Shellfish meats for heavy metals or other chemical or radionuclide contaminants as may be necessary.

B. The evaluation of new methods and procedures, including reagents, media, or other material and instruments and equipment performance.

2. The respective enforcement agencies have agreed to use their best endeavors to ensure that clams exported to the United States originate only from the harvesting area within Southampton waters. Southampton waters are subjected to the controls applied by the Order made by the Council of the City of Southampton on July 22, 1971, under the Public Health (Shellfish) Regulations, 1934 and 1948. They will also attempt to ensure that these clams will be subjected to approved relaying and depuration processes as necessary.

3. The enforcement agencies have agreed to inspect the harvesting, relaying, transportation and processing of fresh clams intended for export to the USA at sufficient frequency to test compliance with NSSP sanitary control practices. The enforcement agencies will make all records of their inspections available to advisory agencies to facilitate evaluations of these procedures.

4. The New Forest District Council have agreed to collate and maintain a file of laboratory results including routine monitoring data and data from quality assurance programs. All data will be accessible to the DHSS Liaison Officer and to all other agencies concerned.

5. Exporters will ensure that clams intended for export to the United States will be relayed within the South Wight District and subject to the control of the South Wight Borough Council.

6. Exporters will ensure that all containers of all lots of fresh clams exported to the United States will be identified by lot number and a reference to the Shellfish Certification referred to in B below, together with all other information required by the Federal Food, Drug, and Cosmetic Act.

7. Exporters will ensure that any container of clams exported to the United States for use as bait will be labeled, "Not for human use" and the contents decharacterized by the use of a permanent colored dye.

8. Arrangements will be made to meet travel and incidental expenses of the FDA officials making inspections in accordance with this memorandum while the officials are in England.

B. On behalf of the DHSS, the Liaison Officer will, if appropriate, certify on the FDA Form FD 3038B, "Shellfish

Certification," that Exporters are following the NSS recommended control practices and operating a cleansing plant approved by DHSS. If DHSS becomes aware that conditions required by the NSSP are not subsequently being met, the Department will cancel the certificate by sending a completed Form FD 3038C, "Certification Cancellation" to FDA.

C. DHSS agrees to arrange joint inspections by FDA and DHSS officials of certified premises, shellfish growing areas used for export, and involved relaying areas.

#### V. Food and Drug Administration

A. FDA agrees to publish the names, locations and certification numbers upon receipt of Form FD 3038B in respect to the applicable firms. These firms will appear in the monthly Interstate Certified Shellfish Shippers List.

B. Subject to the availability of funds for such purposes, FDA will, upon request, provide limited training to technical personnel in laboratory procedures, classification of shellfish growing areas, and inspection and administrative procedures.

C. Whenever shellfish covered by this memorandum are detained by FDA due to noncompliance with NSSP practices or applicable laws or regulations, FDA will inform DHSS of the reason or reasons for the detention. This information will include:

1. Commodity lot and certification number.
2. Name and address of the shipper.
3. Reason for the detention.
4. Sampling procedure.
5. Methods of analysis and confirmation.
6. Administrative guidelines.

D. FDA agrees to make travel arrangements for, and pay round trip transportation expenses of, its inspection team between the United States and England. FDA will also pay all per diem of the inspection team.

#### VI. National Shellfish Sanitation Program

Upon signing this memorandum, the DHSS becomes an active participating member of the NSSP. As a full member of the NSSP, DHSS may participate in national workshops, cooperative research programs, seminars, training courses, and other activities designed for the timely exchange of technical information, assistance, and joint resolution of problems confronting the NSSP. The DHSS may also:

A. Participate in a joint evaluation of the United States program as it pertains to shellfish exports to England.

B. Make recommendations for changes and improvements in NSSP guidelines, methods, and standards.

C. Be advised by FDA in the event of a local food control official questioning the safety, or wholesomeness of shellfish imported into the USA from England. FDA will, if so informed, seek to determine the reason for the problem and inform the DHSS of any action taken relative to State and local laws or regulations governing such shellfish imports.

#### References

1. U.S. Department of Health and Human Services, Public Health Service, National Shellfish Sanitation Program, Manual of Operations: Part I *Sanitation of Shellfish Growing Areas*, 1965 Revision; Part II *Sanitation of the Harvesting and Processing of Shellfish*, 1965 Revision; Part III *Public Health Service Appraisal of State Shellfish Sanitation Programs*, 1965 Revision, PHS Publication No. 33.
2. "Official Methods of Analysis," 12th Ed., Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, DC 20044, 1975.
3. Food and Drug Administration, "Interstate Certified Shellfish Shippers List," published monthly and distributed to food control officials and other interested persons by FDA, Bureau of Foods, Fishery Technology Branch (HFF-217), 200 C St., SW., Washington, DC 20204.
4. Federal Food, Drug, and Cosmetic Act, as amended, United States Code, Title 21.
5. Fair Packaging and Labeling Act, Pub. L. 80-755, approved November 3, 1966.
6. American Public Health Association, "Recommended Procedures for the Examination of Seawater and Shellfish," 4th Ed., 1970, APHA, Inc., 1015 18th St. NW., Washington, DC 20036.
7. Food and Drug Administration, "Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food" regulations, 21 CFR Part 110.
8. Food and Drug Administration, Definitions and Standards for Food, "Fish and Shellfish" regulations, 21 CFR Part 161.

This agreement will be effective from the date of signature by both parties and will continue in force indefinitely. It may be modified by mutual written consent or may be terminated by either party upon a 30-day advance written notice to the other.

For the Food and Drug Administration, United States Department of Health and Human Services:

Dated: September 5, 1980.

Jere E. Goyan,  
Commissioner.

For the Department of Health and Social Security of the United Kingdom:

Dated: September 25, 1980.

J. B. Sharp,  
Assistant Secretary.

Effective date. This memorandum of understanding became effective September 25, 1980.

Dated: November 7, 1980.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-2627 Filed 1-26-81; 645 am]

BILLING CODE 4110-03-M

[Docket No. 80P-0263]

#### Heartbreak Hotel Corp., Dean Coleman Enterprises; Approval of Variance for the Heartbreak Hotel Corp. Laser Light Show

AGENCY: Food and Drug Administration.  
ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces that a variance from the performance standard for laser products has been approved by the Bureau of Radiological Health for the Heartbreak Hotel Corp. Laser Light Show including a laser projection system (Laser Presentations, Inc., Model LP-4K (1)) manufactured and produced by Heartbreak Hotel Corp., Dean Coleman Enterprises, Inc. The projector provides a laser display to produce a variety of special lighting effects in a theater. The principal use of this product is to provide entertainment to general audiences.

**DATES:** The variance became effective November 6, 1980, and ends November 6, 1982.

**ADDRESS:** The application and all correspondence on the application have been placed on display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

**SUPPLEMENTARY INFORMATION:** Under § 1010.4 (21 CFR 1010.4), Heartbreak Hotel Corp., Dean Coleman Enterprises, Inc., 15448 Blackbirch Dr., Chesterfield, MO 63014, has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products. The variance permits the manufacturer to introduce into commerce the demonstration laser product known as the Heartbreak Hotel Corp. Laser Light Show including a laser projection system (Laser Presentations

Model LP-4K (1), manufactured and produced by Heartbreak Hotel Corp., Dean Coleman Enterprises, Inc. The shows have levels of accessible laser radiation in excess of class II levels but not exceeding those required to perform the intended function of the product. Suitable means of radiation protection will be provided by constraints on the physical and optical design, by warnings in the user manual and on the product, and by procedures for Heartbreak Hotel Corp., Dean Coleman Enterprises, Inc., personnel. The product shall bear the Variance Number 80P-0263.

By letter of November 6, 1980, the Director of the Bureau of Radiological Health approved the requested variance, which terminates on November 6, 1982.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval) on this application have been placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-2524 Filed 1-26-81; 8:45 am]  
BILLING CODE 4110-03-M

[Docket No. 80P-0203]

**Laser Concepts; Approval of Variance for the Lumatron and Lumarla 440 Laser Projection Systems and Laser Light Shows**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces that a variance from the performance standard for laser products has been approved by the Bureau of Radiological Health for the Lumatron and Lumarla 440 laser projection systems and laser light shows incorporating these models manufactured and produced by Laser Concepts. The projectors provide laser displays to produce a variety of special lighting effects in a variety of settings. The principal use of these products is to provide entertainment to general audiences.

**DATES:** The variance became effective October 15, 1980, and ends October 15, 1982.

**ADDRESS:** The application and all correspondence on the application have been placed on display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food

and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

**SUPPLEMENTARY INFORMATION:** Under § 1010.4 (21 CFR 1010.4), Laser Concepts, 8025 Wayne Ave., Stanwood, WA 98292, has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products. The variance permits the manufacturer to introduce into commerce the demonstration laser products known as the Lumatron and Lumarla 440 laser projection systems and laser light shows incorporating these models manufactured and produced by Laser Concepts. The shows have levels of accessible laser radiation in excess of class II levels but not exceeding those required to perform the intended function of the product. Suitable means of radiation protection will be provided by constraints on the physical and optical design, by warnings in the user manual and on the product, and by procedures for Laser Concepts personnel. The product shall bear the Variance Number 80P-0203.

By letter of October 15, 1980, the Director of the Bureau of Radiological Health approved the requested variance, which terminates on October 15, 1982.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval) on this application have been placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-2526 Filed 1-26-81; 8:45 am]  
BILLING CODE 4110-03-M

[Docket No. 80P-0318]

**Lightform; approval of variance for the lightform laser light show and ion laser projector**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces that a variance from the performance standard for laser products has been approved by the Bureau of radiological Health for the Lightform laser light show including an ion laser projector manufactured and

produced by Lightform. The projector provides a laser display to produce a variety of special lighting effects in a variety of settings. The principal use of this product is to provide entertainment to general audiences.

**DATES:** The variance became effective November 4, 1980, and ends November 4, 1982.

**ADDRESS:** The application and all correspondence on the application have been placed on display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-3426.

**SUPPLEMENTARY INFORMATION:** Under § 1010.4 (21 CFR 1010.4), Lightform, 71 Harper St., Rochester, NY 14607, has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products. The variance permits the manufacturer to introduce into commerce the demonstration laser product known as the lightform laser light show including an ion laser projector manufactured by Lightform. The shows have levels of accessible laser radiation in excess of class II levels but not exceeding those required to perform the intended function of the product. Suitable means of radiation protection will be provided by constraints on the physical and optical design, by warnings in the user manual and on the product, and by procedures for Lightform personnel. The product shall bear the Variance No. 80P-0318.

By letter of November 4, 1980, the Director of the Bureau of Radiological Health approved the requested variance, which terminates on November 4, 1982.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval) on this application have been placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-2528 Filed 1-26-81; 8:45 am]  
BILLING CODE 4110-03-M



[Docket No. 78N-0376]

**International Nutrition, Inc.; Denial of Request for Hearing and Refusal To Approve Application**AGENCY: Food and Drug Administration.  
ACTION: Notice.

**SUMMARY:** The Commissioner of Food and Drugs denies a hearing request and refuses to approve a medicated feed application for Pig Ration Ban-250, an animal feed containing new animal drugs, whose sponsor, International Nutrition, Inc., requested a hearing to resolve a legal issue regarding interpretation of the statute but did not raise a genuine and substantial issue of fact requiring a hearing.

EFFECTIVE DATE: January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** George Graber, Bureau of Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5363.

**SUPPLEMENTARY INFORMATION:****Background**

In the Federal Register of December 1, 1978 (43 FR 56278), the Director of the Bureau of Veterinary Medicine issued a notice of opportunity for hearing under section 512(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)) to International Nutrition, Inc., 6664 "L" Street, Omaha, NE 68117 ("International") on the Bureau's proposed refusal to approve a medicated feed application (C105-694V) for Pig Ration Ban-250, an animal feed containing a combination of Banminth Premix-48 (pyrantel tartrate 48 grams per pound) and Aureo SP-250 (chlortetracycline 20 grams per pound; sulfamethazine 4.4 percent; procaine penicillin 10 grams per pound).

Banminth is approved by the Food and Drug Administration (FDA) for use in swine for the prevention of certain helminth infestations. ASP-250 is approved by FDA for use in swine for several therapeutic claims as well as for growth promotion; it is not approved for the prevention of helminth infestations. Under the application International is seeking the approval of the simultaneous use for four drugs, Banminth and ASP-250, in a swine feed.

International requested approval of the combination drug on the grounds that (1) regulations have been published under section 512(i) of the act for Banminth and for ASP-250, and (2) data included in a master file supposedly demonstrate, among other things, that Banminth does not interfere with the antibacterial activity of ASP-250 and that the anthelmintic activity of

Banminth is not diminished by the presence of ASP-250 in swine feeds.

To justify approval of the swine feed under section 512(m)(1)(B) of the act, International cited § 558.45 (21 CFR 558.145) and § 558.485 (21 CFR 558.145) and § 558.485 (21 CFR 558.485) as regulations published under section 512(i) of the act. § 558.145 establishes the approved conditions of use and indications for ASP-250; § 558.485 establishes the approved conditions of use and conditions for Banminth. International contended that the regulatory structure of the new animal drug provisions of the act permits the manufacture and sale of an animal feed containing a combination of new animal drugs, each of which is the subject of a regulation reflecting an approved new animal drug application (NADA), so long as there is adequate support for the safety and effectiveness of each component in the new combination in the finished feed. International contended that this is true even when, as in this case, there is no regulation authorizing the use of the combination itself.

In the notice of opportunity for hearing, the Director agreed that an animal feed containing a combination of new animal drugs is approvable on the basis of regulations established for each drug, provided that the regulations specifically cross-reference one another to authorize the combination. The Director emphasized, however, that authorization for use of the combination must be obtained through approval of an NADA based on the safety and effectiveness of the combination itself. The data must provide evidence of the safety and effectiveness of the combination for the animal, and they must establish the absence of unsafe, residues of the drugs and their metabolites in the edible products of treated animals. The Director pointed out that no specific authorization has been established under section 512(i) for combining pyrantel tartrate with chlortetracycline-sulfamethazine-penicillin.

International contended in its application that appropriate data on safety and effectiveness under section 512(m) of the act had been submitted and that the data provide an adequate basis for approval of the combination. The Director did not agree that the statute contemplates the submission of data under section 512(m) of the act regarding the safety and effectiveness of new animal drug premixes. Rather, the statute provides for submitting such information under section 512(b) of the act, and, following approval of an

application filed under section 512(b) of the act, for publication of a regulation under section 512(i) of the act authorizing the use of the combination. No application has been filed under section 512(b) of the act for the combination in question. Consequently, no regulation has been published under section 512(i) of the act that can serve as the basis for approval of the combination through an application filed under section 512(m) of the act.

**The Statutory Scheme**

In enacting the Animal Drug Amendments of 1968 (Pub. L. 90-399), Congress introduced a unique procedure for the approval of an application for manufacturing an animal feed containing a new animal drug. Before a new animal drug can be approved for use in manufacturing a medicated feed, an application must be filed with FDA under section 512(b) of the act. The following information must be included in the application:

(1) [F]ull reports of investigations which have been made to show whether or not the drug is safe and effective for use; (2) a full list of the articles used as components of the drug; (3) a full statement of the composition of the drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug; (5) such samples of the drug and of the articles used as components thereof, of any animal feed for use in or on which the drug is intended, and of the edible portions or products (before or after slaughter) of animals to which the drug (directly or in or on animal feed) is intended to be administered, as FDA may require; (6) specimens of the labeling proposed to be used for the drug, or in case the drug is intended for use in animal feed, proposed labeling appropriate for such use, and specimens of the labeling for the drug to be manufactured, packed or distributed by the applicant; (7) a description of practicable methods for determining the quantity, if any, of the drug in or on food, and any substance formed in or on food, because of its use; and (8) the proposed tolerance or withdrawal period or other use restrictions for the drug if any tolerance or withdrawal period or other use restrictions are required in order to assure that the proposed use of the drug will be safe.

Upon approval of an NADA, a regulation is published under section 512(i) of the act, which provides: When a new animal drug application filed pursuant to subsection (b) is approved the Secretary shall by notice, which upon publication shall be

effective as a regulation, publish in the *Federal Register* the name and address of the applicant and the conditions and indications of use of the new animal drug covered by such application, including any tolerance and withdrawal period or other use restrictions and, if such new animal drug is intended for use in animal feed, appropriate purposes and conditions of use (including special labeling requirements) applicable to any animal feed for use in which such drug is approved, and such other information, upon the basis of which such application was approved, as the Secretary deems necessary to assure the safe and effective use of such drug. \* \* \*

Before an animal feed bearing or containing a new animal drug can be approved, an application must be filed with FDA under section 512(m)(1) of the act, which provides the following:

Any person may file with the Secretary an application with respect to any intended use or uses of an animal feed bearing or containing a new animal drug. Such person shall submit to the Secretary as part of the application (A) a full statement of the composition of such animal feed, (B) an identification of the regulation or regulations (relating to the new animal drug or drugs to be used in such feed), published pursuant to subsection (i), on which he relies as a basis for approval of his application with respect to the use of such drug in such feed, (C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such animal feed, (D) specimens of the labeling proposed to be used for such animal feed, and (E) if so requested by the Secretary, samples of such animal feed or components thereof.

The procedures in section 512 of the act require that a new animal drug (singly or in combination) be approved as safe and effective before the drug can be the subject of an application for its use in the manufacture of a medicated animal feed.

#### International's Request for Hearing

On December 29, 1978, International requested a hearing, and on January 30, 1979, submitted information and views to support the request. International stated that there was no factual issue requiring a formal evidentiary hearing and that the only issue was legal. The materials submitted in support of the hearing request were:

1. Three testimonial exhibits from university professors supporting the rationality and safety of the proposed combination. In denying the hearing request, the Commissioner does not reach this issue.

2. A discussion alleging that section 512(m)(1)(B) of the act specifically authorizes reference to more than one regulation to support a combination of animal drugs in an animal feed.

3. A discussion alleging that the combination of two drug products in the same feed requires an additional evaluation of the product's safety and effectiveness by the agency; but that such data submitted in the firm's Master File fully justify the propriety of the combination in accordance with the agency's most recent combination animal drug policy guidelines. In denying the hearing request the Commissioner does not reach this issue.

4. A discussion alleging that the bureau's position is contrary to the spirit as well as the letter of the act.

a. International stated that a major reason for the Animal Drug Amendments of 1968 was to simplify the procedure for a feed manufacturer to obtain approval of a medicated animal feed.

b. International stated that the Director's refusal to accept data under section 512(m) of the act regarding the safety and effectiveness of animal feeds containing new animal drugs was an inexcusably narrow and cramped reading of the act. It stated that the agency has authority to implement section 512(m) of the act by issuing regulations providing for the submission of such information.

#### Denial of International's Request

The Commissioner has carefully reviewed the materials and arguments submitted by International and concludes—agreeing with International—that, while the firm has raised a legal issue regarding the interpretation of section 512(m) of the act, it has not raised a genuine and substantial issue of fact that requires a hearing. The agency's procedural regulations specify that a hearing will be granted if there is a genuine and substantial issue of fact for resolution at a hearing, but that a hearing will not be granted on issues of law (21 CFR 2.24(b)(1)). The Commissioner finds no merit, however, in International's legal argument regarding the scope of section 512(m) of the act.

The procedures in section 512 of the act, as discussed above, require that before a new animal drug can be the subject of an application for its use in the manufacture of a medicated animal feed, the drug, whether it is a single entity drug or a combination, be the subject of an approved NADA containing evidence that the drug is safe and effective. A combination new animal drug must, in other words, be

approved in accordance with the procedures of section 512(b) of the act before its use may be authorized in a medicated animal feed in accordance with section 512(m) of the act. The statute does not provide for the approval, under section 512(m) of the act, of a medicated animal feed containing a combination of drugs, each of which is the subject of a separate approval granted under section 512(c) of the act and a separate regulation issued under section 512(i) of the act.

International's interpretation of section 512(m) of the act, if accepted, would preclude the agency from evaluating the combination drug for use in animal feed by requiring FDA to accept the data on file for separately approved drugs as showing the safety and effectiveness of the combination. That is, the agency could not evaluate the adequacy of the data supporting the combination drug.

International made quite clear in its hearing request that it wishes to avoid a comprehensive evaluation of the safety and effectiveness data supporting each separately approved drug in the proposed Banminth-ASP-250 combination. The firm states: "It is entirely appropriate for the agency to consider safety and effectiveness questions raised by the feed as a combination of two approved products (as opposed to questions relating to either of the two previously approved separate drug products). . . ."

The act makes clear, however, that section 512(m) is not intended to be a means for avoiding a thorough consideration in the context of an NADA of the safety and effectiveness questions relating to a combination drug for use in a medicated animal feed. The legislative history of the Animal Drug Amendments of 1968 confirms that section 512(m) of the act was intended to permit the use in medicated feeds only of those products which have met the standards of section 512(b) of the act by having been shown, in an application for approval under that section, to be safe and effective.

Section 512(i) \* \* \* require[s] the Secretary to publish as a regulation in the *Federal Register* the conditions of use and the name of the applicant for every new animal drug applicant which is approved. *If the drug is for use in animal feed, appropriate conditions for use in feeds approved shall be included in the regulation.* This is new inasmuch as there is no provision for such publication in section 505 of the basic Act. However, in view of the practice of mixing two or more drugs, which may be purchased from different sources, in animal feeds, the provision has been

included so as to enable feed manufacturer to ascertain those combinations of drugs which have been approved for use in animal feeds. This is necessary because the labeling for a particular drug may not indicate such combinations.

Hearings on H.R. 3639 before the Subcommittee on Public Health and Welfare of the House Committee on Interstate and Foreign Commerce, 90th Cong., 1st Sess. 42 (1967) (Summary and Analysis of H.R. 3639 prepared by the Animal Health Institute) (emphasis added). That only approved combinations were to be referenced in a 512(m) application was emphasized in a colloquy between Warren Armstrong, a representative of the American Feed Manufacturers Association, and Congressman Rogers:

Mr. Rogers: As I understand it, when the basic manufacturer come in with his new drug, he doesn't go into all the combinations of mixtures of that drug, does he?

Mr. Armstrong: Yes. For any combination that would be used he would seek an approval from FDA.

Mr. Rogers: In other words, you would then say that only those combinations that had actually been approved to the basic manufacturer would be allowed to the feed manufacturer?

Mr. Armstrong: That is correct.

*Id.* at 56 (emphasis added). The legislative history of the act thus establishes that an application for a medicated animal feed under section 512(m) must reference only an approved regulation for a drug combination, and not two separately approved regulations. To permit the manufacturer to combine drugs without a distinct approval of the combination under section 512(b) and (i) of the act would nullify the statutory scheme. Section 512(m) of the act was not meant to provide a mechanism for feed producers to fabricate unapproved combinations of separately approved drugs and to secure approval of the combination drug without showing that the combination itself is safe and effective.

Section 512(m) of the act on its face arguably contains an inconsistency. Section 512(m)(1)(B) of the act states that a medicated feed application must identify a "regulation or regulations" published pursuant to section 512(i) of the act. However, the description in section 512(m)(3) (A) and (B) of the grounds for approving a medicated feed application refers only to a "regulation," and not to "regulations." In fact, no where else in section 512(m) of the act is the word "regulations" used. The legislative

history of the act establishes, as discussed above, that section 512(m) of the act does not provide for the procedure advocated by International. Furthermore, the interpretation that the Bureau of Veterinary Medicine has always given to the use of the word "regulations" in section 512(m) of the act resolves the apparent inconsistency in language. That interpretation, as discussed in the notice of opportunity for hearing (43 FR 56278, 56279), is that combinations of new animal drugs are approvable on the basis of "regulations" established for each drug, provided, that the "regulations" specifically cross-reference one another to authorize the combination. The legal interpretation of section 512(b), (i), and (m) of the act outlined above has been consistently followed by the agency since its enactment of July 13, 1968. It is axiomatic that great weight should be given to an agency's construction of a statute if it has a reasonable basis in law, especially when the interpretation has been followed since the enactment of the statute. (*United States v. Rutherford*, 442 U.S. 544, 553 (1979); *United States v. An Article of Drug . . . Bacto-Unidisk*, 394 U.S. 784, 792 (1969); *Udall v. Tallman*, 380 U.S. 1, 16 (1964); see also *Train v. Natural Resources Defense Council*, 421 U.S. 60, 87 (1975)) (interpretation by EPA of Clean Air Act need only be "sufficiently reasonable to preclude the Court of Appeals from substituting its judgment for that of the Agency.").

Section 512 of the act was the culmination of an attempt to consolidate into one section of the provisions of the Federal Food, Drug, and Cosmetic Act relating to animal health products. The legislative history emphasizes that this consolidation was not meant to remove the stringent requirements for premarketing clearance of combination drugs, as International's interpretation of section 512(m) of the act would do.

#### Conclusion

The Commissioner concludes that there is no regulation under section 512(i) of the act on the basis of which Pig Ration Ban-250 may be approved and that section 512(m)(1) of the act requires such a regulation before an approval under section 512(m) of the act may be granted. In addition, the Commissioner concludes that International has raised a legal issue regarding the interpretation of section 512(m) of the act. The firm has not raised a genuine and substantial issue of fact requiring a hearing. Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(m), 82 Stat. 348-350 (21 U.S.C. 360b(m))) and under

delegated authority (21 CFR 5.1), the Commissioner denies International Nutrition, Inc.'s request for a hearing and refuses to approve Pig Ration Ban-250 (C105-694V), effective January 27, 1981.

Dated: January 21, 1981.

Joseph P. Hile,  
Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-2819 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-03-M

#### Health Resources Administration

##### National Council on Health Planning and Development; Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, (5 U.S.C. Appendix I), the Health Resources Administration announces for rechartering by the Secretary, HHS, on January 2, 1981, of the following advisory Council:

##### Council and Termination Date

National Council on Health Planning and Development—Continuing.

A change has been made in the Structure section of the Council's charter to include: (1) a change in name of the National Guidelines, Goal, Priorities and Standards Subcommittee to the National Guidelines and Technology Subcommittee, this combines two subcommittee functions by eliminating the Technology and Productivity Subcommittee; (2) the Agenda Subcommittee has been changed to the Steering Subcommittee to give it broader functions to include additional studies that may be recommended to the Council to carry out its statutory responsibilities; and (3) the Implementation and Administration Subcommittee in addition to its review of issues relating to section 1122 of the Social Security Act, for Council consideration, will also review proposed terminations and/or non-renewals of Health Systems Agencies and State Health Planning and Development Agencies under sections 1515(c) and 1521(b) of the Public Health Service Act.

Authority for this Council is continuing and a Charter will be filed no later than January 4, 1983, in accordance with section 14(b)(2) of Public Law 92-463.

Dated: January 19, 1981.

Irene D. Skinner,  
Advisory Committee Management Officer,  
HRA.

[FR Doc. 81-2768 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-83-M

## Office of Human Development Services

### Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part D of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Office of Human Development Services (HDS) which was published in FR Vol. 45, No. 190 beginning on page 64253, dated September 29, 1980. These HDS Functional Statements include statements, not revised at that time, for the Administration for Children, Youth, and Families; the Administration on Aging; and the Administration for Native Americans. These statements, which supersede prior statements for same, complete the HDS Reorganization (FR Vol. 45, No. 100, pp. 34069-34070, dated May 21, 1980) and replace Chapters DC, DG and DN in their entirety. In addition, this Notice amends functions within the Office of the Assistant Secretary for Human Development Services. The changes are as follows:

1. Delete Chapter DC, Administration for Children, Youth and Families, in its entirety and replace with the following:

*DC.00 Mission. The Administration for Children, Youth and Families (ACYF) advises the Secretary/HHS, the Assistant Secretary/HDS, other Federal and Departmental agencies on matters relating to children, youth and families. Is the principal advocate at the Federal level for the needs, concerns and interests of children, youth and families. Plans, develops and implements a broad range of activities designed to support and encourage the sound development of children, youth and families. Serves as the focal point in the Department for initiatives on Families, Child Abuse and Neglect and on Adoption Opportunities. Is responsible for discretionary grant programs providing Head Start services and Runaway Youth facilities. Administers State grant programs under title IV-B, IV-E and title IV-A as it pertains to section 408 of the Social Security Act, including the development, implementation and approval of joint state planning for IV-B and the approval or recommendation for disapproval under titles IV and IV-A as the latter pertain to section 408. Administers the Child Abuse Prevention and Treatment Act as authorized by Pub. L. 93-247, as amended. Supports and encourages services which prevent or remedy the effects of abuse and/or neglect of children and youth and operates the National Clearinghouse on Child Abuse and Neglect. Is responsible for the Child*

*Abuse and Neglect State grant programs. Develops strategies and directs research, demonstration and evaluation activities for special research or demonstration programs in the field of child welfare designed to improve and enrich the lives of children and youth and strengthen families with particular emphasis on issues involving Head Start, day care and families. Administers the Child Welfare Services Training Programs authorized by title IV-B of the Social Security Act. Provides leadership to the Federal Interagency Panels on Early Childhood Research and Development on Adolescence. Develops policies, strategies, standards, manuals and guidance materials and provides technical assistance for Head Start, Day Care, Child Abuse and Neglect, Child Welfare Services, AFDC Foster Care, Adoption Assistance, and other operational programs administered by ACYF. Is responsible for developing legislative policy issues/proposals concerning legislative activities relating to children, youth and families. Develops and coordinates public affairs strategies relating to children, youth and families. In coordination with OPCR/HDS participates in the development of strategies for joint review and monitoring of the title XX CSP as it relates to children, youth and families. In coordination with OPCR provides leadership in the Department and is responsible for program quality, and related technical assistance for services to children and youth and for services aimed at strengthening family integrity funded under title XX. In cooperation with OPCR, carries out program monitoring and makes recommendations to OPCR, regarding allowances and disallowances under title XX with respect to services funded for children, youth, and families. Works cooperatively and in collaboration with OPCR in the coordination of HDS training programs to achieve a comprehensive HDS training strategy. Is responsible for initiating policy in the area of day care and other child care services.*

*Is the lead agency in the Department for programmatic monitoring and technical assistance for day care and is responsible for implementation of the Federal Day Care Regulations. In accordance with procedures developed by OPCR and approved by the ASHDS, reviews those portions of the title XX Comprehensive Service Program plans that deal with the provision of services for children and youth. In coordination with the Office of Program Coordination and Review, is responsible for the development of strategies for review of*

*title XX State Plans as they pertain to children and youth and for the monitoring of title XX programs aimed at these groups. Carries out program planning and policy development responsibilities as reflected in the following activities: develops standards, provides technical assistance, issues practice guidelines, and initiates policy relative to services provided to children and youth.*

*DC.10 Organization. The Administration for Children, Youth and Families is headed by a Commissioner who reports directly to the Assistant Secretary for Human Development Services (ASHDS) and consists of: Office of the Commissioner (DC) Office of Management Services (DCM) Office of Public Information and Education (DCE) Office of Regional, State and Community Affairs (DCR) Office of Planning, Research and Evaluation (DCP); Planning and Policy Control Division (DCP1); Research Demonstration and Evaluation Division (DCP2) Office of Developmental Services (DCF); Day Care Division (DCF1); Head Start Bureau (DCS1); Youth Development Bureau (DCF2) Office of Services for Children and Youth (DCS); Children's Bureau (DCS2) Office for Families (DCT)*

*DC. 20 Functions. A. The Immediate Office of the Commissioner (DC) provides executive direction, leadership, management strategy, legislative liaison in consultation with ASHDS and Office of Assistant Secretary for Legislation and a focus to the Administration for Children, Youth, and Families components, including the Regional Program Directors. Serves as the principal advisor to the Secretary/HHS, and to the Assistant Secretary/HDS, and other elements of the Department in the area of children, youth and families. The Deputy Commissioner acts as Commissioner in the absence of the Commissioner. Provides primary liaison with HDS staff offices including OMS, OPD and OPCR. Responsible for implementing HDS Consumer Affairs plan within ACYF.*

*B. Office of Management Services (DCM) provides and coordinates all Headquarters' administrative and management support services including personnel, equal employment opportunity, payroll, contracts and grants, budget execution and financial management, the executive secretariat, administrative services and data processing. Responsible for operation and analysis of administrative*

management systems, and development of functional statements and organizational plans.

Provides or arranges for administrative services, including space utilization, safety, telephone, messenger, and mail services; office, assisting staff in complying with clearance requirements; manages the executive secretariat. Organizes timekeeping and payroll functions, develops staffing plans in accordance with equal employment opportunity goals and makes proposals to the Commissioner for allocation of employment ceilings. Provides assistance to staff in developing and tracking personnel actions; supplies up-to-date information on personnel procedures; coordinates the development of employee training plans and assists employees in locating training resources.

Responsible for all aspects of budget execution and financial management including development of apportionment documents in conjunction with OHDS Budget and Financial Management staff; develops obligation plans and allowances for all programs in the regions and in headquarters; maintains commitment registers; reconciles monthly accounting reports from the DHHS accounting system; develops the annual plan for obligation of grant and contract funds and maintains the contract management and tracking system to facilitate achievement of scheduling goals.

Serves as the primary ACYF liaison with the OHDS Office of Management Services in the areas of personnel, payroll, training, financial management, grants and contracts administration and policy, administrative services and data processing; and with the OHDS Office of Equal Opportunity and Civil Rights.

*C. Office of Public Information and Public Education (DCE)* develops a national information dissemination strategy and program to keep ACYF's various constituencies, as well as the general public, continually informed about ACYF program goals, activities and results. Identifies the information needs of the public and furnishes advice and consultation to ACYF Commissioner and program managers concerning those needs. Advises staff on Freedom of Information Act requirements and assures timely responses to requests under the Act. In coordination with the HDS Office of Public Affairs, initiates and directs media arrangements for ACYF activities and programs and maintains continuing media relationships and contacts. Brings public affairs considerations to bear on policy formulation in ACYF. Provides leadership liaison and technical

assistance to regional and appropriate national constituent groups.

*D. Office of Regional, State and Community Affairs (DCR)* exercises responsibilities for the Commissioner and Deputy Commissioner in matters relating to personnel, fiscal and administrative management functions between the Central Office and the ten ACYF Regional Offices is responsible for design and implementation of the Performance Appraisal System for Regional Program Directors, and the second level review of Regional ACYF Merit Pay Personnel. Assesses administrative expenditures, negotiates allocations, ensures financial accountability for meeting operational objectives. Assures regional input in the process of developing policies and regulations; assists in the resolution of issues affecting the regions. Exercises leadership in the development and utilization of the Management Support System; interprets policy and regulatory issuances; procures hearing examiners upon request for formal appeals. Oversees termination and defunding actions and advises Commissioner on appeals raised to ACYF level for final decision. Assists the Commissioner in ensuring that Regional staff offices provide equal opportunity to all ACYF employees. Assists the Commissioner in ensuring citizen participation in ACYF decision-making process. Serves as the Commissioner's staff unit for the enforcement of Executive Order No. 11248 and Titles VI, VII and IX of the Civil Rights Act. Works closely with other ACYF units in Headquarters and Regions to establish and maintain relationships with national and local public interest groups.

*E. Office of Planning, Research and Evaluation (DCP)* provides leadership, direction, management strategy, and focus for the activities of the Planning and Policy Control Division and the Research, Demonstration and Evaluation Division and coordinate the activities of these two divisions.

*1. Planning and Policy Control Division (DCP1)* serves as senior advisor to the Commissioner on the development, direction, and integration of program policies across ACYF. Charged with the formulation and analysis of agency goals and strategies with particular emphasis on resource allocation. Responsible for annual budget formulation and presentation of all necessary budget request documents and briefing materials for hearings; responds to budget request inquiries from all levels of the Department, OMB and the Congress.

Develops long and short range agency plans, coordinating and focusing

individual bureau planning to promote policy coherence. Manages the ACYF submissions to the DHHS Operations Management System (OMS) including preparation of necessary instructions, assists other OMS units in developing OMS proposals for selection; tracks approved initiatives to ensure that they are meeting their goals and scheduling requirements, working to resolve problems as necessary. Provides leadership in management of high priority projects of special interest of the Secretary, Assistant Secretary and the Commissioner including projects which cut across areas of ACYF responsibility. Serves as the focus for analysis of new and existing regulations bearing upon programs for children, youth and families, assessing their impact on intended beneficiaries and existing services. As appropriate, coordinates the development of implementation plans for new legislation and for major changes in existing programs. Provides primary liaison with OHDS staff offices involved in planning and policy, including the Office of Policy Development and with the Assistant Secretary for Planning and Evaluation.

*2. Research, Demonstration, and Evaluation Division (DCP2)* coordinates planning for Section 426, Title IV-B, Social Security Act and other ACYF research and demonstration funds. Provides primary input and assists with the development of a Department-wide research strategy on children, youth, and families; administers the ACYF evaluation funds; coordinates the development of an ACYF-wide evaluation strategy. Provides leadership to the Federal Interagency Panel on Early Childhood Research and Development and the Federal Interagency Panel for Research and Development of Adolescence; collects, analyzes, and interprets research reports on child and family studies and identifies promising models for service programs; actively promotes the utilization of research findings (research finding in title XX will be promoted in coordination with OPCR); serves as clearinghouse for information related to research and demonstration findings in the area of child development and family. Jointly with the National Center on Child Abuse and Neglect, develops policies, priorities, plans, and objectives for research and demonstration activities authorized by Public Law 93-247, the Child Abuse Prevention and Treatment Act of 1974, as amended by Title I of P.L. 95-266, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978. Directly administers R&D efforts related to basic research

and demonstration activities provides coordination with OPD in research, demonstration, and evaluation activities. In conjunction with operating units, develops ACYF Research Demonstration, & Evaluation Plan.

*F. Office of Developmental Services (DCF)* provides leadership, direction, management strategy, focus and coordination for the activities of the Head Start Bureau and the Day Care Division. Serves as primary advisor to the Commissioner in those areas.

*1. Day Care Division (DCF1)* develops policies, strategies, standards, manuals and guidance material for the conduct of experiments demonstrations and operational programs in the field of day care. Identifies the need for applied R&D program; designs and monitors nationwide studies. These activities will be coordinated with OPCR and OPD when title XX is involved. Serves as a advocate for quality day care to meet the needs of children and families. Develops standards and regulations model legislation, and legislative proposals. Coordinates interagency activities relating to day care policy. Identifies training and technical assistance needs and designs programs for States and local communities. Acts as liaison with the Appalachian Regional Commission. Actively encourages and advises Federal, State, and local providers on the development of effective day care services.

*2. Head Start Bureau (DCF2)* develops program and administrative management policy for the operation of Head Start programs. Provides guidance and technical assistance to Regional Head Start Divisions. Plans and implements programs and projects to strengthen administrative and management capabilities of Head Start grantees. Develops and manages a system for monitoring implementation of Head Start policies, priorities, procedures and systems. Coordinates the annual planning for technical assistance and training for Head Start grantees and develops the annual Head Start budget. Designs, tests, and implements systems for data collection from grantees and Regional Offices describing Head Start program activities. Develops and maintains a statistical data base used for analysis and review of program operations and disseminates findings. Initiates legislative policy development and proposals. Reviews applications and makes awards for Head Start programs serving primarily Native American children or children of Migratory Workers; develops and recommends policies and monitors and evaluates

those programs. Plans, provides, or arranges for technical assistance to Native American or Migrant Head Start programs and for training to the staff of these programs. Plans and conducts activities related to child abuse and child welfare services in Native American and Migrant communities. Provides technical and programmatic counsel and expertise in the areas of medical and dental services, nutrition, mental health services, social services, parent involvement, services to handicapped children and training and educational programs for staff of local Head Start programs. Analyzes current trends in these areas and develops and administers demonstration projects designed to strengthen these programmatic areas. Plans, develops, tests, and directs the broad scale implementation of innovative programs for comprehensive child development services. Develops standards, regulations, manuals and guidance material aimed at strengthening and improving Head Start programs.

*G. Office of Services for Children and Youth (DCS)* provides leadership direction, management strategy, focus, and coordination for the activities of the Children's Bureau and the Youth Development Bureau. Serves as advisor to the Commissioner on children and youth issues.

*1. Children's Bureau (DCS1)* advises the Commissioner on matters pertaining to conditions which affect the general well-being of children. Develops policies and procedures for developing Child Welfare Services State Grant Program plans authorized under title IV-B of the Social Security Act and adoption assistance and foster care activities authorized by title IV-E and section 408 of the Social Security Act. Develops regulations, guidelines, instructions, and State allotments. Develops outlines for and processes fiscal requests from States forwarded by RO's. In conjunction with the Regional Children's Bureau Division, monitors regional office State grants administration. Develops policies and guidance for the provision of Regional technical assistance to States to enable them to meet requirements for State grants. Plans for, analyzes, and, in conjunction with Regional Children's Bureau Divisions, collects Child Welfare Program Services data. Coordinates Child Welfare Services with other Federal agencies and non-Federal groups. Analyzes Regional Children's Bureau Divisions monitoring and training/technical assistance reports and provides program technical direction to Regional Offices. These

activities are coordinated with OPCR. Administers the Child Welfare Services Training Program. Provides technical expertise in developing programmatic policies, standards, model laws, regulatory material, and guidelines. Studies current practices and problems, recommends action to meet special needs of children at risk, and promotes replication of successful designs. Provides expert knowledge, training, and technical assistance to public and private social services agencies and organizations through development of innovative programs, suggested guidelines, and program design features for comprehensive child welfare services. Through the National Center on Child Abuse and Neglect, acts as the principal agent within ACYF and the Department for development of policies, advise, and plans (including input to the ACYF Long Range Plan) on programs relating to the prevention, identification, and treatment of child abuse and neglect. Develops and interprets regulations, guidelines, and instructions for grants to assist State programs on child abuse and neglect and for provision of technical assistance. Compiles and prepares for publication training materials for personnel who are or intend to be engaged in the prevention, identification, and treatment of child abuse and neglect and other forms of intra family abuse. Receives, processes, and reviews, either through the regional or headquarters office, all applications for demonstration grants or contracts authorized to prevent, identify and treat child abuse and neglect and makes recommendations thereon to the Commissioner, ACYF. Establishes and operates a National Clearinghouse on Child Abuse and Neglect. Develops policies, priorities, plan, and objective for research and demonstration activities relating to child abuse and neglect and other forms of intra family abuse. Provides staff support to the Advisory Board on Child Abuse and Neglect in the conduct of its responsibilities, including the areas of standards development, reports preparation and program coordination.

Administers and manages the Adoption Opportunities Program (Title II of Pub. L. 95-268) to facilitate the elimination of barriers to adoption and provide permanent homes for children who would benefit by adoption, particularly those with special needs. Develops model adoption legislation and procedures and provides training and technical assistance in their use by States; develops and manages a national adoption information exchange system, including the operation of a national

adoption exchange; develops, manages and monitors a training and technical assistance program to promote quality standards and services in the adoption of children with special needs.

2. *Youth Development Bureau (DCS2)* plans, develops, and implements an integrated program of research, demonstration, and evaluation to investigate and assess a broad range of programs delivering services to youth. Tests the effectiveness of various programs and service strategies in addressing the needs of youth and their problems. Analyzes and synthesizes reports of research, demonstration, and evaluation findings; disseminates findings which will impact on youth development and youth service programs; and recommends programs which will improve services to runaway and other youth in need of services.

Develops or strengthens local facilities that are designed to meet the needs of runaway or other homeless youth and their families by providing temporary shelter, counseling, and aftercare and by working to reunite the youth in their care with their families or provide an alternative appropriate living arrangement. Develops and implements policy for the management of facilities for runaway youth. In coordination with OPCR and through the regional Offices monitors the facilities performance and analyzes results to improve their effectiveness.

Designs, implements, and assesses contracts which provide technical assistance to the runaway facilities and short term training to their staff. Improves services to runaway and other homeless youth through promulgation of model statutes, development of national programs and in coordination with NIMH development of family/individual counseling techniques. Serves as a youth advocate within ACYF and to other Federal agencies. Coordinates with other agencies whose programs impact on youth and serves as a clearinghouse for information on youth needs, problems and programs.

H. *The Office on Families (DCT)* provides a focal point for family concerns within the Department of Health and Human Services through the development and coordination of policies, legislative proposals, and programs which affect families. Is headed by a Director, who reports to the Commissioner of the Administration for Children, Youth and Families. Establishes and maintains liaison with other Federal agencies that have programs and policies which affect the functioning and well being of families.

Proposes policies, legislative recommendations and other actions

which are responsive to the expressed needs of the family. Obtains recommendations on the needs of families and on potential strategies for meeting those needs from parents and other members of families, providers of service to families, family advocates, academicians, and other knowledgeable about family life.

Promotes the development of a coordinated approach to addressing the strengths and problems of families. Works to increase the sensitivity of the Department to the ramifications on family life of current and proposed programs, policies, and procedures.

Coordinates activities with the White House Conference on Families. Is involved in the implementation of recommendations coming from the White House Conference on Families. Assists in the work of the Interagency Task Force of the White House Conference on Families. Coordinates the collection and dissemination of information about families in conjunction with other HHS offices and Federal agencies.

Sponsors research on the family and promotes the coordination of research and other activities aimed at identifying and understanding the issues, concerns, and needs of families. Reviews research findings to identify implications for the family and their relevance to existing HHS policies and programs, and recommends specific applications of information resulting from research.

Analyzes the advantages and disadvantages of actions and policies of the Department with respect to families, and makes recommendations for changes as appropriate.

Provides technical assistance to national organizations, other Federal agencies, and State, local, and community agencies and groups.

2. Delete Chapter DG, Administration on Aging in its entirety and replace with the following

*DG.00 Mission. The Administration on Aging (AoA)* is the principal agency legislated to carry out the provisions of the Older Americans Act of 1965, as amended. Seeks to expand and improve the range of human services which promote continued independence of the elderly. Supports and encourages measures which improve the circumstances of older persons and is entrusted with leadership responsibility on all issues concerning the elderly. Investigations and reports on methods and approaches for improving and enriching the lives of the elderly and trains personnel to use such methods and approaches. Conducts a program of public education on aging.

Develops, implements, and approves title III joint planning with the States. In coordination with OPCR is responsible for the development of strategies for review of title XX Comprehensive Services Plans as they pertain to the elderly and for the monitoring of title XX services for older persons. Works cooperatively and in collaboration with OPCR in the coordination of HDS training programs for purpose of achieving a comprehensive HDS training strategy. Carries out program planning and policy development responsibilities as reflected in the following activities: initiates policy, develops standards, issues practice guidelines, and provides technical assistance relative to services provided to the elderly funded under the Older Americans Act or, in coordination with OPCR, and OPD under title XX.

*DG.10 Organization. The Administration on Aging* is headed by a Commissioner who develops and directs the program of the Administration on Aging and reports directly to the Assistant Secretary for Human Development Services.

The Administration on Aging consists of:

- Office of the Commissioner (DG)
- Federal Council on Aging Staff (DG-1)
- Office of Management and Policy Control (DGQ); Division of Policy and Planning (DGQ1); Division of Management and Budget (DGQ2)
- Public Information Office (DGB)
- Office of Program Operations (DGN); Division of Program Management (DGN1); Division of Operations Analysis (DGN2)
- Office of Program Development (DGS); Division of State and Community Programs (DGS1); Division of Services Development (DGS2)
- Office of Education and Training (DGE); Division of Education and Career Preparation (DGE1); Division of Continuing Education and Training (DGE2)
- National Clearinghouse on Aging (DGT); Information and Referral and Public Inquiries Staff (DGT1); Statistical Analysis Staff (DGT2); Communications and Information Systems Staff (DGT3);
- Office of Research Demonstration, and Evaluation (DGR); Division of Research and Evaluation (DGR1); Division of Model Projects and Demonstrations (DGR2); Division of Long Term Care (DGR3)

*DG. 20 Functions. Office of the Commissioner (DG)* establishes priorities, set policies, and directs plans and programs conducted by the Administration on Aging. Advises the Assistant Secretary and heads of DHHS

agencies administering programs which impact on the lives of older people. Advocates at the Federal level for the needs, concerns, and interests of older people. Advises the Secretary, Assistant Secretary HDS, DHHS agencies, and other Federal departments and agencies on the characteristics, circumstances, and needs of older people and on policies, plans, and programs designed to promote their welfare. Also serves as an advocate for older people with voluntary organizations. Undertakes plans to coordinate activities in behalf of older people.

Assures affirmative action throughout the Aging Network and is responsible for implementing the HDS Consumers Affairs Plan within AoA. Stimulates and coordinates AoA international activities in research, training, and technical assistance; and coordinates AoA international activities with those of the HDS level international offices. Cooperates with multilateral international agencies, such as the United Nations, in planning and participating in international conferences and meetings.

Arranges for visits of personnel interested in aging from other nations and assist U.S. personnel in arranging visits to other countries. The Deputy Commissioner is the Commissioner's principal associate in carrying out the mission of the agency.

*B. Federal Council on Aging Staff (DG-1)* provides general staff support for a Presidential-level advisory body, the Federal Council on Aging (FCA). Provides all meeting and hearing arrangements. Prepares an Annual Report for Congress and such other reports as are authorized by the Federal Advisory Committee Act. Conducts or supervises the production of studies, research, or analysis of various matters affecting the elderly as background for Council deliberations and recommendations.

*C. Office of Management and Policy Control (DGQ)* is responsible for policy analysis and development, long range planning development of legislation, preparation of required reports, budget development, preparation of justifications for the annual budget request provision of guidance to other AoA units concerning the development of subsidiary planning strategies and documents including detailed work plans, management of the employee appraisal system, and execution of a variety of administrative management tasks including the AoA personnel and executive secretariat functions. Coordinates with appropriate HDS staff offices in carrying out these functions.

*1. Division of Policy Analysis and Planning (DGQ1)* conducts policy analyses on a wide range of basic program issues affecting AoA or programs for the aging or works with university-based policy centers supported by AoA under title IV-E to obtain such analyses, reviews legislation, and research, evaluation, and demonstration findings for planning and program implications or works with utilization institute supported by AoA to obtain such reviews; prepares detailed position papers which include policy objectives, analyses of existing data, and possible strategies for achieving objectives as a preface to the development and recommendation of priorities to the Commissioner; coordinates preparation of the AoA long and short range plans with appropriate input from other AoA units; provides policy guidance consistent with the long and short range plans to all AoA units, including the Division of Management and Budget concerning performance appraisal planning, work planning, and the preparation of the budget; and reviews all AoA policy documents for consistency with the long and short range plans.

Coordinates with OPD on planning issues and development. Coordinates development within AoA of legislative proposals; develops testimony, background statements, and other policy documents for use by the Commissioner in legislative and other policy forums; in coordination with HDS and OS legislative staff, analyzes proposed and enacted legislation related directly or indirectly to the Older Americans Act, analyzes non-Federal legislative activity related to the elderly. Coordinates preparation of annual AoA reports to the President and Congress.

*2. Division of Management and Budget (DGQ2)* translates the long and short range plans into guidance for AoA units concerning performance appraisal planning, work planning and budget preparation through an organized system. This system which incorporates the Secretary's Operational Management System (OMS), also coordinates the development of strategies for action and subsidiary plans such as the Discretionary funds plan as well as processes for monitoring and reporting on progress toward achieving stated objectives.

Works with Office of Management Services (OMS)/HDS to prepare budget presentations for use at the Departmental, OMB, and Congressional levels. Formulates budget in accordance with ASHDS guidelines and instructions. Exercises funds control for

all formula grant discretionary and salaries and expense accounts. Processes AoA fiscal documents required to make and manage grants and contracts and tracks financial status of all AoA programs and salaries and expenses funds.

Develops the employee appraisal system in accordance with Department policy and assists the Commissioner and other AoA units in implementing this system.

Serves as a central source for responding to requests for administrative services, manages the work processing system, supervises timekeeping and payroll functions, develops staffing plans, coordinates the development of employee training plans, coordinates the granting of incentive awards, develops space utilization and communication plans and maintains general liaison with personnel, staffing, and administrative officers at the HDS level.

Manages the executive secretariat, maintains correspondence control and other internal agency communications systems, including coordinating and controlling the issuance of AoA policy documents (i.e., program instructions, assistance memoranda, and information memoranda).

*D. Office of Public Information (DCB)* develops and distributes professional and lay publications and audiovisual materials about older people and programs and services for older people; prepares and issues brochures fact sheets, news releases, exhibits and films on the needs and concerns of older persons and measures to improve the circumstances, available services, and environment for the older population. Develops and implements a public affairs strategy for AoA in response to Policy guidance developed by the Office of Management and Policy Control.

Brings public affairs considerations to bear on policy formulation in AoA. Represents AoA in activities involving print and broadcast media.

Develops special information campaigns to inform older people about new benefits and services and fosters the annual Older American Month.

Serves as liaison with the Office of public Affairs in providing centralized publications and audiovisual services for AoA. Distributes numerous publications prepared by AoA, by other agencies of HHS, and by other Federal Departments and agencies; and assists other AoA offices in designing and processing monographs, reports and directories.

Coordinates with the Office of Public Affairs in handling Freedom of



Information Act functions. Acts as liaison to the Office of Public Affairs.

*E. The Office of Program Operations (DGN)* serves as the focal point within AoA for the operation and assessment of the programs authorized under title III of the Older Americans Act and in coordination with OPCR, the programs pertaining to older persons authorized under title XX of the Social Security Act and is responsible for supervising and directing the activities of the ten Regional Offices of the Administration on Aging in the execution of their responsibilities. Implements the AoA program in the field through provision of guidance and information concerning AoA programs to the staff of Regional Offices. Operational contacts between AoA Central and Regional Offices are through the Office of Program Operations.

Issues substantive operating procedures to guide Regional Offices in the conduct of their responsibilities; regularly assesses the performance of Regional Office staff against the established procedures. Provides guidance to Regional Offices on the processing, approval, or recommendation for disapproval of State Plans under the Older Americans Act and, in coordination with OPCR, appropriate title XX activity as it pertains to the elderly.

Is responsible for collection, analysis and distribution of program performance data on Older Americans Act programs and in cooperation with OPCR, responsible for analysis and distribution of program performance data on title XX as it pertains to the elderly.

In consultation with IOASHDS/Office of Equal Opportunities and Civil Rights, provides guidance to Regional Offices on a variety of management issues relating to such areas as civil rights; minority contracting; and age discrimination and handicapped regulations.

Maintains information on the professional development and technical capacity of Regional staff, and recommends and fosters the development of training opportunities to assure a Regional staff capacity for responding to emerging program and management demands.

Is responsible for collection, analysis, and distribution of program performance data on State and Area Agency and tribal organization implementation of Older Americans Act programs and, in coordination with OPCR, title XX as it pertains to the elderly.

*1. Division of Program Management (DGN1)* provides day-to-day direction and technical assistance to Regional Offices to assure proper and effective

implementation of Older Americans Act Programs and, in coordination with OPCR, the title XX program. Develops guidance for, and assists in the development of, annual Regional work plans, and monitors their implementation.

Coordinates with the Office of Management and Policy Control to assure that proper administrative support and financial resources are available to enable the Regional Offices to carry out their responsibilities.

Coordinates the processing of State Older Americans Act (and in coordination with OPCR) title XX Plans.

Coordinates with other AoA Offices to enable Regional Offices to provide timely information and technical assistance to existing and potential grantees of AoA discretionary programs. Managers Regional Office monitoring of AoA discretionary grant activities.

Provides assistance relative to Merit System Standards and their implementation by State agencies. Works with other AoA Offices to assure the timely responses to requests for policy interpretation and technical assistance from State agencies and other grantees are provided to the Regional Offices.

Maintains a control system of Central Office/Regional Office requests to prevent overloading and duplicative demands on staff and defines priorities and expectations for Regional Office activities. Represents AoA in discussions with field coordination units at the HDS and D/HHS levels.

*2. Division of Operation Analysis (DGN2)* develops and operates a management information system focused on the effectiveness and efficiency with which services are delivered. Coordinates and conducts special studies, program analyses, and evaluations on special issues of concern to the Commissioner, Regional Offices, State and area agencies on aging, and State title XX agencies. Prepares reports on program operations under Title III and in coordination with OPCR, prepares reports on title XX program operations as they pertain to the elderly for the Commissioner, other AoA offices, Office of the Secretary, the Congress and the public.

Develops for formula grant activities, in coordination with OPCR, financial management standards for State and area agencies. Provides guidance on and interpretation of 45 CFR Part 74 to AoA staff. Based on formula grants management policies and procedures approved by the HDS, controls administrative accounting and reprogramming of formula grant funds under the Older Americans Act and in

coordination with OPCR title XX as it pertains to the elderly.

Responds to audit issues raised by DHHS audit reviews and assures the proper analysis and resolution of audit findings by Regional Offices for final action by the Commissioner.

Is responsible for developing profiles of State and area agencies on aging, State title XX agencies, area agencies, and the programs of State and title XX agencies.

Through the analysis of State Plans, evaluation findings, audit reports, and progress reports, and, in coordination with OPCR, prepares early warnings of program and management issues.

*F. Office of Program Development (DGS)* develops program plans, regulations, guidelines and instructions to improve the service programs administered by the Administration on Aging under the Older Americans Act and title XX. Fosters, oversees, assists, and assesses the development of State administered community based systems of social services to the elderly as authorized under title III and title XX.

In response to policy guidance from the Office Management and Policy Control, develops and implements strategies for improving the quality of facilities, programs, and services for the nation's older population (except facilities, programs, and services related to long term care which are the responsibility of the Division of Long Term Care).

Such strategies include, but are not limited to, developing standards for facilities, programs, and services. Maintains information on programs in other Federal agencies and national voluntary agencies which have potential for relating to these strategies.

Manages program of services for older Indians authorized under Title VI of the Older Americans Act.

*1. Division of State and Community Programs (DGS1)* develops regulations and guidelines for use by State and area agencies on aging and local agencies and organizations responsible for programs under title III of the Older Americans Act, and provides input to OPCR and OPE on regulations and guidelines for State title XX agencies.

Provides technical assistance through the Office of Program Operations to Regional Office personnel on these regulations and guidelines. Coordinates analysis of State title III plans, and in coordination with OPCR, title XX plans, to identify patterns, emerging issues, and policy implications.

Manages program of services for older Indians authorized under Title VI of the Older Americans Act.

2. *Division of Services Development (DGS2)* develops and implements strategies for improving services and developing new services based on results of evaluation studies and increasing knowledge about the specialized needs and changing circumstances of older people.

Develops and disseminates standards, optional models, and 'best practice' suggestions on services to the elderly, for use by the Regional Offices, State and area agencies on aging and, in coordination with OPCR, State title XX agencies. With assistance from the Office of Education and Training and OPCR develops technical assistance materials and in-service training curricula concerning these standards, models, and best practice suggestions targeted at building the capabilities of State and area agency staff State title XX agency staff, and staff of other social service programs to improve their competence in serving older people.

Develops and implements new initiatives, often in collaboration with public agencies and voluntary organizations. Collaborates with other Federal agencies in development of measures to assist older persons on such matters as employment, disease prevention, health promotion, and suitable living arrangements.

G. *Office of Education and Training (DGE)* administers programs to increase the supply of trained personnel in the field of aging, to increase knowledge in other professional fields of the processes of aging and the circumstances and requirements of older people, and to increase the availability, accessibility, and adequacy of training and educational programs on aging within educational institutions throughout the country. In response to policy guidance from the Office of Management and Policy Control, conducts continuing studies and periodic reviews of manpower needs and resources in the field of aging, develops and monitors a national plan for increasing these resources, and prepares reports thereon for the Administration on Aging, the Federal Council on Aging, the Office of the Secretary, the President, and the Congress.

Develops policies concerning, and fosters career and in-service training programs for, increasing competencies of personnel employed in the field of aging and in related fields. Encourages, and provides partial support for, university-based gerontology programs.

Works in collaboration with OPCR in the coordination of education and manpower development activities of AoA with other HDS training programs

and with similar activities of other Federal agencies and of professional and voluntary professional and voluntary organizations in the field of aging.

1. *Division of Education and Career Preparation (DGE)* administers a program for developing curricula and providing training related to preparation for professional, teaching, research, as well as paraprofessional careers in the field of aging through grants to or contracts with educational institutions. Along with the Division of Long Term Care, makes grants for planning, developing, and operating multidisciplinary centers of gerontology designed to serve the purposes set forth under Title IV-E of the Older Americans Act.

Provides technical assistance and consultation relative to education and training needs and programs to States and educational institutions and organizations at all levels.

Develops criteria for evaluating the effectiveness of education and career training programs and the performance of AoA grantees and contractors, and, through the Office of Program Operations, coordinates the Regional office monitoring of training grants and contracts.

1. *Division of Continuing Education and Training (DGE2)* develops and administers a program in staff development and continuing education for personnel in the field of aging and for established professional and paraprofessional personnel in related fields who seek to develop competencies for work in the field of aging. Allocates manpower development funds to State agencies on aging for the use of State and area agencies in conducting and supporting short term training for network personnel and personnel of provider agencies, including lay volunteers, to improve their competencies for serving older people. Coordinates with OPCR to promote AoA priorities in title XX training programs.

Develops criteria for evaluating short term training. Develops and disseminates material on occupational information, personnel needs and job requirements in the field of aging. Designs techniques and instruments for evaluation of education and training programs.

H. *National Clearinghouse on Aging (DGT)* serves as the focal point within the Federal Government for the development of policy on information concerning the elderly and manages a program for the collection, analysis, and dissemination of information related to the needs and problems of older persons. Wherever possible, develops

and coordinates programs with other offices and agencies to fill gaps in information in the field of aging as mandated by the Act.

Manages through contracts a decentralized system of bibliographic control and dissemination of literature in the field of aging and service delivery models. Develops policy for information and referral services. Provides technical assistance for State Agencies on Aging and in coordination with OPCR for State Title XX agencies in the development of information and referral services.

Provides the chairperson for and secretariat services to the Inter-Departmental Task Force on Information and Referral and Inter-departmental Working Group on Aging Task Force on Statistics. Collects, analyzes, and disseminates in the form of reports and pamphlets statistical data relevant to the demographic, socio-economic, and health characteristics of the older population. Responds to inquiries from the public in the form of letters and telephone inquiries. Distributes publications to members of the public, older persons, professionals in the field of aging, and other interested persons.

1. *Information and Referral and Public Inquiries Staff (DGT1)* promotes, assists and assesses the development of information and referral services for the aging within AoA, the Department, other Federal agencies, State and Area Agencies on Aging, State title XX Agencies, other non-Agencies public and private agencies, and organizations associated with the service-providing network. Develops policy issuances for both professional and public audiences, provides secretarial services for the Interdepartmental Task Force on I&R, and analyzes the need for and outcomes of research in I&R.

Responds to written, phone and personal inquiries from all sources dealing with services and needs of aging; when appropriate, coordinates the provision of technical and policy interpretations from responsible organizational units within the outside AoA. In emergency situations, refers individuals or families to the appropriate State and/or area agency on Aging for assistance in meeting the needs of the older person. Distributes pamphlets, brochures and related materials to the aging network, State Title XX agencies, and to the general public.

2. *Statistical Analysis Staff (DGT2)* is responsible for determining the statistical data needs of AoA, State and Area Agencies on Aging, State Title XX agencies and other agencies and organizations; maintains a knowledge of

data generated by a wide range of agencies and organizations; maintains an inventory of Federal statistical programs relating to older persons; provides chairperson and secretariat services to the Task Force on Statistics; serves on inter- and intra-agency work groups for improving data collection and reporting systems in aging; performs analyses of generic data obtained from Federal agencies and private organizations; performs routine and special analyses of data in support of planning and program requirements; conducts special studies and surveys to meet AoA needs; provides guidance on methods of collecting and using State and local data, transmits analytical reports and statistical information to Central Office and Regional Office (RO) staffs, to State and Area Agencies on Aging and to State title XX agencies; responds to special requests for statistical data and their interpretation from the aging network, State Title XX agencies and the general public; and advises Regional Office's, State and area agencies, and State Title XX Agencies on uses of data for planning, program monitoring, and evaluation.

3. *Communications and Information Systems Staff (DGT3)* is responsible for advising the Director regarding the management of a major automated information system; recommends long range goals to be achieved and operational planning objectives for the implementation of the system; determined policies and procedures, maintain a systems manual, arranges for central processing of information, document reproduction services and establishment and implementation of subject matter clearinghouses monitors major contracts for the information system including the central processing facility, document reproduction services, and topic area clearinghouses; develops marketing strategy for clearinghouse products, including index publications, automated data base tapes, microfiche and hard copy of documents; coordinates with other major government clearinghouses and special libraries in the field of gerontology conducts and participates in annual user conferences of professional organizations; consults with the national network on aging regarding technical assistance for information systems; maintains and updates a thesaurus of terms for the total information system; develops and monitors a network of subject matter (topic) information centers for the field of aging; establishes guidelines for the maintenance of computer software and hardware for the development of a major data base;

markets computer tapes to the private sector (e.g. System Development Corporation, and Lockheed Information Systems); and maintains a complete collection of index documents and microfiche for an Information Resource Center for the use of AoA and other interested individuals.

1. *Office of Research, Demonstrations, and Evaluation (DGR)* assesses the need for, develops strategies and priorities, about, and conducts activities for the development of adequate knowledge for improving the circumstances of older people. In response to policy guidance from the Office of Management and Policy Control, develops a plan for building such knowledge. Promotes coordination of research, evaluation, demonstration, and long term care activities. Oversees the grant and contract activities, designed to carry out research, evaluation, demonstration, and long term care activities, develops AoA policies and criteria for monitoring grants and grants supported through the Office.

Coordinates activities to encourage the utilization of results from research, evaluation, demonstration, and long term care results.

1. *Division of Research and Evaluation (DGR1)* develops the research and evaluation components of the knowledge building plan. Administers the program of research authorized under Title IV-B of the Older Americans Act including monitoring progress and evaluating the performance of grantees and contractors. Promotes coordination of research and takes positive action to encourage the utilization of research project results and findings.

Administers evaluation of AoA programs and other related national programs affecting older people as authorized by Title II, Section 202(f)(14) and Section 207(a) of the Older Americans Act.

Develops AoA plans and priorities for evaluation of programs in consultation with appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA.

2. *Division of Model Projects and Demonstrations (DGR2)* develops the demonstrations and components of the knowledge building plan. Administers the program of development and demonstration model projects authorized by section 310 and Title IV-C of the Older Americans Act, including monitoring the progress and evaluating the performance of national grantees and contractors and coordinating

through the Office of Program Operations, the Regional office monitoring of sub-national grantees and contractors. Provides coordination of demonstrations and takes positive action to encourage the utilization of demonstration project results and findings.

3. *Division of Long-Term Care (DGR3)* develops the long-term care component of the knowledge building plan.

Administers long-term care activities authorized under the Older Americans Act, including monitoring the progress and evaluating the performance of grantees and contractors. Promotes coordination of such activities and takes positive action to encourage the utilization of project results and findings.

In response to guidance from the Office of Management and Policy Control, develops and implements strategies for improving the quality of facilities, programs, and services related to long-term care for the nation's older population. Maintains information on programs in other Federal agencies and national voluntary agencies which have potential for relating to these strategies.

Formulates the AoA agenda on long-term care policy participates in departmental and inter-departmental activities which concern health and social services related to long-term care; reviews and comments on departmental regulations and policies regarding institutional and non-institutional long-term care.

Develops a knowledge base for policy decisions and program development and coordination through support of a wide range of research, evaluation, and demonstration activities.

Develops personnel resources for the delivery of demonstrations, geriatric fellowships, and training programs.

Through the support of long-term care gerontology centers under Title IV-E develops a critical uses of individuals engaged in the implementation, dissemination and utilization of models of care, education and training, and research to improve the care of chronically ill and functionally impaired older persons.

3. Delete Chapter DN, Administration on Native Americans in its entirety and replace with the following:

*DN.00 Mission. The Administration for Native Americans (ANA)* represents the concerns of American Indians, Alaskan Natives and Native Hawaiians hereinafter referred to as Native Americans.

The Administration has primary responsibility for developing policy legislative proposals and guidance, and for providing staff advice to the

Assistant Secretary and the Secretary on matters involving the social and economic development of Native Americans. ANA administers grant program to eligible Indian tribes and Native American organizations in urban and rural areas with funds authorized under the Native American Programs Act, Title VIII of the Head Start, Economic Opportunity, and Community Partnership Act of 1974, as amended.

In conjunction with the Office of the ASHDS, ANA provides Departmental liaison with other Federal agencies on Native American affairs working to address unmet needs and to increase the availability of resources and services to Native American communities through other agencies. Through its policy, liaison, and granting functions, ANA explores new program concepts and new methods for increasing the social and economic development of Native Americans, assures that information about Departmental services and benefits and eligibility criteria is conveyed to Native Americans, and fosters the opportunity for the exercise of self-determination of Native Americans and their operation of Native American programs and enterprises.

ANA serves as the lead agency within HDS on all issues concerning Native Americans. Advocates for the needs of Native Americans in HDS program planning and policy development. Develops standards, provides technical assistance, issues best practices guidelines, initiates policy relative to services provided to Native Americans funded by HDS. Participates with the Office of Program Coordination and Review (OPCR) in the development of a strategy for joint review of State Plans and monitoring of programs for the Native Americans funded by HDS. In coordination with OPCR, is responsible for the development of strategies for review of title XX Comprehensive Services Plans as they pertain to Native Americans and for monitoring of title XX services provided to Native Americans. Provides technical assistance and initiates policy relative to the provision of services to Native Americans under title VIII of Head Start, Economic Opportunity and Community Partnership Act of 1974 as amended and title XX of the Social Security Act. Works in collaboration with OPCR in the coordination of HDS training programs to achieve a comprehensive HDS training strategy. In accordance with procedures developed by OPCR and approved by the ASHDS, reviews those portions of the title XX Comprehensive Annual Service Program

plans that deal with the provision of services to Native Americans.

*DN.10 organization.* The Administration for Native Americans is headed by a Commissioner who reports directly to the Assistant Secretary for Human Development Services and consists of:

Office of the Commissioner (DN): Intra-Departmental Council on Indian Affairs Staff (DN-1); Administrative Services Staff (DN-2)

Office of Program Operations (DNB): Reservation Program Division (DNB1); Special Programs Division (DNB2)

Office of Planning and Program Development (DNP): Research, Demonstration, and Evaluation Division (DNP1); Policy, Planning, and Budget Division (DNP2)

*DN. 20 Functions.* A. *Office of the Commissioner (DN)* provides overall direction, management and legislative liaison in consultation with ASHDS and Office of Assistant Secretary for Legislation, for all components of ANA. Serves as advisor to the ASHDS, the Secretary, and the heads of DHHS agencies administering programs which have a significant impact on Native Americans. On behalf of the Department conducts liaison with and obtains advice from Indian tribes and Native American organizations. Has final approval authority for all ANA grant awards for financial assistance to American Indian tribes, Alaskan Native organizations, and Native Hawaiian groups, except as such authority has been redelegated to the HDS Regional Administrators. Provides policy direction and guidance to the HDS Regional Offices in administering the grant program for urban Indians and off-reservation Indians, except as redelegated within ANA. Has final approval for all ANA interagency agreements and has final approval of contracts and other expenditures. The Commissioner is also Chairman of the Intra-Departmental Council on Indian Affairs.

1. *Intra-Departmental Council on Indian Affairs Staff (IDCIA) (DN-1)* provides general staff support to the Council and the Commissioner of ANA. Chairperson of the Council. The Council serves as the focal point within the Department for inter-agency coordination activities relating to Indian affairs to effect cooperation and complementary utilization of the Department's resources for Indian people. Develops and promotes consistent policies on Indian affairs for the entire Department and promotes the full and continuous application of these policies throughout the Department.

Identifies administrative, legislative and regulatory changes or developments necessary for the application of an effective and consistent Indian policy.

2. *Administrative Services Staff (DN-2)* provides a wide range of administrative services in support of all ANA programs and activities. Initiates and expedites the progress of all procurements and personnel actions. Serves as ANA Executive Secretariat, controlling the flow of correspondence. Coordinates with the Office of Public Affairs/HDS in developing a public information plan and specific materials for dissemination. Responsible for the receipt of Freedom of Information Requests and coordinates responses to such requests directed to ANA. Coordinates with appropriate HDS units in implementing administrative requirements and procedures.

B. *Office of Program Operations (DNB)* administers the financial assistance projects of the Administration for Native Americans. Monitors overall performance of the financial assistance program, and directs the application of consistent regulations, policies, and guidelines. Provides direct assistance to Native Hawaiians in developing, securing and administering services aimed at social and economic self-sufficiency. Furnishes training and technical assistance support to equip Indian tribes, Alaskan Native organizations and other Native American groups and organizations with necessary technical skills in a variety of program and management areas. Works in collaboration with OPCR in coordination activities of HDS training programs.

1. *Reservation Program Division (DNB1)* provides direct assistance to American Indian tribes in developing and securing funds for local self-determination programs aimed at social and economic self-sufficiency. Reviews applications and performs on-site monitoring and evaluation of funded projects. Serves as resource to and liaison with Indian tribes.

2. *Special Programs Division (DNB2)* provides to Native Hawaiians, Alaskan Native organizations, other Native American groups and organizations serving Native Americans through inter-tribal consortia, direct assistance in developing, securing and administering services aimed at social and economic self-sufficiency. Carries out special projects, and initiatives which benefit part or all of the ANA service population. For these grantees, reviews applications for support and performs on-site monitoring and evaluation of funded projects. Serves as a resource to

and liaison with Native American groups and organizations.

**C. Office of Planning and Program Development (DNP)** plans, directs and coordinates planning and program development activities. Directs the development of regulations, policies and guidelines for ANA. In coordination with OPD/HDS directs the development of program and budget plans consistent with the Department's requirements. Monitors overall performance of research, demonstration, evaluation, planning, budget and support functions. Conducts joint review, along with the other program administrations, of all HDS cross-cutting initiatives which have a focus on Native Americans.

1. **Research, Demonstration, and Evaluation Division (DNP1)** develops and monitors projects in social and economic development, manpower, program and resource management, new program concepts and methods, and other areas of concern to Native Americans. Determines research needs; formulates, screens, recommends Research, Demonstration and Evaluation (RD&E) projects; and develops the multi-year RD&E plan for ANA.

Provides advice and support on RD&E projects with a Native American aspect or impact being conducted by other agencies. Maintains liaison with Office of Policy Development, HDS, and participates in HDS cross-cutting projects; conducts intra-agency evaluations and studies on program effectiveness; and assists the evaluation efforts of other agencies relevant to Native American populations. Provides technical assistance to Native American groups on how to perform evaluations; manages the development of grantee evaluation techniques and processes; assesses the extent to which program objectives are being achieved.

Directs the design, development, implementation, and operation/maintenance of the ANA program management information system in support of reporting, planning, and administration of the program. Disseminates RD&E project and study findings to policy makers and other members of the user community; facilitates and promotes utilization of research results by Native American and HHS communities.

2. **Policy, Planning and Budget Division (DNP2)** in coordination and consultation with OPD/HDS, develops and recommends the implementation of policies throughout ANA. Formulates budget and legislative plans consistent with Departmental and ANA requirements. Coordinates the reporting by ANA units to the DHHS/HDS

management system, including reports on short-range initiatives (e.g. OMS). Assists the Office of Program Operations in developing local program planning capability. In accordance with ASHDS guidelines and instructions, administers the development of budget proposals and internal ANA financial operating plans. Tracks financial status of all program and S&E accounts and provides financial data to the Commissioner. Furnishes assistance to program specialists and grantees in financial systems development. Coordinates with appropriate HDS staff units in carrying out these functions.

4. In the **Office of Legislative Affairs (DAL)** under the Immediate Office of the Assistant Secretary for HDS (DA), the paragraph for the **Office of Legislative Affairs** is to be deleted and replaced in its entirety by:

**Office of Legislative Affairs (DAL)** serves as the principal contact point for Congressional or legislative issues affecting HDS. Counsels and advises ASHDS and program commissioners on various aspects of Congressional relations and legislation. Coordinates information and technical assistance provided to Congressional committees, members of Congress and their staffs. With Office of Policy Development and Office of Assistant Secretary for Legislation, coordinates the development of HDS legislative proposals. Coordinates the preparation of bill reports and comments on draft regulations. Assists in the preparation of testimony and backup material on HDS legislative proposals before Congress, monitors hearings and other Congressional activities which affect HDS; coordinates constituent group concerns about legislation which affects HDS programs. Keeps the calendar of expiring legislation and key legislation activities, such as hearings. Serves as HDS liaison with the Office of the Assistant Secretary for Legislation and coordinates Congressional relations activities with that office.

5. Under the **Regional Offices of Human Development Services (DD)** make the following changes.

a. The last paragraph of the **Office of Fiscal Operations (DD1-X-5)** is to be deleted and replaced by the following: *Conducts studies, provides guidance, interpretation, and technical assistance to State and local agencies in the development and operation of financial management functions, purchase of services practices, business and economic development activities and in the adoption of improved management and administrative methods and practices. Coordinates this function with OMS in the Central Office.*

b. At the end of the functions for the **Office of the Regional Administrator DD1-X**, add the following paragraph: *Conducts studies, provides guidance, interpretation, and technical assistance to States and local agencies in the development and operation of reporting systems. Is responsible for program and data systems activities in the regions.*

Dated: January 15, 1981.

Patricia Roberts Harris,  
Secretary.

[FR Doc. 81-2727 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-92-M

## National Institutes of Health

### Amended Notice of Meeting of the National Advisory Research Resources Council

Notice is hereby given of a change in the agenda of the meeting of the National Advisory Research Resources Council, to be held on February 5-6, 1981, Conference Room 6, Bldg. 31, National Institutes of Health, Bethesda, Maryland 20205, and published in the **Federal Register** on January 14, 1981, 46 FR 3282.

The individual Council Program Work Groups were scheduled to meet from approximately 10:30 a.m. to 2:30 p.m. on February 5. They will meet on February 5 from approximately 10:30 a.m. to Noon, and from approximately 1:30 p.m. to 2:30 p.m. At approximately 1:00 p.m., there will be an address to Council by the Director, NIH.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Support; National Institutes of Health)

Notes.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

Dated: January 21, 1981.

Suzanne L. Freneau,  
Committee Management Officer, National Institutes of Health.

[FR Doc. 81-2869 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-08-M

## National Cancer Advisory Board and Board Subcommittees; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the National Cancer Advisory Board and its Subcommittees on Organ Site Programs, Special Actions for Grants, Centers & Construction, and Planning and Budget, February 1-4, 1981, National Cancer

Institute, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. Portions of the Board meeting will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of these meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of the meetings, substantive program information and rosters of members, upon request.

Name of Committee: *National Cancer Advisory Board*

Dates of Meeting: February 2-4, 1981

Place of Meeting: Building 31C, Conference Room 6, National Institutes of Health

Open:

February 2, 8:30 a.m.-3:30 p.m.

February 4, 8:30 a.m.—Adjournment

Agenda:

February 2, Reports on activities of the President's Cancer Panel; the Director, National Cancer Institute; NCI Contracting Procedure: Contract Review; Use of Raw and Normalized Priority Scores; and Clinical Manpower Needs.

February 4, Community-Based Cancer Control; and Cancer in Black Americans.

Closed Session: February 3, 8:30 a.m.—adjournment

Closure Reason: To review research grant applications.

Name of Committee: *Subcommittee on Organ Site Programs*

Date and Place of Meeting: February 1, 1981, 7:30 p.m.—adjournment; Building 31C, Conference Room 8

Open for the Entire Meeting

Agenda: A review of Organ Site Programs.

Name of Committee: *Subcommittee on Special Actions for Grants*

Date and Place of Meeting: February 2, 3:30 p.m.—5:30 p.m. Building 31C, Conference Room 8

Closed for the Entire Meeting

Agenda: A review of grants and grant applications for the Diagnosis Program.

Name of Committee: *Subcommittee on Centers & Construction*

Date and Place of Meeting: February 2, 5:30 p.m.—adjournment; Building 31C, Conference Room 8

Open: 5:45 p.m.—adjournment

Closed: 5:30 p.m.—5:45 p.m.

Closure Reason: To review a grant application.

Agenda: To discuss recommendations regarding modifications of guidelines.

Name of Committee: *Subcommittee on Planning & Budget*

Date and Place of Meeting: February 2, 7:30 p.m.—adjournment; Building 31A, Room 11A10

Open for the Entire Meeting

Agenda: A review of the current NCI budget.

[Catalog of Federal Domestic Assistance Program Nos:

13.392, project grants in cancer construction.

13.393, project grants in cancer cause and prevention.

13.394, project grants in cancer detection and diagnosis.

13.395, project grants in cancer treatment.

13.396, project grants in cancer biology.

13.397, project grants in cancer centers support.

13.398, project grants in cancer research manpower.

13.399, project grants and contracts in cancer control).

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: January 21, 1981.

Suzanne L. Fremeau,

Committee Management Officer, National Institute of Health.

[FR Doc. 81-2870 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-08-M

## Public Health Service

### Health Services Administration

#### Medical Reimbursement Rates for Fiscal Year 1981; Inpatient and Outpatient Medical Care

Notice is given that the Assistant Secretary for Health and Surgeon General, under authority of Section 321 of the Public Health Service Act (42 U.S.C. 248 (a)), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Health Services Administration for fiscal year 1981: Emergency Non-Beneficiaries, Foreign Seafarers, Beneficiaries of Other Federal Agencies, Medicare & Medicaid Beneficiaries.

Inpatient Services per day—\$224.00 (In Alaska, \$284.00).

Outpatient Services per visit—\$44.00 (In Alaska, \$72.00).

Dated: January 13, 1981.

George I. Lythcott,

Assistant Surgeon General, Administrator.

Approved: January 9, 1981.

Julius B. Richmond,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 81-2725 Filed 1-26-81; 8:45 am]

BILLING CODE 4110-84-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### Colorado Craig District Advisory Council Meeting

In accordance with Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on February 26, 1981.

The meeting will begin at 9:30 a.m. in the conference room of the Craig District Office of the Bureau of Land Management, 455 Emerson Street, Craig, Colorado.

The agenda of the meeting will include:

1. Election of officers;
2. Status report on significant District programs;
3. Council recommendations on the objectives for the alternatives to be formulated for the Kremmling Resource Management Plan;
4. Council comments of the Draft Sand Wash Wild Horse Management Plan in the Little Snake Resource Area;
5. Discussion of the District Good Neighbor Policy and council suggestions to improve it, and
6. Statements from the public and discussion.

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 3:00 p.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council or file a written statement should notify the District Manager, Bureau of Land Management, P.O. Box 248, 455 Emerson Street, Craig, Colorado 81625, by February 20, 1981.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Marvin W. Pearson,  
District Manager.

[FR Doc. 81-2720 Filed 1-26-81; 8:45 am]

BILLING CODE 4310-84-M

#### District Advisory Council Susanville, California; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 (FLPMA) that a

meeting of the Susanville District Advisory Council will be held on February 24 and 25, 1981.

The meeting will begin at 10:00 a.m. in the Ravendale Fire Station of the Bureau of Land Management, Ravendale, California.

The agenda for the meeting will include:

1. Ad Hoc Committee Report on Role Statement.
2. Ad Hoc Committee Report on Process for Reporting EIS Implementation Progress to Public.
3. Cowhead/Massacre MFP III.
4. Cal Neva and Willow Creek EIS Status Report.
5. Alturas RMP Status Report.

The meeting is open to the public and time will be provided for public comment.

Summary minutes of the council meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

C. Rex Cleary,

District Manager.

[FR Doc. 81-2721 filed 1-26-81; 8:45 am]

BILLING CODE 4310-84-M

#### Ukiah District Advisory Council; Change of Meeting Date

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Change of meeting date for the Ukiah District Advisory Council.

**SUMMARY:** Notice is hereby given that the meeting date for the Ukiah District Advisory Council as published on page 3642 in the *Federal Register* of January 15, 1981, has been changed from February 12, 1981 to February 26, 1981. Also, written statements must now be filed with the District Manager by February 25, 1981, to be considered by the Council. All other particulars contained in the Notice as published January 15, 1981, remain unchanged.

**DATES:** February 26, 1981: Ukiah District Advisory Council meeting. February 25, 1981: Deadline to file written statements with the Ukiah District Manager.

**FOR FURTHER INFORMATION CONTACT:** Edwin G. Katlas, (707) 462-3873.

Ed Hartley,

Associate Director.

[FR Doc. 81-3021 Filed 1-26-81; 8:45 am]

BILLING CODE 4310-84-M

#### Fish and Wildlife Service

##### Identification of Integral Vistas Associated with Federal Class I Areas; Guidelines Availability

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Proposed Guideline; Extension of Comment Period; Notice of Guideline Availability.

**SUMMARY:** On December 2, 1980, the Environmental Protection Agency (EPA) promulgated final regulations (40 CFR Part 51—Subpart P) for visibility protection for Federal class I areas (45 FR 80084). These regulations provided for the identification of integral vistas by the Federal Land Manager based on guidelines to be established by the Federal Land Manager. These guidelines for the U.S. Fish and Wildlife Service are published herein for public review and comment.

In EPA's proposed rulemaking on May 22, 1980 (45 FR 34762) certain draft guidelines were provided by EPA for public review, including a draft guideline on identification of integral vistas. The proposed guideline being announced today is substantially the same as that published by EPA except for minor changes the Department made in response to public comments addressed to EPA in Docket A-79-40. As indicated, this notice also responds to public comments on the draft guideline (entitled "Criteria for Identification of Integral Vistas") addressed to EPA in response to EPA's request for comments published in the *Federal Register* notice of May 22, 1980 (45 FR 34762).

On January 15, 1981 (46 FR 3646) the National Park Service (NPS) published the proposed guideline entitled "Criteria for the Identification of Integral Vistas." As noted at the beginning of the guideline, this document was prepared in the spring of 1980 by the U.S. Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service at the request of EPA. The NPS was the lead agency for the Department of Interior on this interagency task force for the development of the guideline, and was subsequently assigned the task of reviewing for the Department of Interior the public comments addressed to EPA in Docket A-79-40. Since the NPS was the lead agency for the Department of the Interior in developing the guideline and in responding to public comments on the draft guideline, and since the Fish and Wildlife Service participated in developing the guideline, the Fish and Wildlife Service is herein proposing to

use the same guideline "Criteria for the Identification of Integral Vistas"; to incorporate the same minor changes made in response to public comments addressed to EPA in Docket A-79-40; and to provide the same response to the public comments addressed to EPA in response to EPA's request for comments published in the *Federal Register* notice of May 22, 1980 (45 FR 34762) as NPS published on January 15, 1981 (46 FR 3646).

The purpose of this notice are to announce the availability of the guideline and to provide for additional public review and comment on the guideline before it is finalized. A preliminary list of integral vistas associated with the 21 Fish and Wildlife Service mandatory class I areas where visibility is an important value will be published separately.

A 30 day comment period is provided. The comment period will not be extended since the guideline must be finalized as soon as possible in order for the Federal Land Manager to provide timely information needed by the states for preparation of State Implementation Plans on visibility.

**DATES:** Written comments or suggestions must be received by February 28, 1981.

**ADDRESS:** All written comments are to be submitted to: Ms. Elisabeth Cummings, Division of Refuge Management, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elisabeth Cummings, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240, Telephone: (202) 343-4047.

#### SUPPLEMENTARY INFORMATION:

##### A. Background and Comment Period

Section 169A of the Clean Air Act, 42 U.S.C. 7491, required EPA to promulgate regulations to assure reasonable progress toward the congressional declared goal of "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." EPA promulgated such regulations on December 2, 1980 (42 FR 80084). These regulations provided for the identification of "integral vistas" by the Federal Land Manager based on a guideline established by the Federal Land Manager consistent with EPA's definition of integral vistas contained in the visibility regulations. These regulations define "integral vistas" as a view perceived from within the

mandatory class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory class I area. These regulations provide the Federal Land Managers with the opportunity to identify integral vistas for "mandatory class I areas where visibility is an important value" as identified in 40 CFR Part 81, Subpart D. The Clean Air Act required the Secretary to identify these mandatory class I areas pursuant to Section 109A(a)(2), and EPA published the Secretary's list of these areas on November 30, 1979 (44 FR 69122).

With respect to the responsibilities under the Clean Air Act affecting units of the Fish and Wildlife Service, the Secretary's authority to carry out these tasks was delegated to the Fish and Wildlife Service on January 7, 1981.

This notice announces the availability of the proposed guideline entitled "Criteria for Identification of Integral Vistas." The preliminary list of Fish and Wildlife Service integral vistas for the 21 Fish and Wildlife Service class I areas where visibility is an important value will be published separately. The guideline provides the criteria to be used by the Fish and Wildlife Service in identifying this preliminary list. The guideline document provided today is essentially identical to a document with the same title proposed by EPA at 45 FR 34763 (May 22, 1980) in Docket No. A-79-40 in the proposed rulemaking on visibility protection for Federal class I areas. The document published here includes two minor changes made in response to public comments addressed to EPA in Docket A-79-40.

The guideline was originally developed at EPA's request by a task force representing agencies managing federal lands, including the U.S. Forest Service, the U.S. Fish and Wildlife Service, the National Park Service and the U.S. Bureau of Land Management. Currently only the U.S. Forest Service, the U.S. Fish and Wildlife Service and the National Park Service manage mandatory Federal class I areas.

This notice will provide for an additional 30-day public comment period on the guideline document to be used by the Fish and Wildlife Service. As indicated above, the draft guideline already has been afforded a 90-day public comment period by EPA. On May 23, 1980, (45 FR 34762) EPA published the notice of proposed rulemaking and guideline availability and announced a 75-day comment period. On July 31, 1980 (45 FR 50825) EPA extended the public comment period to August 22, 1980. Two public hearings were held by EPA, one in Washington, D.C. (June 30, 1980) and the second in Salt Lake City, Utah (July

2, 1980) for the purposes of obtaining comments on the proposed regulations and guidelines. The guideline document has been revised as discussed below in response to public comments. Those commentators who have already filed comments in Docket A-79-40 on EPA's draft document of the same title need not comment again since comments from that docket have already been forwarded to the Department and are considered and responded to in this notice.

It is important that a guideline for integral vista identification and a list of such vistas be developed in a timely manner to meet the deadlines imposed by the Clean Air Act and EPA's regulations. Under EPA's December 2, 1980 regulations, the Federal Land Manager must identify a list of integral vistas at least 6 months prior to the State Implementation Plan submission in order for the list to be considered by the State for incorporation into the visibility revision to the State Implementation Plan. In order for the State to meet the statutory deadline of 9 months for the submittal of a visibility State Implementation Plan, the Federal Land Manager will have to identify integral vistas within 90 days of the effective date of EPA's visibility regulations. Identification of integral vistas is important since the visibility revision to a State Implementation Plan is required to consider the potential for existing and new sources to impair the visibility of integral vistas. In addition, according to 40 CFR Part 51 Subpart P, a proposed new source applicant will have to consider visibility effects upon those integral vistas that have been published in the Federal Register at least 6 months prior to the new source applicant's submission of a complete new source permit application.

EPA, in its proposed rulemaking at 45 FR 34775 (May 22, 1980), recommended that the Federal Land Managers should take preliminary steps to prepare for identification of integral vistas. EPA noted that the guideline might change in light of comments received; however, EPA recognized that one important criterion for identification of integral vistas unlikely to be changed by public comment is whether the legislation creating an area specifically mentioned an integral vista as a reason for that area being given special recognition. In response to EPA's recommendation, the Fish and Wildlife Service made conditional application of the guideline in the period following its publication by EPA. This conditional application of the guideline simultaneously functioned as an effective test of the adequacy of the

guideline for all Fish and Wildlife Service class I areas. The conditional application of the guideline is being reviewed and after internal deliberation will result in identification of a preliminary list of integral vistas to be published separately.

The identification criteria guideline presented in this notice will become effective upon final notice unless public comments are received which provide new and significant information which indicates that changes are needed.

## B. The Proposed Guideline

The "Criteria for Identification of Integral Vistas" for the Fish and Wildlife Service established a methodology to aid the Federal Land Manager in identifying and documenting the integral vistas of mandatory class I areas of the National Wildlife Refuge System where visibility is an important value. In 40 CFR Part 51.301(n), EPA has defined integral vistas as those views perceived from within the mandatory class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory class I Federal area. In 40 CFR Part 51.304(a), EPA has required that the criteria to identify integral vistas must include, but not be limited to, whether the integral vista is important to the visitor's visual experience associated with the mandatory class I area.

The guideline provides for identification of vistas which are integral to the visitor experience and to the purposes for which the area was established. By application of the guideline, integral vistas can be identified and described by their important or characteristic scenic feature(s). Integral vistas are determined for each mandatory class I area on a case-by-case basis to reflect the unique or distinguishing characteristics of individual vistas.

Under EPA regulations integral vistas will be limited to only those associated with existing mandatory Federal class I areas where visibility is an important value. The definition of integral vista in EPA's regulations refers to "in-out" vistas, i.e., where the perception of the integral vista outside class I boundaries occurs from a viewpoint *within* mandatory Federal class I area boundaries.

As noted in the Department of the Interior's letter to EPA of August 29, 1980, filed in Docket A-79-40, it was found that one important element or concept of integral vista significance was not included in EPA's proposed draft guideline for the identification of integral vistas. This criterion has now



been added to the "Vista Evaluation" under "Significance of Vista" as follows:

Vista has scientific importance. [This criterion includes all vistas which are marked as "primarily of scientific importance" under PRINCIPAL CONTENT OF VISTA, and may also include vistas marked as primarily of cultural or scenic values). State in the narrative the reasons for scientific importance. For example, a vista may have geologic significance and be important to understanding how or why an area was formed.

The addition of the above quoted criterion, and the omission of a document entitled the "Decision Guide Form," are the only substantive changes in the integral vista guideline from that published by EPA at 45 FR 34762. The Decision Guide Form was omitted because the form could result in arbitrary or inadequately substantiated decisions since the user is instructed to skip many steps in the logic and substantiation process for the selection of integral vistas. This was noted in public comments to EPA from the Department and others.

#### C. Response to Public Comments

The formal record of comments (Docket A-79-40) addressed to EPA on the proposed visibility regulations contained 383 commentors, of which seven written statements pertained to the guideline document for identification of integral vistas. These commentors included three from businesses, two from trade organizations and two from federal officials. One of the two statements from a federal official was from the Secretary of the Interior.

Following are the basic areas of concern set forth in the comments addressing the draft guideline document.

Comments were received on:

1. the identification criteria, and
2. the energy and economic consequences that might result from the identification of an integral vista

#### The Identification Criteria

Several commentors requested the opportunity to comment further on the criteria for identification and that there be public notice and an opportunity to comment on any list of integral vistas selected by the Federal Land Managers. Today's notice is in response to this request as well as in response to the EPA regulations.

Most of the comments, particularly those from the electric utility industry, suggested that the draft guideline did not provide a basis for an objective evaluation of vistas. We believe that the criteria in the guideline document provide for the careful consideration of a range of pertinent factors for which

written substantiation is required. These factors include the vista's scientific, cultural, or historic importance, its importance to the preservation and management of the area, and the importance to the visitor enjoyment of the area. The supporting documentation for each area includes a specific description and an evaluation documenting whether or not a vista meets the test as being "integral".

Several commentors suggested that the guidelines should provide for a weighting of factors so that insignificant factors do not necessarily compel an identification of an integral vista. These commentors suggested that the most weight be given to "concrete" factors, such as clear statements of congressional intent. While enabling legislation for an area may indicate whether Congress singled out a specific vista as important to an area, the absence of a legislative reference does not necessarily imply that there are not significant scenic resources which should be considered for protection. The merits of the scenic resource and its importance to the visitor experience are equally important in determining whether a vista is integral. For example, visitor use of turnouts and trails affording popular or well-known scenic views can also objectively demonstrate the importance of the vista.

A few commentors suggested that the Federal Land Manager should rank vistas within an area and those in one area with the vistas in another area. One commentor recommended that this ranking would identify which vistas should be given priority for later evaluation of visibility protection considerations. Application of the guideline establishes whether the vistas considered meet the criteria of importance to the visitor's visual experience or to the purposes for which the area was created. The vistas associated with the class I areas vary so significantly that it is difficult if not impossible to objectively rank the relative importance of vistas within one area, or those in one area with vistas in another area. A vista either meets the test of "integrality" or it does not. While the sensitivity of individual vistas to varying amounts of visibility impairment may vary, these considerations will be part of any evaluation of whether a visibility impairment constitutes an "adverse" or "significant" effect to the visitor enjoyment of the vista. This analysis is not part of the identification of whether a vista is integral, but rather will be a part of determining the tolerance of individual vistas to varying degrees of

impairment during the new source review or retrofit control analyses.

A few commentors suggested that accessibility and natural conditions be taken into account in the identification of integral vistas. Visitor access and natural conditions are not part of the criteria in the guideline, since these factors also will be considered on a case-by-case basis during new source review and best available retrofit technology analysis in any visibility impact findings made by the state, the applicant or the Federal Land Manager. Thus, determinations of visibility impacts on integral vistas will be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and times of visibility impairment and how these factors correlate with (1) times of visitor use of the Federal class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

#### The Energy and Economic Consequences That Would Follow Identification of an Integral Vista

Several commentors suggested that under EPA's regulations, identification of integral vistas by the Federal Land Manager would be a "federal land grab" and a *de facto* restriction of energy and economic development. This is not the case. Under EPA's visibility regulations concerning integral vista protection, the states have the ultimate decision-making authority over the appropriate measure of protection to be given any integral vista, and may consider and balance competing interests such as energy and economic development. Protection of integral vistas is afforded under Section 169A and requires only that "reasonable progress" be made towards achieving the national visibility goal. The "reasonable progress" standard provides a balancing of competing interests.

The final EPA visibility regulations promulgated on December 2, 1980 differ significantly from provisions proposed by EPA on May 22, 1980. The final regulations made a clear distinction between the protection which must be afforded inside the boundaries of class I areas and the protection which may be provided to integral vistas which extend beyond the boundaries. EPA's final visibility regulations afford protection to integral vistas on the basis of Section 169A of the Clean Air Act, the visibility protection section, and not on the basis of Section 165, the prevention of significant deterioration section. The impact of this distinction is important. As to the integral vistas of a mandatory class I area, Section 169A allows a balancing of various concerns, including energy and economic, in determining the

level of protection for integral vistas. As to visibility and other air quality related values *within* a class I area, however, Section 165 establishes a more protective scheme for air quality values during new source review which excludes consideration of economic and energy concerns. EPA's Prevention of Significant Deterioration regulations, 40 CFR 51.18, 51.24, 52.21, and 52.24, and not EPA's final visibility regulations, govern this protection of air quality *within* the boundaries of a class I area. Under the provisions for the Prevention of Significant Deterioration, the Federal Land Manager may demonstrate to the satisfaction of the state that a proposed source would cause an adverse impact upon visibility within the boundaries of a class I area even though the class I increments are met. In the determination of impacts *within* the class I area boundaries, a state is permitted to consider only the adequacy of the Federal Land Manager's demonstration based solely on air quality factors and cannot consider other factors such as energy or economic factors. Conversely, where the class I increments inside the boundaries are not met, the applicant has an opportunity to demonstrate to the satisfaction of the Federal Land Manager that air quality related values including visibility would not be adversely affected. If the Federal Land Manager is convinced by the demonstration, he or she may recommend to the state that the permit be granted.

Where the Federal Land Manager demonstrates, based solely on air quality factors, that an unacceptable impact on visibility *outside* of class I boundaries but within an integral vista would occur, the state has the authority in the new source permit review and in analyses of best available retrofit technology to consider and balance energy and economic factors, provided that any action a state takes on a proposed new source permit or a best available retrofit technology decision is consistent with the criteria of Section 169A which requires the state to make "reasonable progress" toward achieving the long term visibility goal.

Because EPA's visibility regulations provide the states with the flexibility to consider energy and economic factors in determining the level of visibility protection to be afforded an integral vista, the identification of integral vistas, as candidates for protection consideration, does not in itself impede development in an area.

Even if the states place considerable weight on protecting the integral vistas, studies have shown that the sensitivity

of individual vistas to changes in air quality depends upon numerous factors including the background air quality levels, the characteristics of the features in view, the specific design and location of a source, intervening terrain, meteorology, and the fuel burned. These factors would be taken into consideration in any findings made during the new source review process. As required by EPA's regulations, all determinations of visibility impacts will be made on a vista-by-vista basis, taking into consideration extent, frequency, duration, and intensity of impairment, and the time of visitor use.

Bob Herbst,

*Assistant Secretary, Fish and Wildlife and Parks.*

#### Proposed Guideline—Criteria for the Identification of Integral Vistas

This document was prepared in the spring of 1980 by the U.S. Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service at the request of EPA.

##### *Step 1: Selection of Vistas for Consideration*

For any class I area, the number of vistas, from either developed or undeveloped vantage points, greatly exceeds the number of vistas which need to be thoroughly evaluated for visibility protection. Selection of vistas to be evaluated in Step 2, therefore, will rely on the background knowledge and best judgement of the Federal Land Manager (FLM) responsible for the class I area in applying the following criteria.

As an aid to the Federal Land Manager in selecting vistas initially for consideration, two overall criteria are to be applied: the importance of the vista to the objectives for which the area was created and the contribution of the vista to the visitor enjoyment of the area. Vistas for which any of the factors listed below apply should be included in the vistas selected for evaluation in Step 2:

1. Vistas which are important to the objectives for which the area was created; in particular, vistas or landscape feature(s) identified in relevant legislation and legislative history.

2. Vistas which significantly contribute to visitor enjoyment of the area.

a. Vistas identified in the 1978 Federal Land Managers review of class I areas for which visibility is an important value.

b. Vistas which have received emphasis or attention in management plans, visitor surveys or studies, leaflets, maps, books, magazines or newspaper articles, reports on the area, pictures on

postcards, TV or radio references, visual resource surveys, or movies or slide shows (include examples of the above items when the evaluation is submitted.)

c. Vistas that have developed observation points along roads or trails or vistas for which a developed observation point is planned.

d. Vistas which are viewed from prominent topographic points in predominantly flat terrain in undeveloped areas.

e. Vistas from popular view points in undeveloped areas.

f. Vistas which have particular or unusual scenic quality or of cultural or historical value.

g. Vistas which have been recommended by significant public comment for visibility protection.

The Federal Land Manager responsible for the class I area will in many cases be familiar enough with the area to spend one day or less in this initial selection of vistas to be evaluated in detail in Step 2.

As an additional aid to the Federal Land Manager, vistas may be aggregated and considered as one vista where more than one observer point overlooks the same vista. Figure 1 gives an example of how a class I area may be reviewed as an entire unit to select vistas for consideration. During the vista selection (Step 1) the Federal Land Manager should also keep in mind the following points:

a. Characteristic landscapes naturally differ between parts of the country. All landscapes, such as flatlands, shore, water, or hills, are to be considered.

b. Although natural visibility conditions differ with geographic location, season, and time of day, the identification of integral vistas should not be affected by these differences. For example, visibility is generally more limited in humid regions in the East than in arid areas of the West. Identification should depend primarily on whether the vista meets the criteria discussed in this document.

c. Normal access to observation points may be limited in certain seasons or by level of effort required to reach the observation point. Such a limitation does not in itself eliminate the vista from consideration, but should be reported in the vista evaluation if selected.

d. Vistas may include either of 2 basic types: focal point or panoramic. A focal point vista is one that directs the eye toward and focuses primarily upon one or more landscape features or visual elements. A panoramic vista is one that sweeps over a broad area and provides an essentially unobstructed or complete view of multiple visual elements.

*Step 2: Identification of vistas integral to visitor experience on the class I area*

For each vista or aggregate vista considered, a separate Vista Evaluation (Form 1) shall be prepared. Each Vista Evaluation shall be accompanied by the supporting narrative statements requested; by the examples, maps and documentation indicated; and by a Vista Description. Instructions for completion of the Vista Evaluation are in Appendix 1. Each of the important landscape elements in the integral vista shall be described as part of the vista description so that later determinations may be made of the sensitivity of the vista, and the important landscape elements comprising it, to air quality.

**Form 1 Vista Evaluation**

Name of Vista or Brief Description \_\_\_\_\_

*Principal Content of Vista (Select One)*

- a.  Vista is primarily of cultural or historical importance.  
 b.  Vista is primarily of scientific importance.  
 c.  Vista is primarily of scenic importance.

*Specific Information Relating to the Vista*

## 1. Legislation

- a.  Vista was specifically mentioned in enabling legislation for the Class I area or in the House, Senate or Conference Committee Reports pertaining to the enabling legislation. Examine the enabling legislation and accompanying legislative history to determine the purpose for which the area was created and the importance of vistas. Include copy of legislation or appropriate quotations with references in the supporting documentation.  
 b.  Legislation other than enabling legislation requires protection of the vistas. Include copy of legislation or appropriate quotations with references (e.g., Wilderness Act or Clean Air Act) in the supporting documentation.  
 c.  Other legislation or legislative history (such as floor debates reported in the Congressional Record) mentions vista or implies protection of vista. Include in the narrative quotations with references and reasons for determination of Congressional intent.

## 2. Significance of Vista (Select all applicable criteria)

- a.  Vista is known or recognized by the public through exposure in various media. State in the narrative the source of exposure (e.g., movie, photographs by well known photographers, posters, travel brochures) and the extent to

which the vista is known or recognized (e.g., Devil's Tower vista shown in the movie *Close Encounters* seen by x number of people throughout the United States.) Use specific data wherever possible.

b.  Vista is visited by persons from outside the local area. (In this criterion local visitation is defined as within 2 hours commuting distance; visitation to the area is assumed to be representative of vista visitation.) State in the supporting narrative the source of data, distances traveled, and percent of visitors to the area traveling each distance range.

c.  Vista has cultural or historical importance. (This criterion includes all vistas which were marked as "primarily of cultural or historical importance," under PRINCIPAL CONTENT OF VISTA, and may also include vistas marked as primarily of scientific or scenic importance, where these vistas also possess cultural or historical values.) State in the supporting narrative the reason for an extent of the cultural or historical values. For example, a vista may be part of a traditional religious ceremony of a local group of native Americans.

d.  Vista has scientific importance. (This criterion includes all vistas which were marked as "primarily of scientific importance" under PRINCIPAL CONTENT OF VISTA, and may also include vistas marked as primarily of cultural or scenic importance, where these vistas also possess scientific values.) State in the narrative the reasons for scientific importance. For example, a vista may have geologic significance and be important to understanding how or why an area was formed.

## 3. Visitor Experience (Select all applicable criteria)

- a.  Management of the Class I area emphasize the importance of the vista to the visitor experience. Management emphasis of a vista includes development (e.g., trails to observation points, pullouts, telescopes) to enhance the visitor's enjoyment of a vista, agency media exposure of vista (e.g., showing vista in leaflets or slide shows), and interpretive activities (e.g., attendants at observer points, guided tours). Report in the supporting narrative all evidence of management emphasis of the vista, including examples (such as leaflets) where practical.  
 b.  Management plans indicate future emphasis of vista. Document in the supporting narrative the management emphasis planned, citing the specific planning report and quoting

applicable sections. Follow guidelines in the criterion above for management emphasis.

c.  Vista is sought out by visitors to the Class I area. In the supporting narrative, report the number of visitors to the vista or the proportion of visitors to the Class I area which observe the vista. Cite source of data (e.g., visitor use survey taken in 1975). If data is not available, the number or proportion of visitors may be estimated and any evidence supporting the estimate (e.g., trash collection from pullout) provided. Where access to an observation point is difficult, the amount of energy expended by the visitor to enjoy the vista is more important than the number of visitors. Report the access and the number or estimated number of visitors.

d.  Vista is important to visitors at the observation point. Visitor comments at observation points (e.g., comments in log books or to visitor surveys) are direct indications of visitor reaction to vista. Indirect indications of visitor reaction to vista may be inferred from visitor activity (e.g., photograph, sketching) at observation points. Describe visitor reaction to vista and the source (direct or indirect indications) of this information (e.g., visitor survey, direct observation of x number of hours during x season(s) of year). Include in the narrative statistics or quotations and references for these.

**Appendix 1—Instructions for Completion of the Vista Evaluation (Form 1)**

The top of Form 1 should be completed as directed below for each line item.

*Name of the Class I Area:* Indicate the name of the class I area from which the vista being analyzed would be viewed, e.g., Canyonlands NP or Bridger Wilderness area.

*Agency:* Indicate the name of the agency responsible for the management of the class I area.

*Name or Description of the Vista:* Indicate the name of the vista, if named, or a brief description of the physiography. A full description of the landscape, including foreground, middleground, or background features in the vista shall be included in the narrative section.

*Observation Point(s):* The point or points within the class I area from which a vista is viewed. The point(s) shall be a map of the area which shall be submitted with the Vista Evaluation Form.

*Viewing Direction and Horizontal Viewing Angle:* The true azimuth (in degrees) from the observation point(s) to the horizontal limits of the vista.

*Distance Zones:* The distance in miles or kilometers from observation point(s) to the limits of the foreground, and background. The background should include the farthest point in the vista. Use the distance range for these zone as defined in the U.S. Forest Service and Bureau of Land Management Visual Resource Management System.

**Visual Resource Inventory System:** If the area has been analyzed under a visual resource inventory system, such as VIEWIT or VIS, the information should be used in this analysis and the system name indicated on this line.

**Map Scale:** Use appropriate map to show observation point(s) and vista. Where possible locate all identified vistas on one map of the class I area. Indicate scale used (not less than 1/4 inch to 1 mile) on this line.

The rest of Form 1 should be completed by marking in the box adjacent to each criterion which applies to the vista under consideration. Each applicable criterion must be supported by narrative statements as directed. As much detail and quantification as possible should be used in the narrative. Examples (such as leaflets and trail maps), or other documentation (such as visitor surveys, and legislation) shall be submitted with the Vista Evaluation, wherever practicable. If impractical to submit examples (e.g., 106 mm motion picture), list these in the narrative as additional factors considered in the evaluation.

[FR Doc. 81-2766 Filed 1-29-81; 8:45 am]

BILLING CODE 4310-55-M

#### Availability of Draft Refuge Manual

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice.

**SUMMARY:** The Refuge Manual is a central source of Fish and Wildlife Service policy, operating guidelines, and technical references for the management of the National Wildlife Refuge System. The material contained in the Refuge Manual provides direction for wildlife, habitat, and public use management programs and activities. The present Manual is currently undergoing revision. A draft of the revised Manual is now being made available for public review and comment.

**SUPPLEMENTARY INFORMATION:** The following guidelines should be used for requesting and commenting on the draft Manual:

1. A copy of the draft Refuge Manual has been sent to each Fish and Wildlife Service Regional, Area, and Refuge Office. It will be available at those locations for review during business hours.

2. Copies of individual chapters are available. Select the chapter(s) desired from the list of chapters below. When requesting, identify each chapter by chapter name and number, e.g., Public Participation, 4 RM 4.

3. Requests should be directed to: Refuge Manual Coordinator, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th & C Streets, NW., Interior Building, Room 2340, Washington, D.C. 20240 (Telephone: 202-343-4305).

4. All comments must be submitted in writing to the above address. Each comment must be identified with the chapter name, number, and section to which the comment refers, e.g., Waterfowl Management, 7 RM 3.5.

5. Comments must be received in Washington by close of business on April 27, 1981.

#### List of Chapters

- 1 RM 1 Introduction to Refuge Manual
- 1 RM 2 History of U.S. Fish and Wildlife Service
- 1 RM 3 History of National Wildlife Refuge System
- 1 RM 4 Organization of FWS
- 1 RM 5 Authorities, Regulations, and Jurisdiction
- 2 RM 1 Objectives of NWRS
- 3 RM 1 Establishing NWRS
- 3 RM 2 Types of Refuges
- 4 RM 1 Master Planning
- 4 RM 2 Budgetary Planning
- 4 RM 3 Management Planning
- 4 RM 4 Public Participation
- 4 RM 5 NEPA Compliance
- 4 RM 6 Research and Management Studies
- 5 RM 1 Naming Refuges
- 5 RM 2 Refuge Staffing
- 5 RM 3 Employee Training
- 5 RM 4 Personal Privileges
- 5 RM 5 Pay Determination
- 5 RM 6 Reporting and Recordkeeping
- 5 RM 6 Annual Narrative Reports
- 5 RM 8 Refuge Inspections
- 5 RM 9 Youth Programs
- 5 RM 10 Federal Register Document
- 5 RM 11 Pollution Abatement
- 5 RM 12 Rights-of-Way
- 5 RM 13 Minerals and Mining
- 5 RM 14 Oil and Gas
- 5 RM 15 Technical Assistance
- 5 RM 16 Historical, Archeological, and Paleontological Resource
- 5 RM 17 Permits and Agreements
- 6 RM 1 General
- 6 RM 2 Marsh and Water Management
- 6 RM 3 Forest Management
- 6 RM 4 Cropland Management
- 6 RM 5 Grassland Management
- 6 RM 6 Tundra Management
- 6 RM 7 Fire Management
- 6 RM 8 Water Rights
- 7 RM 1 General
- 7 RM 2 Endangered Species Management
- 7 RM 3 Waterfowl Management
- 7 RM 4 Other Migratory Bird Management
- 7 RM 5 Fenced Animal Management
- 7 RM 6 Feral Animal Management
- 7 RM 7 Feral Horses and Burros
- 7 RM 8 Other Resident Wildlife Management
- 7 RM 9 Exotic Species Introduction and Management
- 7 RM 10 Fishery Resources Management
- 7 RM 11 Wildlife Inventories
- 7 RM 12 Propagation and Stocking
- 7 RM 13 Collections, Donations, and Disposal
- 7 RM 14 Pest Control
- 7 RM 15 Trapping
- 7 RM 16 Marking and Banding
- 7 RM 17 Disease Prevention and Control
- 8 RM 1 General
- 8 RM 2 Public Relations

- 8 RM 3 Outdoor Classrooms and Educational Assistance
- 8 RM 4 Interpretation
- 8 RM 5 Hunting
- 8 RM 6 Fishing
- 8 RM 7 Off-Road Vehicles
- 8 RM 8 Field Trials
- 8 RM 9 Other Recreation
- 8 RM 10 Wilderness Area Management
- 8 RM 11 Natural Area Management
- 8 RM 12 Cooperating Associations
- 8 RM 13 Visitor Protection
- 8 RM 14 Law Enforcement
- 8 RM 15 Search and Rescue
- 8 RM 16 Audio-Visual Productions
- 8 RM 17 Concessions
- 8 RM 18 Dedications and Open House Events

- 9 RM 1 Facility & Landscape Design Compatibility
- 9 RM 2 Facility & Equipment Utilization & Maintenance
- 9 RM 3 Fencing
- 9 RM 4 Communications Systems
- 9 RM 5 Energy Conservation

Dated: January 14, 1981.

Lynn A. Greenwall,

Director.

[FR Doc. 81-2744 Filed 1-28-81; 8:45 am]

BILLING CODE 4310-55-M

#### Geological Survey

##### Oil and Gas and Sulphur Operations in the Outer Continental Shelf

**AGENCY:** U.S. Geological Survey, Department of the Interior.

**ACTION:** Notice of the Receipt of a Proposed Development and Production Plan.

**SUMMARY:** Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 1256, Block 172, South Timbalier Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

**FOR FURTHER INFORMATION CONTACT:** U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

**SUPPLEMENTARY INFORMATION:** Revised rules governing practices and procedures under which the U.S. Geological Survey makes information

contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of title 30 of the Code of Federal Regulations.

Dated: January 19, 1981.

E. A. Marsh,  
Staff Assistant for Operations.

[FR Doc. 81-297 Filed 1-29-81; 8:45 am]  
BILLING CODE 4310-31-M

#### Heritage Conservation and Recreation Service

##### National Registry of Natural Landmarks

**AGENCY:** Heritage Conservation and Recreation Service, Department of the Interior.

**ACTION:** Public notice and request for comment.

The areas listed below appear to qualify for designation as national natural landmarks, in accordance with provisions of 36 CFR § 1212. Pursuant to 1212.4(d)(1) of 36 CFR Part 1212, written comments concerning the potential designation of these areas as natural landmarks may be forwarded to the Acting Associate Director for Natural Programs, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243. Detailed information is available for each site. Written comments or a request for additional time or information should be received no later than March 30, 1981.

Dated: January 22, 1981.

Robert A. Ritsch,  
Acting Associate Director for Natural Programs.

##### U.S. Virgin Islands

###### St. Thomas

West End Cays (Enlargement of a previously designated landmark); a group of cays (islands) off the western coast of St. Thomas Island. The enlargement consists of Flat Cay and Little Flat Cay, and represents an increase of 110 acres to the \$1,750 acres of land and water in the existing landmark. The isolated islands provide high quality nesting sites for a variety of sea birds. Flat and Little Flat Cays serve as nesting sites for zenaida and ground doves, bahama ducks, bridled terns, sooty terns, roseate terns, brown noody terns, sandwich terns, laughing gulls, and red-billed tropic birds.

###### Washington

###### Walla Walla County

Touchet Beds, Burlingame Canal Overflow; a 28-acre site in southeastern Washington, 13

miles west of Walla Walla and 2 miles south of Lowden. The site contains the best example of the Touchet Beds (Pleistocene lake deposits) in the Columbia Plateau. This exposure contains excellent illustrations of graded sedimentary beds, clastic dikes, and ripple marks.

[FR Doc. 81-2979 Filed 1-26-81; 8:45 am]  
BILLING CODE 4310-03-M

#### INTERSTATE COMMERCE COMMISSION

##### Motor Carrier; Decision—Notice

The following applications filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, *Federal Register* at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349*. These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00, in accordance with 49 CFR 1100.240(A)(h).

*Amendments to the request for authority will not be accepted after the date of this publication.* However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

*We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved*

fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed on or before March 13, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: January 19, 1981.

By the Commission, Review Board Number 5, Members Krock Taylor, and Williams. (In MC-F-14538 Board Member Taylor would also impose an impediment stating that the fixed charges appear to be contrary to the public interest. While the 11% interest rate is good, Mid America-Georgia Coaches does not appear to have sufficient cash flow to pay its own maturing long-term debt, let alone pay the additional fixed charges to be incurred. Ability to pay, not the rate charges, is the important consideration. Also the proposed transaction contains an agreement by the sellers not to compete with the buyer in the future. Such an agreement is contrary to the public interest and the Commission's policy of encouraging competition).

MC F-14497F, filed October 29, 1980. CONVOY COMPANY (Convoy) (3900 N.W. Yeon Avenue, Portland, OR 97210)—MERGER—TAT, INC. (TAT) (800 Wyoming Street, Kansas City, MO 64101). Representative: Raymond A. Greene, Jr., 100 Pine Street, Suite 2550, San Francisco, CA 94111. Convoy seeks

authority to merge the interstate operating rights and property of TAT into Convoy for ownership, management and operation. Thomas P. Youell, the majority stockholder of Convoy, seeks authority to continue in control of TAT through the transaction. Convoy was authorized to control TAT by decision served June 13, 1974, in MCF-11998. TAT is authorized to operate as a motor common carrier pursuant to Certificates issued in MC-115357 and MC-115357 (Sub-No. 7), which authorize the transportation of (1) *new automobiles*, in secondary movements, in truckaway service, restricted against the transportation of traffic having a prior movement by connecting carriers, (2) *used automobiles*, in secondary movements, in truckaway service, and (3) *trucks*, in secondary movements, in truckaway service, between Kansas City, MO, on the one hand, and on the other, points in CO, IA, KS, NE, OK, and TX. Convoy is authorized to operate as a motor common carrier, transporting motor vehicles throughout numerous States, pursuant to certificates issued in MC-52858 and sub-numbers thereunder. Convoy is affiliated with Canadian Auto Carriers, Ltd., a motor common carrier pursuant to certificates issued in MC-128080 and sub-numbers thereunder. Condition: Because applicants filed their application incorrectly on Form OP-F-45, the "giving effect" income statement and balance sheet were omitted. Our approval and authorization of this transaction and the issuance of the effective notice is conditioned upon the prior receipt by the Commission of Appendices C-5 and C-6 of Form OP-F-44, which require the following information: (1) A "giving effect" balance sheet for transferee as of the latest available date showing the effect of consummation of the proposed transaction. Each adjustment should be separately explained, and (2) a "giving effect" income statement for the current calendar year to date, for transferee, showing estimated adjustments and eliminations which would have resulted from consummation of the proposed transaction. Each adjustment should be separately explained and supported.

**Note.**—This notice was originally scheduled for publication in the *Federal Register* on November 24, 1980. Due to a ministerial error it did not appear in the *Federal Register* as scheduled.

MC (F-14481F), filed September 25, 1980. (SUPPLEMENTAL PUBLICATION) (Previously published in the *Federal Register* issue of October 23, 1980). VALLEY TRANSPORTATION SERVICE, INC. (Valley) (P.O. Box 1527, Mission, TX 78572)—PURCHASE (PORTION)—HIGHWAY PIPELINE

TRUCKING CO. (Highway) (P.O. Box 1517, Edinburg, TX 78539.) Representative: Kenneth R. Hoffman, P.O. Box 2165, Austin, TX 78768. The purpose of this supplemental publication is to include in the scope of authority being acquired by Valley, that authority recently issued to Highway in MC-96992 (Sub-No. 22F), issued October 7, 1980. That certificate authorizes the transportation, as a motor common carrier, over irregular routes, of (1) *copying machines*, and *materials, equipment, supplies and accessories* used in the manufacture, service, and distribution of copying machines (except commodities in bulk), between points in CA, NY, NH, and TX, and (2) *paper and paper products* (except commodities in bulk), between points in CA, NY, NH, and TX (except from the facilities of (a) Eastex, Incorporated in Jasper County, TX, (b) Southland Paper Mills, Inc., at Sheldon and Herty, TX, and (c) Rock-Tenn Corp., at Greenville, TX), restricted in (1) and (2) above to traffic originating at and destined to points in the described territory.

**Note.**—The impediment contained in the October 23, 1980 *Federal Register* notice in this case must still be cleared.

MC (F-14533F), filed December 29, 1980. TRANSPORT TECHNOLOGY, INC. (Transport) (824 Burton, S.E., Grand Rapids, MI 49507)—PURCHASE (PORTION)—DIRECT TRANSIT LINES, INC. (Direct) (200 Colrain Street, S.W., P.O. Box 8099, Grand Rapids, MI 49508. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transport seeks authority to purchase a portion of the interstate operating rights of Direct. Transport is a wholly-owned subsidiary of Direct. Direct is also the majority stockholder of Fast Freight Systems, Inc., a motor common carrier holding authority under MC-142743 and sub-numbers thereunder. Transport presently holds no authority from this Commission. However, the Commission has authorized Transport to be substituted as applicant in MC-142743 (Sub-Nos. 20F, 21F, 22F, 23F, and 24F). Therefore, by this application, Transport also seeks authority to continue under common control with its affiliate, Fast Freight Systems, Inc. Transport is purchasing that authority issued to Direct in MC-106603 (Sub-Nos. 80, 114, 122, 138, 165, 197F, 198F, 203F, 209F, 216F, and 217F), which authorize the transportation as a motor common carrier, over irregular routes of: *Sub 80. (a) Clay products*. From Grand Ledge, MI to points in IN on and north of a line beginning at the IN-OH State line and extending along U.S. Hwy. 40 to Indianapolis, thence along

U.S. Hwy. 36 to IN-IL State line, points in Chicago, IL, Commercial Zone, and those in IL within 50 miles of the Chicago Commercial Zone. (b) *Clay products and sewer pipe joint compound*. From Barberton and Uhrichville, OH to points in MI, From Grand Ledge, MI to points in OH and WI. (c) *Barium*. From Blue Island, IL to Grand Ledge, MI. *Sub 114. Cement and marble aggregate building tile and materials and supplies* used in the installation thereof (except commodities in bulk). From Flint, MI to points in IL, IN, and OH. *Sub 122. Masonry building products* (except in bulk). From Ypsilanti, MI to points in OH, IN, IL, PA, WV, and KY. *Sub 138. (a) Coated iron and steel articles*. From the facilities of Roll Coater, Inc. at or near Kingsbury, IN to points in IL, IN, IA, MI, MO, and WI. (b) *Iron and steel articles*. From points in IL and IN to the facilities of Roll Coater, Inc., at or near Kingsbury, IN. *Sub 165. To transport (1) composition board*, from Coldwater, MI, to points in DE, IL, IN, IA, KS, NE, NJ, NY, OH, PA, TN, VA, WV, and WI, and (2) *equipment, materials, and supplies* (except commodities in bulk), used in the manufacture and distribution of composition board, from points in DE, IL, IN, IA, KS, KY, MD, MN, MS, MO, NE, NJ, NY, OH, PA, TN, VA, WV, and WI to Coldwater, MI. *Sub 197F. (1) Iron and steel articles*, from the facilities of Northwestern Steel and Wire Company, at Sterling and Rock Falls, IL, to points in DE, KY, IN, IA, MD, MI, MN, MO, NJ, NY, OH, PA, VA, WV, and WI; and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. *Sub 198F. (1) Iron and steel articles*, from Canonsburg, PA, to points in IL, IN, IA, KY, MI, MO, OH, and WI; and (2) *Materials, equipment and supplies* used in the manufacture or distribution of iron and steel articles, in the reverse direction. *Sub 203F. Iron and steel articles* from the facilities used by United States Steel Corp. in (a) Allegheny and Westmoreland Counties, PA and (b) Mahoning, Trumbull, Cuyahoga and Lorain Counties, OH to points in IN, IL, MI, WI, KY, and OH. *Sub 209F. (1) Metal roofing and building materials*, from Grand Rapids, MI, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX, and (2) *Materials, equipment and supplies*, used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. *Sub 216F. (1) Composition board, plywood, and asbestos board*, from Dowagiac, MI, to those points in the U.S. in and east of

ND, SD, NE, KS, OK, and TX; and (2) *Materials and supplies* (except commodities in bulk) used in the manufacturing and distribution of the commodities in (1) above, in the reverse direction. *Sub 217F.* (1) *Refractories* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of refractories (except commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities of Harbison Walker Refractories, Division of Dresser Industries, Inc. *Impediment:* Applicants state that this transfer will not result in significant duplications. However, they have failed to describe the duplicating authority. Our initial review of the application discloses several substantial duplications which would result in a split of authority and the holding of duplicating operating rights by commonly controlled carriers. For example, Direct is retaining its Sub-Nos. 133 and 150 and is seeking authority to transfer duplicating authority in its Sub-Nos. 138 and 216. We have generally recognized that a carrier has but one right to operate between two sets of points, regardless of how many times that authority is mentioned. It has been the policy of the Commission to deny applications which would result in the transferor retaining the right to operate between the same points which are sold to another, or to acquire cancellation of the retained duplicating authority. Since transferee is a subsidiary of transferor, our regulations at 49 CFR 1134.51, prescribing certain conditions to be met by applicants where there is a prospect of holding duplicate operating rights under common control, are pertinent. Therefore, this proceeding will be held open to enable applicants to submit (1) an affidavit setting forth all splits of duplicating operating rights, and duplications, in detail, resulting from this transaction, (2) a request for cancellation of the duplicating rights being retained by transferor to eliminate a split of operating rights, or acceptable reasons for permitting such splits, and (3) in the event a split of authority is allowed, an affidavit setting forth cogent and acceptable reasons why duplicate operating rights under common control should be permitted to continue.

MC-F-14536F), filed December 30, 1980. LEASEWAY TRANSPORTATION CORP. (Leaseway) (3700 Park East Drive, Cleveland, OH 44122)—CONTROL—AMAC TRUCKING, INC. (Amac) (5050 First Avenue South, Seattle, WA 98134. Representative: J. A. Kundtz, 1100 National City Bank Bldg.,

Cleveland, OH 44114. Leaseway, a non-carrier holding and management company, seeks authority to acquire control of Amac through the purchase by Leaseway of all of Amac's issued and outstanding stock. Leaseway is in control of 13 carriers; Anchor Motor Freight, Inc. (MC-808), Gypsum Haulage, Inc. (MC-112113), Signal Delivery Service, Inc. (MC-108393), Sugar Transport, Inc. (MC-115924), Dedicated Freight Systems, Inc. (MC-139583), Custom Deliveries, Inc. (MC-142693), LDF, Inc. (MC-147101), Pep Lines, Trucking Co. (MC-120184 and MC-135280), Mitchell Transport, Inc. (MC-124212), Refiners Transport & Terminal Corporation (MC-50069), Max Binswanger Trucking (MC-116314), General Trucking Service, Inc. (MC-143308, and Stam-Win, Inc. (MC-150185). Leaseway was granted approval to continue in control of Vernon Equipment, Inc. (MC-150412), by Notice of Effectiveness served October 31, 1980. The operating rights to be controlled are contained in Amac's permits in MC-140619, and sub-numbers thereunder, which authorizes the transportation of *such merchandise* as is dealt in by retail department stores and mail order houses, and *equipment, materials and supplies* used in the conduct of such business, between points in ID, MT, OR, and WA, under continuing contract(s) with Sears, Roebuck & Co. Condition: By order of March 24, 1965, in MC-8924 *Leaseway Transportation Corp.—Control—Refiners Transport & Terminal Corp.*, 101 M.C.C. 611, Leaseway was subjected to Commission jurisdiction to the extent that it is required to submit such periodic and special reports as the Commission may require. The same conclusion is here warranted. *Impediment:* Applicant acknowledges duplications exist between Signal Delivery Service, Inc., a carrier they now control, and Amac. They have requested a restriction be imposed to the extent the authorities duplicate, may not be thereafter severed from common ownership by sale or otherwise. However, in order to comply with the Commission's regulations at 49 CFR 1134.51, Applicant will be required to submit cogent and acceptable reasons why the duplicate operating rights under common control should be permitted to continue.

*Note.*—An application for temporary authority has been filed.

MC-F-14538F, filed December 31, 1980. MID AMERICA-GEORGIA COACHES, INC. (Georgia) (3390 Peachtree Road, N.E., Fifth Floor, Atlanta, GA 30326)—CONTROL—

ASSOCIATED CAB CO., INC. doing business as GRAYLINE OF ATLANTA (Grayline) (309 Walker Street, SW, Atlanta, GA 30313). Representative: Bruce E. Mitchell, Suite 520, 3390 Peachtree Road, NE, Atlanta, GA 30326. Georgia seeks authority to acquire control of Grayline through the purchase by Georgia of all the issued and outstanding capital stock of Grayline. Mid America Charter Lines, Inc. (Mid America), the majority stockholder of Georgia, and in turn, Terry L. Van Der Aa, John, G. Van Der Aa, Richard D. Bingham, and Karen A. Bingham, equal stockholders of Mid America, seek to acquire control of said properties through the transaction. Grayline is authorized to operate as a motor carrier pursuant to Certificate No. MC-143364 (Sub-No. 1), which authorizes the transportation of passengers and their baggage, in the same vehicle with passengers, in special and charter operations, in round-trip sightseeing or pleasure tours, beginning and ending at points in Fulton, DeKalb, Cobb, Gwinnett and Clayton Counties, GA, and extending to points in the United States (except HI). Mid America holds authority to operate as a motor common carrier pursuant to authority issued in Certificates in MC-78296 and sub-numbers thereunder, which authorize the transportation of (1) passengers and their baggage, restricted to traffic originating at the point in the territory indicated, in charter operations, from Chicago, IL, and points in IL, WI, IN, and MI, within 100 miles of Chicago, to points in the United States east of, but not including NM, UT, ID, and MT, and return, restricted against (a) the transportation of passengers and their baggage, in common, yellow-type school buses, in round trip charter operations beginning and ending at points in Milwaukee, Waukesha, and Ozaukee Counties, WI, and extending to points in that part of IL on and north of U.S. Hwy 30, and (b) the transportation of passengers and their baggage in round trip charter operations beginning and ending at South Holland, Calumet City, Lansing, and Phoenix, IL, and extending to points in Lake, Porter, Jasper, and St. Joseph Counties, IN; and (2) passengers and their baggage, in the same vehicle with passengers, in special operations, beginning and ending at points in Kenosha, Racine, Milwaukee, Waukesha, Walworth, Jefferson, and Rock Counties, WI, points in that part of IL on, north, and east of a line beginning at the IN-IL State line and extending along Interstate Hwy 74 to junction Interstate Hwy 280, and then along Interstate Hwy 280 to the IL-IA State

line, points in that part of IN on, north, and west of a line beginning at the IL-IN State line and extending along Interstate Hwy 74 to junction IN Hwy 32, then along IN Hwy 32 to Anderson, IN, and then along IN Hwy 9 to the IN-MI State line, and points in that part of MI on, west, and south of a line beginning at the MI-IN State line and extending along MI Hwy 66 to junction Interstate Hwy 96, then along Interstate Hwy 96 to Muskegon, MI, and extending to points in the United States, including AK, but excluding HI, restricted in (1) and (2) above against the transportation of passengers and their baggage in the same vehicle with passengers, in charter operations, from points in Lake, LaPorte, and Porter Counties, IN, to points in the Lower Peninsula of MI, points in IL, KY, OH, WI, and those in MO on and east of U.S. Hwy 63 and on and north of U.S. Hwy 60. Georgia is affiliated with the following regulated carriers: Van Der Aa Bus Lines, Inc. (MC-114886); Barker School Bus Service, Inc. (MC-141600); Colorado Charter Lines, Inc. (MC-145424); Sport & Water Safety Institute, LTD (MC-142206); Refrigerated Transport Co., Inc. (MC-107515); and Coastal Transport & Trading Co. (MC-121654).

Impediment: In order to eliminate the holding of duplicating authority by commonly controlled carriers, Harry Martin, a stockholder, officer, and director of Georgia, indicates that he will divest himself of all interest in Sport & Water Safety Institute, LTD prior to consummation of this transaction. Therefore, approval and authorization of this transaction is conditioned upon Harry Martin divesting himself of all control and interest in Sport & Water Safety Institute, LTD. Condition: Mid America Charter Lines, Inc. is required to join in the application as a party in control of applicant.

Note.—Application for TA has been filed.

MC-F-14541F, filed December 31, 1980. MIDWESTERN DISTRIBUTION, INC., (Midwestern) (400 North National, Fort Scott, KS 66701)—CONTINUANCE IN CONTROL—INTERMODAL SYSTEMS, INC. (Intermodal) (4740 Roanoke Parkway, Kansas City, MO 64111). Representative: Arthur J. Cerra, 2100 Charter Bank Center, 920 Main Street, P.O. Box 19251, Kansas City, MO 64141. Midwestern seeks authority to continue in control of Intermodal upon the institution by Intermodal of operations, in interstate or foreign commerce, as a motor common carrier. By the same application, Denny Ellis, Chairman of the Board of Midwestern, and a principal stockholder, seeks authority to acquire control of said

rights and property through the transaction. Midwestern, a common carrier by motor vehicle, is authorized under No. MC-128273 and sub-numbers thereunder. By certificate issued November 18, 1980, in MC-144901 (sub-1F), Intermodal was granted authority to operate as a common carrier transporting *foodstuffs and agricultural commodities* as defined by 49 U.S.C. section 10526 (a)(6) (except commodities in bulk), when moving with foodstuffs, in temperature controlled equipment in substituted T.O.F.C. service for a portion of the through motor carrier movement, between point in AZ, CA, IL, IN, IA, KS, MI, MN, MO, NE, OR, WI, and WA, restricted to shipments originating at or destined to AZ, CA, OR, and WA.

Note.—Intermodal should be cautioned not to begin operations in MC-144901 (Sub-1F), until common control has been approved.

MC-F-14540F, filed December 30, 1980. BHY TRUCKING, INC. (BHY) (9231 Whitmore, Street, El Monte, CA 91733)—CONTROL—BRUCE'S TRANSPORT SERVICE, INC. (Bruce's) (2176 N. Ventura Avenue, Ventura, CA 93002). Representative: William D. Taylor, 100 Pine Street, 25th Floor, San Francisco, CA 94111. BHY seeks authority to acquire control of Bruce's through the purchase by BHY of all of Bruce's issued and outstanding stock. Jean Howell and Roy L. Barrow are equal stockholders of BHY, and, as a condition to the approval and authorization of this transaction, Roy L. Barrow will be required to join in this application as a person in joint control. The operating rights to be controlled are contained in Bruce's permits in MC-139234 and sub-numbers thereunder, which authorize the transportation of (1) *oilfield equipment, materials and supplies* used in the drilling, exploration and production of oil, between points in Ventura County, CA, on the one hand, and, on the other, Los Angeles International Airport and points in the Los Angeles Harbor Commercial Zone, CA, (2) *oilfield and offshore equipment and materials and supplies* used in the drilling, exploration and production of oil, between points Ventura and Los Angeles, Ca, on the one hand, and, on the other, Beaumont, TX, and points in Harris County, TX, under continuing contract(s) with Vetco Offshore, Inc., of Ventura, CA, and (3) *dry barium sulfate*, in bulk, between points in CA, OK, WA, NV, UT, AR, NM, MT, CO, ID, and WY, under continuing contract(s) with IMCO services, a division of Halliburton Company of Long Beach, CA. BHY is a motor common carrier pursuant to authority issued in MC-138322 and sub-number thereunder. Condition:

Authorization and approval of this transaction and the issuance of an effective notice is conditioned upon the prior receipt by the Commission of an affidavit signed Roy L. Barrow, stating that he is in joint control of BHY Trucking, Inc., with Jean Howell through stock ownership, and that he joins in this application.

Note.—An application for temporary authority has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-2926 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

### Motor Carrier; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

#### We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed on or before February 17, 1981. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices on or before February 26, 1981, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.



By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC-FC-78784. By decision of December 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to Charles Hetzel McDonald of Burlington, WV of Certificate No. MC-7525 issued February 10, 1963, to Edgar Head McDonald, doing business as E. H. McDonald, authorizing the transportation in irregular routes of *livestock and farm and orchard products and supplies*, between points in Hampshire, Grant, Hardy, and Mineral Counties, WV, on the one hand, and, on the other, points in Pennsylvania, Maryland (except Baltimore and its Commercial Zone), West Virginia, that part of Virginia on and north of U.S. Highway 60, and the District of Columbia.

MC-FC-78838. By decision of December 5, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1151 Review Board Number 5 approved the transfer to N.A.S.A. Freight Express Company, Inc. of No. FF-187 issued August 7, 1972 to Special Forwarding Corp. authorizing the operation as a freight forwarder in the transportation of *general commodities*, in interstate commerce, between points in Cook, Lake, Du Page, and Will Counties, IL, and Lake County, IN, on the one hand, and, on the other, the Port of New York District. Applicant's representative is: Charles W. Beinhauer, 85 East End Avenue, 16-E, New York, NY 10028.

MC-FC-78853. By decision of December 18, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to Owners Transport, Inc. of Kansas City, MO of Certificate No. MC-143701 (Sub-Nos. 1, 3F, 4F, 7F, 8F, 11F, 12F, 13F, 18F, 21F, 23F, 1-TA, 6-TA, 9-TA, 14-TA, 15-TA, 5-3TA issued April 5, 1979, June 5, 1980, April 3, 1980, May 1, 1980, September 19, 1980, July 25, 1980, August 14, 1980, June 27, 1978, November 20, 1979, July 30, 1979, September 12, 1979, March 27, 1980, August 27, 1980, and September 18, 1980, to Hodges Freight Lines, Inc. of Kansas City, MO, authorizing the transportation of *Foodstuffs*, (except commodities in bulk) in vehicles equipped with mechanical refrigeration, from the facilities of Inland Storage Distribution Center, located at Kansas City, KS, to points in AL, GA, LA, MS, NC, SC, VA and WV. Restricted to traffic originating at the facilities of Inland Storage Distribution Center and destined to the named states. Between

points and places in the United States. Restricted to traffic originating at or destined to points of suppliers and/or shippers that are customers of Winton Sales Company. Between points in the State of LA, on the one hand, and, on the other, points and places in the states east of the line of the States of NM, CO, WY and MT. Restricted to traffic moving for the account of New Orleans Cold Storage & Warehouse Co., Ltd. *Paper bags*, from the facilities of Westvaco Corporation, Bag Division, at New Orleans, LA to points in AR, AZ, CA, CO, GA, IL, IN, IA, KS, KY, MI, MO, NE, NM, OH, OK, TN, TX and WI. From New Orleans, LA to points in ID, MA, NV, NH, NY, OR, PA, WV and WY; and *Materials used in the production of paper bags*, (except commodities in bulk) from points in AR, AZ, CA, CO, GA, IL, IN, IA, KS, KY, MI, MO, NE, NM, OH, OK, TN, TX and WI, to New Orleans, LA. *Sugar*, (except in bulk) from the facilities of Godchaux-Henderson Sugar Company, Inc. at or near Reserve and Kenner, LA, to points in AL, AR, FL, GA, IL, IA, KY, MS, MO, NC, OK, SC, TN, TX, VA and WV. *Sugar, condiments and flavoring compounds* (except in bulk) from Supreme, LA, to points in AL, AR, FL, GA, IL, IN, IA, KS, KY, MD, MS, MO, NE, NC, OH, OK, PA, SC, SD, TN, TX, VA and WV. *Plastic materials and commodities used in the manufacture of plastic materials* (except commodities in bulk), from Houston, TX; and Baton Rouge, Marksville and Lake Charles, LA; to points in AL, FL, GA, IL, KY, MN, NC, OH, PA, SC, TN, VA, WI and WV. Restricted to the transportation of shipments originating at the facilities of Jenre Plastics and Southern Petrochemical, Inc., and destined to points in the named states. *Prepared animal food and pet supplies and materials and supplies used in the manufacture and distribution thereof* (except commodities in bulk), between the facilities of Hills Division of Riviana Foods, Inc., at or near (a) Topeka, KS; (b) Commerce City and Hayward, CA; and (c) Miami, FL, on the one hand, and, on the other, points in the United States (except AK, CT, DE, HI, ME, NH, NY, MA and VT). *Such commodities as are dealt in by grocery and food business houses*, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, between the facilities of Inland Storage Distribution Center, at or near Kansas City, KS, on the one hand, and, on the other, points in the United States (except AK, HI and KS). Restricted to the transportation of traffic originating at or destined to the named facilities. (1) *Bananas*, and (2)

*agricultural commodities which are otherwise exempt from economic regulation* under 49 U.S.C. 10526(a)(6) (formerly Section 203(b)(6) of the Interstate Commerce Act), when moving in mixed loads with bananas, from the facilities of Best Banana, Inc., at or near Norfolk, VA, to points in IL, MI, OH, NY, MA, PA, MD, WV, VA, NC, SC, MO, IN, Toronto in the Province of Ontario and Montreal in the Province of Quebec, and DC. Restricted to the transportation of traffic having an immediately prior movement by water. (1) *Roofing*; and (2) *materials and supplies used in the manufacture of roofing*, from the facilities of Delta Roofing Mills, Inc., a Division of Republic Gypsum, Inc., at or near Slidell, LA to points in AL, AR, FL, GA, MS and TX. *Chemicals used in the curing and processing of cement and concrete* (except commodities in bulk); and *materials, equipment and supplies used in the manufacture, distribution and application of the commodities above* (except commodities in bulk) from Baton Rouge, LA to points in AL, AR, CA, FL, GA, KY, LA, MS, NC, OK, SC, TN and TX. *Fiber board*, from the facilities of Aurora Paper Board at Aurora, IL to Jefferson City, Kansas City and Marceline, MO; and Iola, Kansas City and Topeka, KS, subject to the following conditions if any. Applicants' representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202.

MC-FC-78862. By decision of December 24, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to Red Ball Wrecker and Towing, Inc., Wichita, KS of Certificate No. MC-143449 (Sub-1) issued August 1, 1978 to Red Ball Wrecker Service, Inc., Wichita, KS authorizing the common carrier transportation of wrecked and disabled or repossessed vehicles and trailers and replacement vehicles and trailers for such wrecked or disabled vehicles, in wrecker service only, between points in KS on the one hand, and, on the other, points in AL, AZ, AR, CO, GA, IL, IA, LA, MS, MO, NE, NM, OK, TN, TX and UT. Applicant's representative is: Brad T. Murphree [No. 265-2634], Suite 814, Century Plaza Bldg., Wichita, KS 67202.

MC-FC-78864. By decision of December 12, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to John L. Griffin, Sr., d/b/a John Griffin & Son of Certificate No. MC-693 issued May 20, 1941 to Harry B. Niehaus, Jr., and effective September 7, 1978, transferred to Margaret C. Niehaus pursuant to No.

MC-FC-77601 authorizing the transportation over irregular routes of: *Machinery and tramrails and materials and supplies* used or useful in the erection of tramrails, Between Philadelphia, PA, on the one hand, and, on the other, New York, NY, Wilmington and Worth, DE, and points in New Jersey south of a line beginning at Atlantic City, NJ, and extending northwest to Burlington, NJ, including the points named. *Metal sponges*, Between Philadelphia, PA, on the one hand, and, on the other, New York, NY, and Atlantic City, NJ. *Rags*, Between Philadelphia, PA, and New York, NY. *Tanning materials*, Between Wilmington, DE, Newark, NJ, New York, NY, and Philadelphia, PA. *Water softeners, filters and purifiers*, and *materials and supplies*, used or useful in the erection of these commodities, Between Philadelphia, PA, New York, NY, Wilmington, DE, and points in New Jersey. *Refrigerators and refrigerated showcases*, From Philadelphia, PA, to Atlantic City, NJ, and Wilmington, DE, with no transportation for compensation on return, except as otherwise authorized. Applicants' representative is: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 191110.

MC-FC-78870. By decision of December 9, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number approved the transfer to Central Texas Bus Lines of Certificate of Registration No. MC-97113 (Sub-No. 1) issued April 17, 1964 and Certificate of Public Convenience and Necessity No. MC-97113 (Sub-No. 2) issued April 22, 1965 to Texas Electric Bus Lines, authorizing the transportation of (1) Sub-No. 1, *passengers* between Wasco and Dallas, TX over Texas Hwy No. 342, from Dallas to Red Oak via Lisbon and Lancaster, then from Red Oak to Hillsboro via Sterett, Waxahachie, Forrester, Italy and Milford over U.S. Hwy 77, then from Hillsboro to Waco via Abbott, West Elm Mott over U.S. Hwys 77 and 81 and over an alternate route from Dallas to Red Oak over U.S. Hwy 77 via Langs Boulevard for through buses picking up and delivering passengers only in Dallas and suburban areas; and (2) Sub-No. 2, *newspaper and express* (except motion picture film), when moving in the same vehicle and at the same time with passengers presently authorized in certificate of Registration No. MC-97113 (Sub-No. 1), between Dallas and Waco, TX, serving all intermediate points, from Dallas over Texas Hwy 342 to junction U.S. Hwy 77, then over U.S. Hwys 77 and 81 via Hillsboro to Waco and return over the same route. Restriction: The

authority contained in Sub-No. 1 and Sub-No. 2 shall constitute a single operating right and shall not be severable on transfer by sale or otherwise.

MC-FC-78871. By decision of December 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1134, Review Board Number 5 approved the transfer to Middle American Express, Inc. of Certificate No. MC-120909 (Sub-3) issued January 31, 1980 to Island Cartage Co., Inc., authorizing the transportation of *general commodities*, except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment, between points in McHenry, Lake, Kane, Cook, DuPage, Kendall, Will, Grundy, and Kankakee Counties, IL, on the one hand, and, on the other, points in Madison, St. Clair, and Monroe Counties, IL. Applicant's representative is: James R. Madler, 120 W. Madison St., Chicago, IL 60602.

MC-FC-78873. By decision of December 10, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to Jay Memmelaor, Sr. d.b.a. Walter H. Delah Moving & Storage Co. of Bangor, ME of Certificate No. MC-116738 issued December 1, 1978, to Lynwood E. Dolan d.b.a. Walter H. Dolan Moving Company authorizing the transportation of household goods between points and places in ME, and points and places in MA and NH. Subject to the following conditions: if any. Applicant's representative: Clare Hudson Payne, P.O. Box 1210, Bangor, ME 04401.

MC-FC-78875. By decision of December 16, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1134, Review Board Number 5 approved the transfer to Gilbert Truck Lines, Inc., Western of Permit No. MC-134959 and (Sub-Nos. 1, 3, 10 and 11) issued to Ben-K Trucking, Inc., authorizing the transportation of *Feed and feed ingredients* (except commodities in bulk, in tank vehicles). From points in IA, MO, KS, IL, TX, NM, and OK to points in Weld, Pueblo, Rio Grande, and Denver Counties, CO, with no transportation for compensation on return except as otherwise authorized. From points in Weld, Pueblo, Rio Grande, and Denver Counties, CO, to points in TX, NM, and OK, with no transportation for compensation on return except as otherwise authorized. From points in IL, IA, KS, and MO to points in CO (except points in Denver, Pueblo, Rio Grande and Weld Counties),

KS, NE, NM, OK and TX, with no compensation on return except as otherwise authorized. From Denver, CO, to points in KS, NE and WY, with no transportation on return except as otherwise authorized. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts with Feed Products, Inc. (1) *Magnesium oxide*, From the facilities of Basics, Inc., located at or near Gabbs, NV, to points in CO, NM, KS, OK, WY, TX, NE and UT with no transportation for compensation on return except as otherwise authorized. (2) *Animal feed supplements*, From Lee's Summit, MO, to Denver, CO, with no transportation for compensation on return except as otherwise authorized. (3) *Agricultural chemicals*, From Kansas City, MO, to Denver, CO, with no transportation for compensation on return except as otherwise authorized. (4) *Soda bicarbonate*, From points in Sweetwater County, WY, to points in CO, with no transportation for compensation on return except as otherwise authorized. (5) *Sodium bentonite*, From points in Weston County, WY, to points in CO, with no transportation for compensation on return except as otherwise authorized. (6) *Baling wire*, From Pueblo, CO, to points in WY and NM, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized under (6) above are limited to a transportation service to be performed, under a continuing contract, or contracts, with Van Waters & Rogers, of Denver, CO. Restriction: The authority granted in parts (1) through (6) herein is restricted against the transportation of commodities in bulk, in tank vehicles. *Feed and feed ingredients* (except in bulk in tank vehicles, and except in vehicles equipped with mechanical refrigeration). From Greeley, CO, to points in AZ, AR, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NM, ND, OH, OK, SD, TN, TX, and WI, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority granted herein is limited to a transportation service to be performed, under a continuing contract, or contracts, with American Commodity Corporation, of Marshall, MO. *Feed and feed ingredients* (except commodities in bulk, in tank vehicles). From Houston, TX, and Denver and Ft. Collins, CO, to points in NM and UT. From Minneapolis, MN, points in AR, UT, TX and points in Butte and Lawrence Counties, SD, to points in NE and CO. From points in Converse,

Crook, Natrona, Sweetwater, and Weston Counties, WY, Eddy County, NM, Otoe County, NE, and Woodbury County, IA, to points in KS, OK, NE, TX, CO, NM, and UT. From points in Adams and Cass Counties, NE, to points in CO and UT; transportation service to be performed under a continuing contract(s) with Feed Products, Inc., of Denver, CO. Applicant's representative is: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203.

MC-FC-78876. By decision of December 17, 1980, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to R&M Services, Inc. of City of Industry, CA of Certificate of Registration No. MC-120762 (Sub-No. 1) issued July 14, 1970, to Huskie Freightways, Inc. evidencing a right to engage in transportation in interstate commerce corresponding in scope to Decision No. 60397, as amended by Decision No. 74082, and transferred by Decision No 76590, dated July 12, 1960, May 7, 1968 and December 23, 1969 issued by the Public Utilities Commission of the State of California authorizing general commodities in an area including the central portion of Los Angeles County, in the State of CA. Applicant's representative is: William Davidson, 2455 E. 27th St., Los Angeles, CA 90058. TA application has not been filed. Transferee holds no authority.

MC-FC-78879. By decision of December 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132, Review Board Number 5 approved the transfer to David E. Bailey, an individual, dba David Bailey Trucking, of Auburn, IL, of Certificate No. MC-69981 and the subs thereunder to Austin W. Hulcher, an individual, dba Hulcher Trucking, of Virden, IL, authorizing the transportation in MC-69981 of *washing machines, ironers, and supplies and parts* thereof, from Newton, Iowa, to specified counties in Illinois, serving no intermediate points on the regular route specified below, as follows: from Newton over Iowa Highway 14 to junction Iowa Highway 163, thence over Iowa Highway 163 to Oakaloosa, Iowa, thence over U.S. Highway 63 to Ottumwa, Iowa, thence over U.S. Highway 34 to Mount Pleasant, Iowa, thence over U.S. Highway 218 to Keokuk, Iowa, thence across the Mississippi River, and thence over irregular routes to points in Adams, Bond, Brown, Calhoun, Cass, Christiana, Clinton, Fayette, Fulton, Greene, Hancock, Jersey, Logan, Macoupin, Madison, Marion, Mason, McDonough, Menard, Montgomery, Morgan, Moultrie,

Pike, Sangamon, Scott, Shelby, Tazewell, and Washington Counties, Ill.; and return with no transportation for compensation except as otherwise authorized from points in the above-specified Illinois Counties over irregular routes to Keokuk, thence over the above-specified route to Newton. Irregular routes: *Washing machines, ironers, and supplies and parts* thereof, From Newton, Iowa, to points in Champaign, Clark, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Effingham, Henderson, Henry, Jasper, Knox, Macon, Mercer, Piatt, Rock Island, Stark, Vermillion, Warren, and Whiteside Counties, Ill., with no transportation for compensation on return except as otherwise authorized. *Laundry driers and home deep freezers and parts* thereof, From Newton, Iowa, to points in Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Effingham, Fayette, Fulton, Greene, Hancock, Henderson, Henry, Jasper, Jersey, Knox, Logan, Macon, Macoupin, Madison, Marion, Mason, McDonough, Manard, Mercer, Montgomery, Morgan, Moultrie, Piatt, Pike, Rock Island, Sangamon, Scott, Shelby, Stark, Tazewell, Vermillion, Warren, Washington, and Whiteside Counties, Ill., with no transportation for compensation on return except as otherwise authorized. *Laundry driers, freezers, washing machines, ironers, and ranges, and parts* thereof, From Newton, Iowa, to points in Peoria and Woodford Counties, Ill., with no transportation for compensation on return except as otherwise authorized. *Ranges and parts* thereof, From Newton, Iowa, to points in Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Effingham, Fayette, Fulton, Greene, Hancock, Henderson, Henry, Jasper, Jersey, Knox, Logan, McDonough, Macon, Macoupin, Madison, Marion, Mason, Manard, Mercer, Montgomery, Morgan, Moultrie, Piatt, Pike, Rock Island, Sangamon, Scott, Shelby, Stark, Tazewell, Vermillion, Warren, Washington, and Whiteside Counties, IL, with no transportation for compensation on return except as otherwise authorized. *Underground water-main pipe and fittings and fire hydrants and fittings*, From Springfield, IL, to South Lineville, MO, and to points in Iowa on and east of U.S Highway 169, with no transportation for compensation on return except as otherwise authorized. *Electric garbage disposal units*, From Newton, Iowa, to points in

Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Effingham, Fayette, Foulton, Greene, Hancock, Henderson, Henry, Jasper, Jersey, Knox, Logan, McDonough, Macon, Macoupin, Madison, Marion, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Rock Island, Sangamon, Scott, Shelby, Stark, Tazewell, Vermillion, Warren, Washington, Whiteside, and Woodford Counties, IL, with no transportation for compensation on return except as otherwise authorized. In MC 69981 (Sub-14) *washing machines, dishwashers, laundry driers, and food waste disposers*, From the facilities of the Maytag Company at Newton, Iowa, to points in McLean and Schuyler Counties, IL, with no transportation for compensation on return except as otherwise authorized. In MC 69981 (Sub-15), (1) *Washing machines, dishwashers, laundry driers, and food waste disposers*, From the facilities of the Maytag Company located at Newton, IA, to points in Alexander, Clay, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Lawrence, Massae, Monroe, Perry, Pope, Pulaski, Randolph, Richland, Saline, St. Clair, Union, Wabash, Wayne, White and Williamson Counties, IL. (2) *Dishwashers*, From the facilities of the Maytag Company located at Newton, IA, to points in Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Effingham, Fayette, Fulton, Greene, Hancock, Henderson, Henry, Jasper, Jersey, Knox, Logan, McDonough, Macon, Macoupin, Madison, Marion, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Piatt, Peoria, Pike, Rock Island, Sangamon, Scott, Shelby, Stark, Tazewell, Vermillion, Warren, Washington, Whiteside, and Woodford Counties, IL. If transferee desires to become an applicant in the transferor's pending proceeding docket No. MC-69981 (Sub-No. 13) upon consummation of the transfer, an appropriate request for substitution of transferee as applicant should be filed jointly by transferor and transferee. Application for TA has not been filed. Transferee presently holds no authority from the Commission. Applicant's representative is: Robert T. Lawley, Attorney, 300 Reisch Building, Springfield, IL 62701, 217-544-5468.

MC-FC-78881. By decision of December 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 5

approved the transfer to Lone Star Bus Lines, Inc., of Bowie, TX. Certificate No. MC-110688 (Sub-No. 4) issued November 4, 1980 to Central Texas Bus Lines, Inc., of Waco, TX authorizing the transportation, over regular routes, in interstate or foreign commerce, of (1) *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, between Tyler, TX, and Lufkin, TX, serving 69 through Jacksonville and Tusk, TX, to Lufkin and return over the same route, and (2) *passengers and their baggage, and express newspapers and mail, in the same vehicle with passengers and their baggage, and express newspapers, and mail*, in the same vehicle with passengers, between Lufkin, TX and Beaumont, TX, serving all intermediate points over U.S. Hwy 69 from Lufkin to Beaumont. Applicant's representative is: Mike Cotten, P.O. Box 1148, Austin, TX 78767.

MC-FC-76883. By decision of December 12, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to Elmer W. Borgen of Canby, OR, of Permit No. MC 140027 (Sub-1) issued August 23, 1976 to Tri State Trucking Service, Inc. of Wilsonville, OR authorizing transportation in interstate or foreign commerce over irregular routes, transporting *wine*, (a) from Chicago, IL, to Portland, OR, with no transportation for compensation on return except as otherwise authorized and limited to a transportation service to be performed, under a continuing contract, or contracts, with Spear Beverage Company, of Portland, OR; and (b) from New York and Hammondport, NY, and points in Nassau and Suffolk Counties, NY, to Portland, OR, with no transportation for compensation on return except as otherwise authorized, and limited to a transportation service to be performed, under a continuing contract, or contracts, with Al C. Giusti Wine Company, of Portland, OR. Applicant's representative is: Philip G. Skofstad, 1525 N.E. Weidler, Portland, OR 97232, (503) 288-8141.

MC-FC-76887. By decision of December 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 5 approved the transfer to Lake Country Farms, Inc., of Rice, MN, of Permit No. MC-143393 issued September 21, 1978 to Jack Frost, Inc., of St. Cloud, MN, authorizing the transportation of *agricultural limestone* from Lisbon (Waukesha County) and Sussex, WI to points in Minnesota, subject to the following conditions: The authority is

limited to a transportation service to be performed under a continuing contract(s) with Vulcan Materials Co., of Sussex, WI. Carrier must conduct independently its for-hire motor carrier activities and its other activities. Carrier must maintain separate records for its for-hire motor carrier activities and its other activities. Applicant's representative is: Norb Marthaler, Rt. 2, Rice, MN 56367.

MC-FC-78892. By decision of December 19, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to Bendan Trucking Corp., of Yonkers, NY, of Certificate Nos. (1) MC-19161 issued June 29, 1966 to Cap Motor Lines, Inc., of Woodside, Queens County, NY authorizing the transportation, over irregular routes, of such merchandise as is usually dealt in by wholesale and retail chain variety stores, between New York, NY on the one hand, and, on the other, Perth Amboy, NJ, and points in Essex, Hudson, and Union Counties, NJ, and (2) MC-39161 (Sub-No. 2), issued March 29, 1971, to Cap Motor Lines, Inc., of Woodside, Queens County, NY, authorizing the transporting of, over irregular routes, electrical goods, equipment and supplies, between New York, NY, and Hoboken, NJ, on the one hand, and, on the other, points in New Jersey and New York within 50 miles of Hoboken, NJ, and those in New Jersey and New York within 50 miles of New York, NY, restricted in (2) against the transportation to, or for the use of manufacturers of paper, subject to the approval of the United States District Court for the Eastern District of New York in bankruptcy proceedings Docket No. 77 B 855 and the latter's approval of the cancellation of an agreement dated November 17, 1977, for sale of the involved authorities to Posa, Inc., of 122-124 Kingsland Avenue, Brooklyn, NY, as subsequently assigned to J. Posa, Inc., of One North First Street, Fulton, NY. Applicant's representative is: Harold L. Reckson, 33-28 Halsey Road, Fair Lawn, NJ 07410.

MC-FC-78894. By decision of December 29, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to Cantlay Transportation, Inc., Los Angeles, California of a portion of Certificate No. MC-23939 (Sub-No. 1) issued June 9, 1972 to Ashbury Transportation Co., Los Angeles, California authorizing the transportation set forth in the Appendix hereto: "See attached Exhibit" subject to the following conditions: Applicant's representative is: Robert W. Hancock,

1545 Wilshire Blvd., No. 606, Los Angeles, California, (213) 483-4700.

MC-FC-78895. By decision of December 19, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to Mil-Co Trucking, Inc., of West Unity, OH, of Certificate No. MC-144438 (Sub-No. 3) issued April 30, 1979 to County Line Trucking, Inc., of Archbold, OH, authorizing the transportation of (1) *new furniture*, from Archbold, Ohio, to points in the United States (excluding Alaska and Hawaii); and (2) *returned shipments of new furniture, and equipment, materials, and supplies* used in the manufacture and distribution of furniture, from points in the United States (excluding Alaska and Hawaii), to Archbold, Ohio. RESTRICTION: The service authorized in (1) and (2) above is subject to the following conditions: Said operations are restricted against the transportation of lumber (except plywood and veneer) from points in Alabama, Arkansas, Florida, Georgia, Louisiana, Oklahoma, South Carolina, Tennessee, and Texas, to Archbold, Ohio and flakeboard from Crossett, Ark. and Gloster and Louisville, Miss., to Archbold, Ohio. Said operations are restricted to the transportation of traffic originating at points in the United States (excluding Alaska and Hawaii), and destined to Archbold, Ohio, in the transportation of lumber, lumber products, and cartons. (3) *Furniture parts and furniture stock*, from Archbold, Ohio, to points in the United States (excluding Alaska and Hawaii). (4) *New furniture, furniture parts, and furniture stock*, from Stryker, Ohio, to points in the United States (except Alaska and Hawaii); and (5) *Returned shipments of new furniture, and equipment, materials, and supplies* used in the manufacture and distribution of furniture (except commodities in bulk), from points in the United States (except Alaska and Hawaii), to Stryker, Ohio. (6) *Uncrated tubular steel scaffolding and accessories, uncrated boarding ramps, uncrated maintenance stands, and uncrated baggage loading stands*, (1) between Archbold, Ohio, on the one hand, and, on the other, points in the United States (excluding Alaska and Hawaii). (b) Between points in the United States (except Alabama, Alaska, Florida, Georgia, Hawaii, Indiana, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee). (7) *Agricultural machinery, implements, and parts*, as described in Appendix XII to the report on *Descriptions in Motor Carrier Certificates*, 60 M.C.C. 209, except those requiring the use of special

equipment, (1) between the site of the Yoder & Frey, Inc., auction yard, located near Archbold, Ohio, on the one hand, and, on the other, points in Illinois, Pennsylvania, and Wisconsin.

Restriction: The operations authorized in (7)(a) above shall be restricted to the transportation of traffic originating at and destined to the above-described points. (b) Between the site of the Yoder & Frey, Inc., auction yard, located approximately one and one quarter miles northwest of Archbold, Ohio, on an unnumbered county road, on the one hand, and, on the other, points in Arkansas, Indiana, Iowa, Kentucky, Michigan, Missouri, New York, North Carolina, Tennessee, and West Virginia.

MC-FC-78897. By decision of December 24, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132, Review Board Number 5 approved the transfer to Western Moving and Storage, Inc. of Certificate No. MC-105353 (Sub. No. 2) issued April 25, 1966, to Merritt Packing & Crating Service, Inc. authorizing the transportation of household goods as defined by the Commission between Denver, CO, and points within 25 miles of Denver on the one hand, and, on the other, Kansas City, MO, and points in KS and NE. Applicant's representative is: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, CO 80203, (303) 861-4273.

MC-FC-78902. By decision of December 24, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to Dill & Beasley, Inc., of Linden, TN, of Certificate No. MC-140123 (Sub-Nos. 2, 5F, and 6F) issued July 8, 1977, September 26, 1979, and March 17, 1980, respectively to Graham Transfer, Inc., of Linden, TN, authorizing the transportation of (1) *railroad ties, railroad crossing blanks, timber, poles, pilings, crossarms, pallets, pallet parts and lumber* generally, from to and between defined areas in AL, GA, IL, IN, KY, MS, MO, NC, SC, TN, VA and WV, and (2) *steel tubing, steel coils and steel bars* from Chicago, IL to the facilities of Linden Products Company at or near Linden, TN, as more fully described in the Certificate MC 140123, Sub-2, 5F and 6F. Applicants' representative is: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Transferee presently holds no authority from the Commission. An application has been filed for a temporary authority lease under 49 U.S.C. 11347.

MC-FC-78909. By decision of December 30, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49

C.F.R. 1132, Review Board Number 5 approved the transfer to Les Autobus De L'Estrie, Inc., of Sherbrooke, Quebec, Canada of Certificate No. MC-143314, 142475 (Sub-No. 1), and MC-124827 issued to Autobus St. Denis, Inc., and Transfer Co., (same address), authorizing the transportation of passengers and their baggage, in the same vehicle with passengers, in round trip charter operations, beginning and ending at ports of entry on the United States-Canada Boundary line located in Alexandria Bay and Rouses Point, N.Y., Richford, Derby Line, and Norton Mills, Vt., Beecher Falls, N.H., and Coburn Gore, Maine, and extending to points in the United States (except Alaska and Hawaii). Restriction: The authority granted herein is restricted to the transportation of traffic originating at and destined to points in Province of Quebec, Canada. Passengers and their baggage, in special and charter operations, from points on the United States-Canada Boundary line located in Maine, Michigan, New Hampshire, New York, and Vermont, to points in the United States (except Alaska and Hawaii), with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are restricted to the transportation of patrons and their baggage originating at Sherbrooke in the Province of Quebec, Canada. Passengers and their baggage, in round trip charter operations, beginning at Ports of Entry on the United States-Canada Boundary line located in Michigan, New York, Vermont, New Hampshire, and Maine, and ending at Ports of Entry located along the southern United States-Canada Boundary line, and extending to points in the United States, except those in Alaska and Hawaii. Applicant's representative: W. Norman Charles, P.O. Box 724, Glens Falls, NY, 12801. TA lease is not sought. Transferee is not a carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-2927 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

#### Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before February 17, 1981 (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

On or before March 30, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those

where service is for a named shipper "under contract".

#### Volume No. OP5-02

Decided: January 5, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 40978 (Sub-81F), filed December 8, 1980. Applicant: CHAIR CITY MOTOR EXPRESS CO., a corporation, 3321 South Business Drive, Sheboygan, WI 53081. Representative: Daniel R. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. Transporting (1) *office furniture and office equipment*, and (2) *parts and supplies* for the commodities in (1) between points in Dodge County, WI, on the one hand, and, on the other, points in CT, DE, MD, NJ, NY, PA, and DC.

MC 52979 (Sub-24F), filed December 8, 1980. Applicant: HUNT TRUCK LINES, INC., West High Street, Rockwell City, IA 50579. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting (1) *cylinders, manifolds, and cranes*, and (2) *materials* used in the manufacture of the commodities in (1), between Pocahontas, IA, on the one hand, and, on the other, points in IL, MI, MN, MO, and WI.

MC 98979 (Sub-4F), filed December 16, 1980. Applicant: MILLER BROS., INC., 306 North 8th Ave., Greeley, CO 80631. Representative: Charles J. Kimball, Suite 350, 1600 Sherman, Denver, CO 80203. Transporting, over regular routes, *general commodities* (except commodities in bulk, classes A and B explosives, household goods as defined by the Commission, and commodities requiring the use of special equipment), (1) between Denver, CO, and The Rawhide Energy Project of The Platte River Power Authority at or near Buckeye, CO, serving the intermediate and off-route points of Loveland, Ft. Collins, Wellington, Livermore and Red Feather Lakes, (a) from Denver over Interstate Hwy 25 (also U.S. Hwy 87) to junction Colorado Hwy 14, then over Colorado Hwy 14 to junction U.S. Hwy 287, then over U.S. Hwy 287 to junction County Road No. 9, aka Buckeye Road, near Livermore, CO, and then over Buckeye Road to junction County Road No. 82, then over County Road No. 82 to the Rawhide Energy Project of The Platte River Power Authority and return over the same route, (b) from Denver over U.S. Hwy 287 to junction County Road No. 9, aka Buckeye Road, near Livermore, CO, then over Buckeye Road to junction with County Road No. 82, then over County Road No. 82 to the Rawhide Energy Project of The Platte River Power Authority, and return over the same route, (b) between Denver, CO,

and Ault, CO, serving intermediate points, from Denver over U.S. Hwy 85 to Ault and return over the same route, (3) between Ft. Collins, CO, and The Rawhide Energy Project of The Platte River Authority at or near Buckeye, CO, serving the off-route points of Livermore and Red Feather Lakes, CO, from Ft. Collins over U.S. Hwy 287 to junction County Road No. 9 aka Buckeye Road near Livermore, CO, then over Buckeye Road to junction County Road No. 82, then over County Road No. 82 to the Rawhide Energy Project of The Platte River Authority.

Note.—Applicant seeks conversion of its Certificate of Registration MC 98979 (Sub-1) to a certificate of public convenience and necessity.

MC 106398 (Sub-1091F), filed December 17, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (address same as applicant). Transporting *pulp, paper, or allied products* as described in Item 26 of the Standard Transportation Commodity Code Tariff, between Washington County, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 135469 (Sub-9F), filed December 8, 1980. Applicant: HAWKEYE TRANSPORT CO., a corporation, 601 Front Street, P.O. Box 126, Stanwood, IA 52337. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. Transporting *concrete products*, from Stanwood, IA, to points in IL, KS, MN, MO, and WI.

MC 144678 (Sub-27F), filed December 18, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th Street, Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in MO and OK as off-route points in connection with carrier's otherwise authorized regular-route service.

MC 144999 (Sub-4F), filed December 8, 1980. Applicant: JEM TRUCKING CO., INC., P.O. Box 217, Wilkesboro, NC 28697. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting *meats, meat products, meat byproducts, and articles distributed by meat packing houses* between points in the U.S., under continuing contract(s) with Carolina Meat Processors, Inc., of Holly Ridge, N.C.

MC 145018 (Sub-17F), filed December 8, 1980. Applicant: NORTHEAST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517. Representative: Daniel W.

Krane, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. Transporting *general commodities* (except household goods, as defined by the Commission, and classes A and B explosives), between Binghamton, Johnson City and Vestal, NY; Linden, NJ; and Calvert City, KY, on the one hand, and, on the other, points in the U.S.

MC 147338 (Sub-2F), filed December 15, 1980. Applicant: POWER PACKAGING TRANSPORTATION CORP., 1150 Powis Road, West Chicago, IL 60185. Representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603. Transporting (1) *food or kindred products*, as described in Item 20 of the Standard Transportation Commodity Code, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities described in (1), between points in the U.S.

MC 150019 (Sub-3F), filed December 16, 1980. Applicant: EDWARD E. GARBER, d.b.a. CUSTOM TRANSPORT, 6600 Sweet Air Lane, Sykesville, MD 21784. Representative: R. Emery Clark, 366 Executive Building, 1030 Fifteenth Street, N.W., Washington, D.C. 20005. Transporting *such commodities* as are dealt in or used by grocery stores and food business houses, between Baltimore, MD, and points in Baltimore and Howard Counties, MD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 1531585F, filed December 12, 1980. Applicant: KELLY TRUCKING CO., INC., 162 Grand Avenue, Elmhurst, IL 60126. Representative: Barry Weintraub, Suite 800, 8133 Leesburg Pike, Vienna, VA 22180. Transporting *general commodities* (except household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the United States.

MC 153249F, filed December 12, 1980. Applicant: TRANS-SERVICE, INC., 1306 East Webb Avenue, Burlington, NC 27215. Representative: J. G. Dail, Jr., P.O. Box 11, McLean, VA 22101. Transporting *passengers and their baggage*, in charter operations, beginning and ending at points in Alamance and Orange Counties, NC, and extending to points in GA, MD, SC, TN, VA, and DC.

#### Volume No. OP5-04

Decided: January 7, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

MC 35628 (Sub-441F), filed December 19, 1980. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 110 Ionia

Avenue, N.W., P.O. Box 175, Grand Rapids, Michigan 49501. Representative: Michael P. Zell (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between those points in the U.S. in and east of TX, OK, CO, WY, and MT.

MC 63838 (Sub-14F), filed December 11, 1980. Applicant: BOLUS MOTOR LINES, INC., 700 North Keyser Avenue, Scranton, PA 18508. Representative: Joseph A. Keating, Jr., 121 South Main Street, Taylor, PA 18517. Transporting (1) *confectionery*, from Scranton and Duryea, PA, to points in the U.S., and (2) *materials, equipment, and supplies* used in the manufacture and distribution of confectionery, in the reverse direction.

MC 110098 (Sub-189F), filed December 24, 1980. Applicant: ZERO REFRIGERATED LINES, a corporation, 1400 Ackerman Road, Box 20380, San Antonio, TX 78220. Representative: T. W. Cothren (same address as applicant). Transporting *such commodities* as are dealt in or used by food business houses (except in bulk), between points in the U.S. in and west of MI, OH, IN, IL, MO, AR, and LA.

MC 110878 (Sub-47F), filed December 11, 1980. Applicant: ARGO TRUCKING CO., INC., P.O. Box 955, Elberton, GA 30635. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Transporting *granite*, from Elberton, GA, to Harrison, NJ.

MC 118468 (Sub-70F), filed December 22, 1980. Applicant: UMTHUN TRUCKING CO., a corporation, 910 South Jackson St., Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *lumber, lumber products and wood products*, between points in the U.S., under continuing contract(s) with R. D. Johnson Lumber, Inc., of Northfield, IL.

MC 119908 (Sub-47F), filed December 29, 1980. Applicant: WESTERN LINES, INC., 3523 N. McCarty Drive, P.O. Box 1145, Houston, TX 77001. Representative: Wayne A. Premeaux (same address as above). Transporting *lumber and lumber products*, between Dallas County, TX, on the one hand, and, on the other, points in CO, OK, and NM.

MC 144578 (Sub-6F), filed December 19, 1980. Applicant: LIME, INC., 3969 Wyoming Ave., Dearborn, MI 48126. Representative: Miss Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. Transporting *lime*,

*limestone and limestone products*, between points in Giles County, VA, on the one hand, and, on the other, points in GA, IN, KY, NC, SC, OH, TN, and WV.

MC 149308 (Sub-7F), filed December 10, 1980. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., P.O. Box P, Sellersburg, IN 47172. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Transporting *sugar*, from points in St. James, St. John the Baptist and Jefferson Parishes, LA, to points in AL, AR, FL, GA, IL, IA, KY, MS, MO, NC, OH, OK, SC, TN, TX, VA, WI, WV, IN, KS, MI, and NE.

MC 149489 (Sub-1F), filed December 19, 1980. Applicant: WITTE BROS., INC., R.R. No. 3, Fairbault, MN 55021. Representative: David R. Busch, 4744 IDS Center, Minneapolis, MN 55402. Transporting (1) *dry cement*, in bulk, from points in WI, Mason City, IA, Watertown, SD, and Fargo, ND, to points in MN, and (2) *fly ash*, in bulk, from points in SD, IA and WI to points in MN.

MC 150578 (Sub-5F), filed December 15, 1980. Applicant: STEVENS TRANSPORT, a division of STEVENS FOODS, INC., 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Representative: E. Lewis Coffey 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Transporting (1) *store fixtures and furnishings*, and (2) *materials, equipment, and supplies* used in the manufacturing and distribution of the commodities in (1), between points in Kaufman County, TX, on the one hand, and, on the other, points in OH, PA, NJ, IN, IL, CA, SC, CO, IA, MD, MI, MN, UT, WI, NC, AZ, NM, GA, TN, KY, and VA.

MC 150888 (Sub-1), filed December 19, 1980. Applicant: FLORENCIO G. RAMIREZ, a.b.a. FLORENCIO'S BULK FERTILIZER SPREADING SERVICE, 320 San Diego Ave., El Centro, CA 92243. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. Transporting *Chemicals or allied products* as described in Item 28 of the Standard Transportation Commodity Code Tariff, between points in Maricopa and Pinal Counties, AZ, on the one hand, and, on the other, points in Imperial and Riverside Counties, CA.

MC 150939 (Sub-6F), filed December 10, 1980. Applicant: GEMINI TRUCKING, INC., 1533 Broad Street, Greensburg, PA 15601. Representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between point in the U.S., under

continuing contract(s) with Mattel Toys, Division of Mattel, Inc., of Hawthorne, CA.

Note.—The person or persons who appear to be engaged in common control of applicant and other regulated carrier must either file an application under 49 U.S.C. 11343 (a), or submit an affidavit indicating why such approval is unnecessary.

MC 151118 (Sub-6F), filed December 15, 1980. Applicant: MDR CARTAGE, INC., 516 West Johnson, Jonesboro, AR 72401. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting (1) *gas cooking appliances and equipment* and (2) *steel cylinders* for storage of air, gas or liquid under pressure, and (3) *parts, accessories and fittings* for the commodities in (2), and (4) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities described in (1), (2), and (3), (except commodities in bulk and those requiring special equipment), between the facilities of Arkla Industries, Inc., at Paragould, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI), (5) *air conditioning equipment* (6) *fittings, parts and supplies* for air conditioning equipment, and (7) *equipment, materials and supplies* used in the manufacture and distribution of the commodities in (5) and (6), (except commodities in bulk and those requiring special equipment), between the facilities of Arkla Industries, Inc., at Evansville, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151958 (Sub-1F), filed December 29, 1980. Applicant: FAR WEST TRUCKING, INC., 823 E. Artesia Blvd., Carson, CA 90746. Representative: Miles L. Kavalier, 315 So. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting *apparel, or other finished textile products or knit apparel* as described in Item 23 of the Standard Transportation Commodity Code Tariff, between points in the U.S., under continuing contract(s) with Kmart Apparel Corporation, of North Bergen, NJ.

MC 153139F, filed December 9, 1980. Applicant: KENNETH WAMHOFF AND DARLENE WAMHOFF, d.b.a. MODERN TRANSPORT SERVICE, Route No. 1, Box 98B, Foreston, MN 56330. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Transporting (1) *building and construction materials and supplies*, and (2) *agricultural and horticultural materials and supplies*, between Minneapolis, MN, on the one hand, and, on the other, points in ND, SD, NE, KS, IA, MO, WI, IL, and the Upper Peninsula of MI.

MC 153229F, filed December 16, 1980. Applicant: FONDREN ENTERPRISES, INC., 4713 King Road, Sylvania, OH 43560. Representative: Michael M. Briley, P.O. Box 2088, Toledo, OH 43603. Transporting (1) *metal beer barrels*, and (2) *materials, equipment, and supplies* used in the restoration and distribution of metal beer barrels between points in Lucas County, OH, on the one hand, and, on the other, points in the U.S.

MC 153239F, filed December 12, 1980. Applicant: WEST COAST EQUIPMENT, INC., 7777 Detroit Avenue, S.W., Seattle, WA 98106. Representative: Brian D. Lynch, 1411 Fourth Avenue Bldg., Suite 312, Seattle, WA 98101. Transporting *material and equipment* used in the production and distribution of forest products, between points in the U.S., under continuing contract(s) with Weyerhaeuser Co., of Tacoma, WA.

#### Volume OP5-06

Decided: January 8, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 488 (Sub-21F), filed December 22, 1980. Applicant: BREMAN'S EXPRESS COMPANY, 318 Haymaker Rd., Monroeville, PA 15146. Representative: Joseph E. Breman, 700 Fifth Floor Bldg., 5th Floor, Pittsburgh, PA 15219. Transporting *iron and steel articles, and materials, equipment, and supplies* used in the manufacture and distribution of iron and steel articles, between those points in the U.S. in and east of WI, IL, MO, AR, and TX.

MC 5888 (Sub-57F), filed December 12, 1980. Applicant: MID-AMERICAN LINES, INC., 127 West Tenth Street, Kansas City, MO 64105. Representative: Tom Zaun, 127 West Tenth Street, Kansas City, MO 64105. Transporting *general commodities* [except household goods as defined by the Commission, hazardous or secret materials as sensitive weapons and munitions], for the U.S. Government, between points in the U.S.

MC 26639 (Sub-6F), filed December 18, 1980. Applicant: DEL TRANSPORT, INC., P.O. Box 6125, Providence, RI 02940. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting (1) *sprinkler systems, and equipment, materials and supplies* used in the manufacture and distribution of sprinkler systems, between points in RI, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *alcoholic beverages* (except in bulk), from points in NY, MD, and PA, to points in RI, (3) *suitcases, traveling bags, and brief cases*, from points in RI to points in the U.S. (except AK and HI),

(4) *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers or trailers, restricted to traffic having a prior or subsequent movement by water, between points in NY and NJ, on the one hand, and, on the other, points in RI, and (5) *iron and steel articles, and equipment, materials and supplies* used in the manufacture and distribution of iron and steel articles, between points in RI and MA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 31389 (Sub-318F), filed December 16, 1980. Applicant: McLEAN TRUCKING COMPANY, a corporation, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. Over regular routes, transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), serving points in Mercer County, PA, as off-route points in connection with applicant's otherwise authorized regular route operations.

MC 31389 (Sub-319F), filed December 17, 1980. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. Transporting *iron and steel articles, and materials, equipment, and supplies* used in the manufacture of iron and steel articles, between the facilities of Keystone Group at or near Sherman, TX, and Crawfordsville, IN. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 106398 (Sub-1089F), filed December 17, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, 705 South Elgin, Tulsa, OK 74120. Transporting *fabricated metal products, except ordnance*, as described in Item 34 of the Standard Transportation Code between Baltimore, MD and points in Cook County, IL, Porter County, IN, Wayne County, MI, Orleans Parish, LA, Harris County, TX and Baltimore County, MD, on the one hand, and, on the other, points in the United States (except AK and HI).

MC 110988 (Sub-436F), filed December 12, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 West College Ave.,

Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between the facilities of American Cyanamid Company, its affiliates, and subsidiaries, on the one hand, and, on the other, point in the U.S.

MC 113658 (Sub-43F), filed December 24, 1980. Applicant: SCOTT TRUCK LINE, INC., 5280 Newport St., Commerce City, CO 80022. Representative: Richard J. Loose (same address as applicant). Transporting *meat, meat products, and meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of A Appendix I to the report in *Descriptions in Motor Carrier Certificates*, M.C.C. 209 and 766 (except hides and commodities in bulk).

(a) From the facilities of Sterling Colorado Beef Company at or near Sterling and Fort Morgan, CO, to points in AL, AZ, AR, CA, FL, GA, ID, IA, KS, KY, LA, ME, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OK, OR, SC, SD, TN, TX, UT, VT, WA, and WY. (b) From the facilities of Sterling Colorado Beef Company at or near Denver, CO, to points in AZ, CA, ID, IA, ME, MN, MT, NE, NV, NH, NM, ND, OR, SD, UT, VT, WA, and WY. (c) From the facilities of Peppertree Beef, Inc., at or near Denver, CO to points in AZ, CA, ID, IA, ME, MN, MT, NE, NV, NH, NM, ND, OR, SD, UT, VT, WA, and WY.

MC 116068 (Sub-5F), filed December 12, 1980. Applicant: D & F TRANSIT, INC., 192 East Main Street, Fredonia, NY 14063. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Over regular routes *transporting passengers and their baggage, and express and newspapers* in the same vehicle with passengers between Westfield, NY and Erie, PA, over U.S. Highway 20 serving all intermediate points.

Note.—Applicant intends to tack this authority with its existing regular route authority.

MC 119789 (Sub-724F), filed December 16, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., P.O. Box 226188, Dallas, TX 75266. Transporting (1) *electrical appliances, electrical equipment, and electric parts*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S. (except AK and HI).

MC 120758 (Sub-2F), filed October 23, 1980. Initially published in the Federal



Register on November 26, 1980.

Applicant: SAV-MOR TRANSPORTATION, INC., 37 Mystic St., Everett, MA 02149. Representative: Anthony J. Zarrella (same address as applicant). Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in MA, on the one hand, and, on the other, points in CT, ME, NH, NJ, NY, RI, and VT.

Note.—This application is republished to show the correct territorial description. The initial publication was in error.

MC 124988 (Sub-15F), filed December 12, 1980. Applicant: TRUCK SERVICE COMPANY, 2169 E. Blaine, Springfield, MO 65803. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Transporting *chemicals* between points in the U.S. under continuing contract(s) with PPG Industries, Inc., of Pittsburgh, PA.

MC 128539 (Sub-16F), filed December 18, 1980. Applicant: EAGLE TRANSPORT CORPORATION, Box 4508, 3204 Sunset Ave., Rocky Mount, NC 27801. Representative: Robert J. Corber, 1250 Connecticut Ave., N.W., Washington, DC 20036. Transporting *liquefied petroleum gas* from Yorktown, VA, to points in MD.

Note.—Any certificate issued in this proceeding shall be limited to a period expiring 5 years from date of issuance.

MC 129908 (Sub-72F), filed December 12, 1980. Applicant: AMERICAN FARM LINES, INC., 8125 S.W. 15th Street, Oklahoma City, OK 73147. Representative: T. J. Blaylock, P.O. Box 75410, Oklahoma City, OK 73147. Transporting *pulp, paper and related products, printed matter, chemicals and related products, machinery or supplies, clay, concrete, glass or stone products, rubber and plastic products, medicines, and toilet preparations*, between points in Sullivan County, TN, on the one hand, and, on the other, points in CA, CO, DE, FL, GA, IL, IN, KY, MD, MO, NE, NJ, NY, OH, PA, TX, VA and WV.

#### Vol. No. OP5-07

Decided: January 8, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

MC 141318 (Sub-6F), filed December 15, 1980. Applicant: WEATHER SHIELD TRANSPORTATION, LTD., 531 North Eighth St., Medford, WI 54451. Representative: Robert S. Lee, 1600 TCF Tower, Minneapolis, MN 55402. Transporting (1) *furniture* and *fixtures* (b) *parts* for (a) and (2) *materials, equipment, and supplies* used in the manufacture of the commodities

in (1) between points in the U.S. under continuing contracts with Northern Kitchens, Inc., of Rib Lake, WI.

MC 141849 (Sub-9F), filed December 29, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor Lenox Towers S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and those which because of size or weight require the use of special equipment), between points in the U.S., under continuing contract(s) with United Freight, Inc. of Morrow, GA.

MC 144008 (Sub-4F), filed December 24, 1980. Applicant: STORE TRANSFER & DELIVERY SERVICE, INC., 228 Mill Street, Poughkeepsie, NY 12601. Representative: Ronald L. Shapss, 450 Seventh Ave., New York, NY 10123. Transporting *such commodities* as are dealt in by retail department stores, between points in the U.S., under continuing contract(s) with Ball Stores, Inc., of Muncie, IN, Maloney Enterprises, Inc. of Mt. Sterling, KY, and S. Grumbacher & Son of York, PA.

MC 144678 (Sub-32F), filed December 22, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th St., Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in ND, SD, and NE as off-route points in connection with carrier's otherwise authorized regular-route service.

MC 144989 (Sub-21F), filed December 29, 1980. Applicant: BLUE RIDGE MOUNTAIN CONTRACT CARRIER, INC., P.O. Box 1965, Calhoun, GA 30701. Representative: S. H. Rich, 1600 Cromwell Ct., Charlotte, NC 28205. Transporting *textile mill products, and materials, equipment, and supplies* used in the manufacture and distribution of textile mill products, between points in the U.S., under continuing contract(s) with Horizon Industries, Inc., of Calhoun, GA.

MC 145468 (Sub-39F), filed December 24, 1980. Applicant: KSS TRANSPORTATION CORP., Route 1 and Adams Station, P.O. Box 3052, North Brunswick, NJ 08902. Representative: Arlyn L. Westergren, 9202 West Dodge Rd., Suite 201, Omaha, NE 68114. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and

those requiring special equipment), between points in the U.S. (except AK and HI) restricted to traffic originating at or destined to the facilities of Beatrice Foods Co., and its subsidiaries. The purpose of this application is to convert applicant's permit in MC 135873 (Sub-12) to a certificate. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of its permit in MC 135873 (Sub-12).

MC 148438 (Sub-3F), filed December 12, 1980. Applicant: MARCHAND CONSTRUCTION, INC., P.O. Box 48, Port Allen, LA 70787. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245. Transporting *commodities* requiring the use of special equipment between points in TX, MS, LA, AL, GA, SC, NC, TN, and FL.

MC 150328 (Sub-1F), filed December 10, 1980. Applicant: SHAFER TRUCKING COMPANY, INC., 4726 Ballcamp Pike, Knoxville, TN 37921. Representative: John J. Duncan, Jr., Suite 350, City & County Bank, One Regency Square, Knoxville, TN 37915. Transporting (1) *concrete pipes, conduits, and manholes*, and (2) *materials used in the installation of pipes and conduits* from the facilities used by Hermitage Concrete Pipe Co., and the Knoxville Concrete Pipe and Products Company, at or near Knoxville, TN, to points in GA, KY, NC, SC, TN, VA, and WV.

MC 150629 (Sub-1F), filed December 19, 1980. Applicant: C. D. GAMMON COMPANY, a corporation, 531 Winthrop St., Addison, IL 60101. Representative: William D. Brejcha, Ten South LaSalle St., No. 1600, Chicago, IL 60603. Transporting *concrete products, metal products, and such commodities* as are manufactured or dealt in by manufacturers, suppliers, or erectors of buildings, bridges, tanks, and towers, between points in the U.S., under continuing contract(s) with Inryco, Inc., of Melrose Park, IL, Jones & Brown Company, of Addison, IL, S-R Industries, Inc., of Schaumburg, IL, Arlington Structural Steel Company, Inc., of Arlington Heights, IL, Rogers Iron Works, Inc., of Franklin Park, IL, North States Steel Corporation, of Arlington Heights, IL, LaGrange Steel Erectors, Inc., of Countryside, IL, and Swanson Cast Stone Co., of Kaneville, IL.

MC 151299 (Sub-1F), filed December 15, 1980. Applicant: DEPPE LUMBER CO., INC. d.b.a. DEPPE ENTERPRISES, 300 Water Street, Baraboo, WI 53913. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison,

WI 53705. Transporting (1) *outdoor furniture, and materials, equipment, and supplies* used in the manufacture and distribution of outdoor furniture, between points in the U.S. under continuing contract(s) with Almet, Inc., of Baraboo, WI. (2) *solar energy equipment, and heat recovering systems*, and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (2) above between points in the U.S. under continuing contract(s) with Sun Stone Company, Inc., of Baraboo, WI.

MC 153009 (Sub-1F), filed December 16, 1980. Applicant: SPUR TRUCK LINE, INC., 5211 Allen Street, Houston, TX 77007. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Transporting (1) *machinery, equipment, materials and supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, and (2) *machinery, equipment, materials and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof and (3) *earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in TX, on the one hand, and, on the other, points in LA.

MC 153188F, filed December 16, 1980. Applicant: THE TRAVEL COMPANY LIMITED, 10449 N. May Avenue, Oklahoma City, OK 73120. Representative: Jack Owens (same address as applicant). To engage in operations as a *broker*, at Oklahoma City, OK in arranging for the transportation of *passengers and their baggage*, beginning and ending at points in OK and extending to points in AR, CO, LA, MO, MT, MN, and TX.

MC 153248F, filed December 18, 1980. Applicant: PRATT TRANSPORTATION CO., INC., 2225 Pratt Street, Philadelphia, PA 19137. Representative: Alan R. Squires, 818 Widener Building, 1339 Chestnut Street, Philadelphia, PA 19107. Transporting *general*

*commodities* (except household goods as defined by the Commission, and classes A and B explosives) between points in PA and NJ, on the one hand, and, on the other, points in AL, CT, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, and WV.

MC 153268F, filed December 19, 1980. Applicant: CHRIS' WRECKER SERVICE, INC., 705 Kings Highway, Fairfield, CT 06430. Representative: C. F. Wengenroth, 705 Kings Highway, Fairfield, CT 06430. Transporting *wrecked or disabled motor vehicles* between points in the U.S.

MC 153318F, filed December 23, 1980. Applicant: AGILE FREIGHT SYSTEM, INC., 11514 Orum Rd., Los Angeles, CA 90049. Representative: Charles A. Webb, 1828 L St., NW, Suite 1111, Washington, DC 20036. Transporting *general commodities* (except articles of unusual value, classes A and B explosives, and commodities in bulk), (1) between points in CA, and (2) between points in Winnebago, Boone, McHenry, Lake, Ogle, DeKalb, Kane, Cook, DuPage, Lee, LaSalle, Kendall, Will, Grundy, Livingston, and Kankakee Counties, IL, restricted in (1) and (2) to traffic having a prior or subsequent movement by rail or moving under a freight forwarder bill of lading.

#### Volume No. OP5-9

Decided: January 9, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 52589 (Sub-2F), filed December 19, 1980. Applicant: BLUE BIRD TRANSFER & STORAGE CO., a Corp., 2123 Harrison Dr., Clinton, IA 52732. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *general commodities* (except household goods as defined by the Commission, commodities in bulk, and classes A and B explosives), between points in CO, IL, IN, KS, KY, MI, MN, MO, NE, IA, ND, OH, OK, SD, and WI, restricted to traffic originating at or destined to facilities used by Ralston Purina Company.

MC 93649 (Sub-34F), filed December 19, 1980. Applicant: GAINES MOTOR LINES, INC., P.O. Box 1549, Hickory, NC 28601. Representative: Dennis Gaines (same address as applicant). Transporting *textiles and textile products, and materials and supplies* used in the manufacture of textiles and textile products, between points in NC, SC, and GA.

MC 100318 (Sub-4F), filed December 19, 1980. Applicant: JAMES F. MOLLENHAUER, d.b.a. CITY TRANSPORT COMPANY, P.O. Box 1331, Cherry Hill, NJ 08034. Representative: Ronald Ervais, 1315

Walnut St., Suite 1329, Philadelphia, PA 19107. Transporting *general commodities*, between points in PA, on the one hand, and, on the other, points in DE, MD, NJ, NY, VA, and DC. Condition: Any certificate issued in this proceeding to the extent it authorizes the transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from date of issuance of said certificate.

MC 113678 (Sub-904F), filed December 22, 1980. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *general commodities* (except household goods, classes A and B explosives, commodities requiring special equipment, and commodities in bulk), between points in the U.S. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of all existing certificates and gateway elimination notices, and certificates that may be issued in applications pending at this time.

Note.—Applicant relies on traffic studies of past operations rather than shipper support for the authority sought.

MC 119118 (Sub-68F), filed December 16, 1980. Applicant: McCURDY TRUCKING, INC., P.O. Box 388, LaTrobe, PA 15850. Representative: Richard C. McGinnis, 711 Washington Bldg., Washington, DC 20005. Transporting (1)(a) *insulation and foam rubber* and (b) *materials, equipment, and supplies* used in the manufacture of the commodities in (1)(a), between points in Westmoreland County, PA, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, MO, TN, and MS; and (2)(a) *grinding wheels* and (b) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (2)(a), between points in Worcester County, MA, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, MO, TN, and MS.

MC 119988 (Sub-271F), filed December 19, 1980. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Larry Norwood (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of chemicals (except commodities in bulk), between points in the U.S.

MC 130529 (Sub-1F), filed December 16, 1980. Applicant: THE AUTOMOBILE CLUB OF MARYLAND, a Corporation, 1401 Mt. Royal Ave., Baltimore, MD 21217. Representative: L.C. Major, Jr.,

Suite 400 Overlook Bldg., 8121 Lincolnia Rd., P.O. Box 11278, Alexandria, VA 22321. To operate as a *broker* at points in MD, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, between points in the U.S., including AK and HI.

**Note.**—Issuance of a license in this proceeding is conditioned upon prior or coincidental cancellation of MC-130529F issued May 3, 1979.

MC 134229 (Sub-10F), filed December 18, 1980. Applicant: RICHMOND TRANSFER, INC., Route 2, Box 346, Richmond, MO 64085. Representative: Warren H. Sapp, P.O. Box 30010, Kansas City, MO 64112. Transporting *foodstuffs*, between points in Sedgewick County, KS, Greene and Jackson Counties, MO, and Oklahoma and Tulsa Counties, OK, on the one hand, and, on the other, points in AR, FL, GA, KS, MO, OK, and TX.

MC 139039 (Sub-5F), filed December 22, 1980. Applicant: A. MARIANNI'S SONS, INC., 2942 E. Tioga St., Philadelphia, PA 19134. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *material handling and waste processing equipment*, and (2) *materials, equipment and supplies used in the manufacture and distribution of the commodities in (1)*, between Philadelphia, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143059 (Sub-149F), filed December 16, 1980. Applicant: MERCER TRANSPORTATION CO., a Corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk, in tank vehicles), between Houston, TX, and points in WA, CA, WY, CO, NM, ND, SD, NE, KS, OK, AR, LA, IL, MS, MI, IN, KY, AL, FL, NY, MA, OH, PA, WV, VA, NC, and SC.

#### Volume No. OP5-10

Decided: January 9, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 143699 (Sub-3F), filed December 22, 1980. Applicant: QUALITY CONTRACT CARRIERS, INC., 1009 West Edgewood Avenue, Indianapolis, IN 46217. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of chemicals and related products (except commodities in bulk), between points in the U.S., under continuing contract(s)

with The Sherwin Williams Company, of Cleveland, OH.

MC 144678 (Sub-26F), filed December 16, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th St., Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). Over regular routes transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving those points in that part of OH on, south, and east of a line beginning at the PA-OH state line and extending along Interstate Hwy 90 to junction OH Hwy 44, then along OH Hwy 44 to junction U.S. Hwy 62, then along U.S. Hwy 62 to junction OH Hwy 21, then along OH Hwy 21 to junction OH Hwy 93, then along OH Hwy 93 to junction OH Hwy 16, then along OH Hwy 16 to junction OH Hwy 13, then along OH Hwy 13 to junction Interstate Hwy 70, then along Interstate Hwy 70 to junction Interstate Hwy 270, then along Interstate Hwy 270 to junction Interstate Hwy 71, then along Interstate Hwy 71 to Cincinnati, OH, as off-route points in connection with applicant's otherwise authorized regular-route operations.

MC 144678 (Sub-29F), filed December 22, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th St., Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in TX as off-route points in connection with applicant's otherwise authorized regular-route operations.

MC 145108 (Sub-37F), filed December 30, 1980. Applicant: BULLET EXPRESS, INC., P.O. Box 289, Bay Ridge Station, Brooklyn, NY 11220. Representative: Terrence D. Jones, 2033 K Street, N.W., Washington, D.C. 20006. Transporting *general commodities* (except classes A and B explosives) between points in the U.S., under continuing contract(s) with Foremost-McKesson, Inc., of San Francisco, CA.

MC 146148 (Sub-15F), filed December 19, 1980. Applicant: B-RIGHT TRUCKING CO., a Corporation, 492 Old St. Rt. 2, Pottery Addition, Steubenville, OH 43952. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *lockers, cabinets, storage cases, shelving, sheet metal products*, and (2) *parts and accessories* for the commodities in (1), between points in the U.S., under continuing contract(s) with the Interior Steel Equipment Co., of Cleveland, OH.

MC 151759 (Sub-1F), filed December 24, 1980. Applicant: BULKWAY

TRANSPORT CORPORATION, 350 Central Avenue, Kearny, NJ 07032. Representative: Eric Meierhoefer, Suite 423, 1511 K St. NW., Washington, DC. Transporting *general commodities* (except classes A & B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Cellomer Corporation of Newark, NJ.

MC 152259 (Sub-1F), filed December 16, 1980. Applicant: CLIFFORD D. AND LOIS R. SANDBERG, d.b.a. SCHULTZ & SON TRUCKING, MINNESOTA DIVISION, Rural Route 4, Long Prairie, MN 56347. Representative: Clifford D. Sandberg (same address as applicant). Transporting *boneless beef and fresh carcass beef*, between Long Prairie, MN, on the one hand, and, on the other, points in IL, WI, and IA.

MC 152648 (Sub-1F), filed December 22, 1980. Applicant: ED RUTLEDGE, d.b.a. ED RUTLEDGE TRUCKING, 1824 Ruth Street, Arlington, TX 76010. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. Transporting *case goods*, from Grand Prairie, TX, to points in AL, AR, FL, GA, LA, MS, NM, NC, OK, SC, TN, TX, and VA.

MC 152728 (Sub-1F), filed December 19, 1980. Applicant: INDEPENDENT CARRIERS, INC., P.O. Box 37642, Omaha, NE 68137. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., NW., Washington, DC 20036. Transporting *food and kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, between points in Cache and Davis Counties, UT, on the one hand, and, on the other, points in NE, CA, SC, NY, and MD.

MC 153109F, filed December 9, 1980. Applicant: F. DAVID SENSENIG, R.D. 4, Mohler Church Rd., Ephrata, PA 17522. Representative: John W. Metzger, 49 North Duke St., Lancaster, PA 17602. Transporting *agricultural limestone*, (1) from points in Lancaster County, PA, to points in NY, NJ, DE, MD, and VA, and (2) from Viola and Laurel, DE, to points in MD and VA.

MC 153398F, filed December 19, 1980. Applicant: H. G. TURNER, INC., U.S. Highways 129 & 41, P.O. Box 1007, Jasper, FL 32052. Representative: Martin Sack, Jr., 203 Marine National Bank Building, 311 West Duval Street, Jacksonville, FL 32202. Transporting *construction materials, and equipment, materials, and supplies used in the manufacture, installation, and distribution of construction materials*, between the facilities of General Laminates Corporation at or near Jasper,

FL, on the one hand, and, on the other, points in the U.S.

#### Vol. No. OP5-12

Decided: January 13, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton and Liberman.

MC 488 (Sub-22F), filed December 24, 1980. Applicant: BREMAN'S EXPRESS COMPANY, 318 Haymaker Rd., Monroeville, PA 15146. Representative: Joseph E. Breman, 700 Fifth Ave. Bldg., Pittsburgh, PA 15219. Transporting (1) *leather, leather products and hides*, and (2) *materials and supplies* used in the production and distribution of the commodities in (1), between the facilities of Howes Leather Company at Curwensville, PA on the one hand, and, on the other, points in DE, OH, MA, MD, NJ, NY, TN, and WV.

MC 50069 (Sub-565F), filed December 19, 1980. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Avenue, Oregon, OH 43616. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *Commodities in bulk*, in tank vehicles, between Flint, MI, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR and LA.

MC 79999 (Sub-14F), filed December 22, 1980. Applicant: RANGER TRUCK LINE, INC., P.O. Box 2008, Houston, TX 77001. Representative: Mike Cotten, P.O. Box 1148, Austin, TX 78767. Transporting *machinery, equipment, materials and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas, and petroleum and their products and by-products*, (a) between points in OK, KS, TX, NM, and LA, on the one hand, and, on the other, points in AL, AR, CO, MS, NE, SD, UT, and WY, and (b) between points in AL, AR, CO, MS, NE, SD, UT, and WY.

MC 87128 (Sub-1F), filed December 30, 1980. Applicant: WHERLEY MOVING & STORAGE, INC., 2793 Miller Trunk Highway, Duluth, MN 55811. Representative: James Robert Evans, 145 W. Wisconsin Avenue, Neenah, WI 54956. Transporting *Household Goods*, as defined by the Commission, between points in Becker, Carlton, Clay, Clearwater, Cook, Kittson, Lake, Mahanomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau, St. Louis and Wilken Counties, MN, Barnes, Cass, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Lamoure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Traill, and Walsh Counties,

ND, Ashland, Bayfield, Burnett, Douglas, Sawyer, and Washburn Counties, WI, on the one hand, and, on the other, points in AR, CO, IL, IN, IA, KS, LA, MI, MN, MO, NE, ND, OH, OK, SD, TX, WI and WY.

MC 99899 (Sub-6F), filed December 29, 1980. Applicant: CERTIFIED FREIGHT LINES, INC., 201 West Branch St., P.O. Box 455, Arroyo Grande, CA 93420. Representative: Wyman C. Knapp, Suite 1800, 707 Wilshire Blvd., Los Angeles, CA 90017. Transporting (1) *copper and aluminum cable*, from Santa Maria, CA to Port Hueneme, Los Angeles, Long Beach, San Francisco, Oakland and Stockton, CA, and points in OR, WA, and AZ, and (2) *copper wire and copper rod*, from points in AZ to Santa Maria, CA.

MC 106088 (Sub-9F), filed December 30, 1980. Applicant: WM. O. HOPKINS INC., R. R. #1, Box 16A, Renselaer, IN 47978. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Transporting *iron and steel articles* between Kouts, IN, on the one hand, and, on the other, AL, AR, GA, IL, IA, KS, KY, MI, MN, MS, MO, NC, OH, PA, SC, TN, VA, WV, and WI.

MC 114848 (Sub-65F), filed December 30, 1980. Applicant: WHARTON TRANSPORT CORPORATION, 1498 Channel Ave., Memphis, TN 38113. Representative: Robert T. Wharton (address same as above). Transporting *dolomite* from points in St. Francois County, MO to points in TN and KY.

MC 119099 (Sub-34F), filed December 8, 1980. Applicant: BJORKLUND TRUCKING, INC., First Avenue N.E. and 8th Street, Buffalo, MN 55313. Representative: Val M. Higgins, 1600 TCF Tower, Minneapolis, MN 55402. Transporting *building materials*, between those points in the U.S. in and west of MI, IN, KY, TN and AL, restricted to traffic originating at or destined to the facilities of Great Plains Supply Co., a division of Farmers Union Grain Terminal Association.

MC 119908 (Sub-46F), filed December 29, 1980. Applicant: WESTERN LINES, INC., 3523 N. McCarty Drive, P.O. Box 1145, Houston, TX 77001. Representative: Wayne A. Premeaux (same address as applicant). Transporting *roofing and roofing materials*, between points in St. Tammany Parish, LA, on the one hand, and, on the other, points in AR, MS, OK, and TX.

MC 119968 (Sub-23F), filed December 30, 1980. Applicant: A.J. WEIGAND, INC., P.O. Box 130, Dover, OH 44622. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215.

Transporting *commodities in bulk*, between points in the U.S. restricted to traffic originating at or destined to the facilities of Procter & Gamble Company.

MC 120618 (Sub-28F), filed December 22, 1980. Applicant: SCHALLER TRUCKING CORP., 5700 W. Minnesota St., Indianapolis, IN 46241. Representative: Stephen M. Gentry, 1502 Main St., Speedway, IN 46224.

Transporting *metal products and metal scrap*, between points in Limestone County, AL, on the one hand, and, on the other points in Lawrence County, IN.

MC 121568 (Sub-71F), filed December 19, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Evansville and Mt. Vernon, IN, Springfield, MO, on the one hand, and, on the other points in the U.S.

Note.—Applicant intends to tack with existing authority.

#### Volume No. OP5-13

Decided: January 13, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 121568 (Sub-73F), filed December 22, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting (1) *oil and air filters and oil and air filter parts*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above between Albion, IL, on the one hand, and, on the other, points in IL, IN, IA, MI, NY, MN, OH, PA, WI, WV, and VA.

MC 124078 (Sub-1038F), filed December 30, 1980. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th St., Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S.

MC 128279 (Sub-41F), filed November 12, 1980, previously noticed in FR issue of December 10, 1980. Applicant: ARROW FREIGHTWAYS, INC., 150 Woodward Rd., S.E., P.O. Box 25125, Albuquerque, NM 87125. Representative: Olif Q. Boyd, 7105 Edwina, Northeast, Albuquerque, NM 87110. Transporting

general commodities (except household goods as defined by the Commission, and classes A and B explosives) between points in AZ, CA, CO, KS, NE, NM, NV, OK, TX, UT, and WY.

Note.—This republication changes the territorial description.

MC 129708 (Sub-3F), filed December 18, 1980. Applicant: McRAY TRUCK LINE, INC., Rural Route No. 2, Old Henderson Road, P.O. Box 307A, Evansville, IN 47712. Representative: Warren C. Moberly, 777 Chamber of Commerce Building, 320 North Meridian Street, Indianapolis, IN, 46204. Transporting (1) *iron and steel articles*, and (2) *materials, equipment and supplies used in the manufacture and distribution of commodities in (1)* (except commodities in bulk), between the facilities of Keystone Group at or near (a) Peoria and Chicago, IL, (b) Crawfordsville, IN, and (c) Sherman, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 129878 (Sub-5F), filed December 22, 1980. Applicant: FLOUR TRANSPORT, INC., 5471-A Ferguson Drive, Los Angeles, CA 90022. Representative: Walter L. Keeney (same address as applicant). Transporting *commodities in bulk* (except petroleum and petroleum products), between points in CA, AZ, OR, NV, UT, and WA.

MC 134229 (Sub-9F), filed December 18, 1980. Applicant: RICHMOND TRANSFER, INC., Route 2, P.O. Box 346, Richmond, MO 64085. Representative: Warren H. Sapp, P.O. Box 30010, Ian Kansas City, MO 64112. Transporting (1) *home heating furnaces*, (2) *chimney assemblies*, (3) *air conditioning plenums and coils*, (4) *agricultural implements*, and (5) *parts and accessories for the commodities in (1) and (4) above*, and (6) *materials and supplies used in the manufacture and installation of the commodities in (1) through (5)*, between points in Daviess County, MO, on the one hand, and, on the other points in AR, CO, GA, IL, IN, IA, KS, MI, MN, MD, NE, NJ, NY, OH, PA, TN, TX, VA, and DC.

MC 136709 (Sub-4F), filed December 23, 1980. Applicant: WALLACE TRUCKING CO., a corporation, Route 4, Box A-71, Laurinburg, NC 28352. Representative: F. Kent Burns, P.O. Box 2479, Raleigh, NC 27602. Transporting *canned and preserved foodstuffs and materials used in the manufacture and processing of canned and preserved foodstuffs*, between Maxton, NC, on the one hand, and, on the other, points in AL, FL, GA, NC, SC, TN, VA, and DC.

MC 136818 (Sub-120F), filed December 29, 1980. Applicant: SWIFT TRANSPORTATION CO., INC., 335

West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *iron and steel articles*, from the facilities of Nucor Corporation at Plymouth, UT, to points in AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY.

MC 136898 (Sub-11F), filed December 19, 1980. Applicant: BAKER TRANSPORT, INC., P.O. Box 688, Hartselle, AL 35840. Representative: M. Bruce Morgan, 100 Roesler Rd., Glen Burnie, MD 21061. Transporting *general commodities*, between points in the U.S., under continuing contract(s) with Alabama Farmers Cooperative, Inc., of Decatur, AL. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring five years from the date of issuance of the certificate.

MC 138469 (Sub-281F), filed December 23, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *alcoholic beverages* (except in bulk), (a) from points in CA to points in CA and MN, and (b) from points in MO to the facilities of Central Liquor Company at Oklahoma City, OK.

MC 141029 (Sub-5F), filed December 22, 1980. Applicant: JON A. JULLERAT, d.b.a. JON A. JULLERAT AND CO., R.R. 2, Box 10, Portland, IN 47371. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. Transporting *textile mill products*, between points in the U.S., under continuing contract(s) with Jay Garment Co., of Portland, IN.

MC 141869 (Sub-3F), filed December 31, 1980. Applicant: ROYAL COACH LINES, INC., 1600 Junction Avenue, Racine, WI 53403. Representative: Andrew R. Clark, 1800 TCF Tower, 121 South 8th Street, Minneapolis, MN 55402. Transporting *passengers and their baggage*, in charter operations, beginning and ending at points in Kenosha, Racine, Walworth, Rock, Milwaukee, Waukesha, Jefferson, Dodge, Washington, Ozaukee, Sheboygan and Manitowoc Counties, WI, and extending to points in the U.S. (except HI).

#### Volume No. OP5-14

Decided: January 13, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 142189 (Sub-45F), filed December 29, 1980. Applicant: C. M. BURNS, d.b.a. WESTERN TRUCKING, P.O. Box 980, Baker, MT 59313. Representative: James B. Hovland, Suite M-20, 400 Marquette Ave., Minneapolis, MN 55401. Transporting *lumber, wood products, millwork, building materials and construction materials*, from points in MT to points in WY, CO, OK, and TX.

MC 142519 (Sub-10F), filed December 23, 1980. Applicant: DELIVERY SERVICES CORP., 1141 Springwells, Detroit, MI 48209. Representative: William B. Elmer, 624 Third St., Traverse City, MI 49684. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities requiring the use of special equipment), between points in the U.S., under continuing contract(s) with International Paper Company, of New York, NY.

MC 142909 (Sub-12F), filed December 11, 1980, previously noticed in FR issue of December 16, 1980. Applicant: TIMBER TRUCKING, INC., 35 S. 6th W. St., Salt Lake City, UT 84101. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *machinery, and road construction equipment*, between points in UT, ID, WY, MT, CO, NV, AZ, CA, IL, and TX.

Note.—This republication changes the territorial description.

MC 144678 (Sub-31F), filed December 30, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th St., Overland Park, KS 66210. Representative: Harold H. Closkey (same address as applicant). Over regular routes, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in MI as off-route points in connection with applicant's otherwise authorized regular-route operations.

MC 146079 (Sub-14F), filed December 22, 1980. Applicant: JACKSON TRANSPORTATION, INC., R.R. 1, Box 410-A, Clayton, IN 46118. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *general commodities* between points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring five years from the date of issuance of the certificate.

MC 146719 (Sub-6F), filed December 19, 1980. Applicant: MATERIAL DELIVERY SERVICE, INC., P.O. Drawer

F. County Road 16, Alabaster, AL 35007. Representative: Edward J. Kiley, 1730 M Street, NW., Washington, D.C. 20036. Transporting *cement*, from Decatur, AL to points in GA, LA, MS, NC, SC, and TN.

MC 147198 (Sub-8F), filed December 19, 1980. Applicant: P. & E.I. TRUCK LINES INC., Box 175, Rossville, IL 60963. Representative: Thomas A. Graham, 4 West Seminary, Danville, IL 61832. Transporting (1) *food and related products, and materials, equipment, and supplies* used in the manufacture and distribution of food and related products, between points in IA, IL, IN, KS, KY, MI, MN, MO, NE, OH, TN, and WI, and (2) *such commodities* as are dealt in or used by manufacturers and distributors of containers, between points in NE, MO, KS, KY, TN, IN, OH, MI, WI, MN, IA, IL, AR, MS, GA, LA, TX, CO, AL, and OK.

MC 147499 (Sub-5F), filed December 29, 1980. Applicant: D. H. TRANSFER INC., 671 M-73, Iron River, MI 49935. Representative: Donald Hooper (same address as applicant). Transporting *iron and steel articles, and materials* used in the manufacture of iron and steel articles, between the facilities of Northern Automatic Electric Foundry (Division of Armco Inc.) at or near Ishpeming, MI, on the one hand, and, on the other, points in MN.

MC 148158 (Sub-10F), filed December 17, 1980. Applicant: CONTROLLED DELIVERY SERVICE, INC., P.O. Box 1299, City of Industry, CA 91749. Representative: Robert L. Cope, Suite 501, 1730 M St., NW., Washington, D.C. 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with National Distribution Systems, Inc., of Clearfield, UT.

MC 153328F, filed December 30, 1980. Applicant: RED K TRANSPORT, INC. 2545 Peach Tree, Cape Girardeau, MO 63701. Representative: Joel H. Steiner, 39 South LaSalle, Suite 600, Chicago, IL 60603. Transporting (1) *Lime and limestone products*, (2) *iron and steel articles*, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2), between St. Louis, MO, and points in St. Genevieve County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153378F, filed December 16, 1980. Applicant: BRATTLEBORO HAULAGE, INC., 50 Middlesex Ave., Somerville, MA 02145. Representative: James F. Martin, Jr., 8 W. Morse Rd., Bellingham, MA 02019. Transporting *such*

*commodities* as are dealt in or used by (a) chain grocery and food business houses and (b) retail and discount department stores (except commodities in bulk, in tank vehicles), between points in Windham County, VT, and Hartford County, CT, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY and NJ.

MC 153419F, filed December 15, 1980. Applicant: THOMAS D. COX, 2105 Hamilton St., Murphysboro, IL 62966. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *labels, wrappers, and foil paper*, between points in the U.S., under continuing contract(s) with Lustour Corporation, a subsidiary of Bemis Bag, of Murphysboro, IL.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2764 Filed 1-26-81; 8:45 am]  
BILLING CODE 7035-01-M

#### [Vol. 5]

#### Permanent Authority Decisions; Restriction Removals

Decided: January 21, 1981.

The following restriction removal application, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

#### Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,  
Secretary.

MC 2202 (Sub-651)X, filed January 15, 1981. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Avenue, Washington, DC 20014. Applicant seeks to remove restrictions in its Sub-No. 137 Certificate to authorize service at all intermediate points between Birmingham, AL, and Dallas, TX, and between Birmingham, AL and Houston, TX, and to remove a restriction against traffic originating at or destined to points in AL west of U.S. Hwy. 231.

MC 25869 (Sub-177)X, filed January 14, 1981. Applicant: C.O.D.E., INC., 4800 North Colorado Boulevard, Denver, CO 80218. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Applicant seeks to remove restrictions from portions of its lead certificate MC-25869 and Sub-Nos. 163 and 166, which authorizes transportation of general commodities with exceptions between Chicago, IL, Churdan, LA and points within 25 miles thereof, Omaha, NE, Tamora, NE, Denver, CO and points in Sedgwick County, CO to (1) remove all restrictions in its commodity authorities except "classes A and B explosives" and (2) authorize service at all intermediate points in connection with its regular routes between Chicago, Churdan, Omaha, and Tamora.

MC 29910 (Sub-321)X, filed January 13, 1981. Applicant: ABF FREIGHT SYSTEM, INC., 301 S. 11th Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (same as applicant). Applicant seeks to remove restrictions in Certificate No. MC-29910, and Sub-Nos 90, 92, 165, 173, 179, 206, 267, and 268, authorizing the transportation of various commodities by removing restrictions to the transportation of traffic originating at and/or destined to named plantsite facilities, in all of the above certificates, by substituting specific counties for the plantsite restrictions: Jackson County, AR, for Newport, AR in Sub-No 90; Washington County, MS, for Greenville, MS in Sub-No. 92; Henderson County, NC, for Fletcher, NC in Sub-No. 165; Crawford County, AR, for Van Buren, AR in Sub-No. 173; Shelby County, TN, for Memphis, TN in Sub-No. 179; Warren County, MS, in lieu of plantsite restriction in same county in Sub-No. 206; McKinlay County, NM, for Navajo, NM in Sub-No. 267; and Kay County, OK, for Ponca City, OK in Sub-No. 268; and to authorize radial authority in lieu

of one-way authority (except in Sub-Nos. 206 and 268 which already contain round-trip authority) between each of the respective counties and named states.

MC 35320 (Sub-626)X, filed January 12, 1981. Applicant: T.I.M.E.-DC, INC., 2598-74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same as above). Applicant seeks removal of restrictions in MC-4200 (Sub-No. 1), which was granted to applicant in MC-F-13914F, and which authorizes the transportation of general commodities (with exceptions) from Houston, TX to points in a described portion of TX to (1) authorize radial service between Houston and a portion of TX and (2) remove all restrictions in its general commodities authority, except classes A and B explosives.

MC 55889 (Sub-66)X, filed January 15, 1981. Applicant: AAA COOPER TRANSPORTATION, P.O. Box 6827, Dothan, AL 36302. Representative: Kim D. Mann, Turney & Turney, 7101 Wisconsin Avenue, Washington, DC 20014. Applicant seeks to remove restrictions in its Sub-No. 60 and Sub-No. 62 certificates which authorize the transportation of general commodities, with the usual exceptions, over described regular routes, in Sub-No. 60, between certain points in AL and LA, with routes through MS, serving specified intermediate points, and restricted against shipments between certain points in LA having prior or subsequent movement by water; and, in Sub-No. 62, between certain points in AL and Memphis, TN, with routes through MS, serving no intermediate points to (1) eliminate all restrictions in the commodity descriptions except classes A and B explosives, (2) eliminate the ex-water restriction, and (3) authorize service at all intermediate points in connection with its regular-route operations. Further, Sub-Nos. 60 and 62 contain restrictions which limit service to Jackson, MS, for the purpose of joinder only, which applicant also seeks to eliminate.

MC 118838 (Sub-71)X, filed January 13, 1981. Applicant: GABOR TRUCKING INC., R.R. 4, Box 124B, Detroit Lakes, MN 56501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. The application seeks to remove the restrictions from its Sub-No. 69 certificate by (1) broadening the commodity description from fabricated metal products to metal products, (2) by removing the plantsite restrictions to the facilities of United States Gypsum Company and Boyles Galvanizer at the points named in (3) and St. Louis, MO,

and (3) by broadening the origin of Franklin Park, IL, to Chicago, IL, and the origin of Pinckneyville, IL, to Perry County, IL.

MC 133229 (Sub-15)X, filed January 13, 1981. Applicant: COATS FREIGHTWAYS, INC., 601 32nd Avenue, P.O. Box 415, Council Bluffs, IA 51502. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Applicant seeks to remove restrictions from its lead certificate which authorizes the transportation of general commodities (with exceptions), over regular routes from Chicago, IL, and to Hastings, NE, serving named intermediate points and designated off-routes points, with restrictions limiting transportation against traffic originating at or destined to named points or to traffic moving from or to named points, to (1) remove all exceptions from its general commodity authority except classes A and B explosives, (2) authorize service at all intermediate points, (3) remove restrictions against the transportation of traffic originating at or destined to points in the Chicago, IL, commercial zone, and (4) broaden the one-way authority to round-trip authority.

MC 146465 (Sub-10)X, filed January 14, 1981. Applicant: LAWRENCE PILGRIM d.b.a. PILGRIM TRUCKING COMPANY, P.O. Box 877, Cleveland, GA 30528. Representative: Robert E. Born, Suite 508, 1447 Peachtree St., N.E., Atlanta, GA 30309. Applicant seeks to remove restrictions from its Certificate No. MC-146465 (Sub-No. 3) to (1) broaden the territorial description by replacing the plantsite restrictions of Hoover Universal, Inc., Wood Preserving Division at Thomson, GA, and Milford, VA, with McDuffie County, GA, and Caroline County, VA, and (2) broaden its commodity authority from lumber to lumber and wood products.

MC 147595 (Sub-2)X, filed January 14, 1981. Applicant: LYLE GUENTZEL TRUCKING, INC. d.b.a. G AND A TRUCKING, Route 4, Box 260, Hibbing, MN 55746. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Applicant seeks to remove restrictions in its lead Certificate to (1) remove all restrictions from its general commodity authority except "classes A and B explosives", and (2) expand its territorial authority to serve radially between Hennepin and Ramsey Counties, MN, and points in St. Louis and Itasca Counties, MN, in place of its limited authority between Minneapolis, MN, and St. Louis County (except

Duluth) and Itasca County (except Grand Rapids), MN.

[FR Doc. 81-2007 Filed 1-26-81; 8:43 am]  
BILLING CODE 7035-01-M

**[Notice No. 206]**  
**Assignment of Hearings**

January 19, 1981.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

- MC 63562 (Sub-68F), BN Transport, Inc., now assigned for hearing on January 14, 1981 at Seattle, Wa is transferred to Modified Procedure.
- MC 148079 (Sub-1F), Frye Trucking Company, Inc., now assigned for hearing on January 12, 1981 at Raleigh, NC is transferred to Modified Procedure.
- MC F-12730, Pacific Transportation Lines, Inc.—Purchase—Jackson Distribution Corp., MC 142048 (Sub-7F), Pacific Transportation Lines, Inc., now assigned for hearing on January 14, 1981 (3 days) at Buffalo, N.Y., in Room 209, City Hall, Niagara Square.
- MC 140611 (Sub-1F), Harkema Express Lines, Inc., now assigned for hearing on January 19, 1981 (4 days) at Buffalo, N.Y. in Room 209, City Hall, Niagara Square.
- MC 144190 (Sub-9F), Story, Inc., now assigned for hearing on January 21, 1981 at Nashville, TN is postponed indefinitely.
- MC 110986 (Sub-414F), Schneider Tank Lines, Inc., now assigned for hearing on January 21, 1981 at Chicago, IL is canceled and application is dismissed.
- MC 35320 (Sub-311F), T.I.M.E.-DC, Inc., now assigned for hearing on January 27, 1981 at Houston, Tx is canceled and application is dismissed.
- MC 730 (Sub-507F), Pacific Intermountain Express Co., now assigned for hearing on January 26, 1981 at New Orleans, La is transferred to Modified Procedure.
- MC 139763 (Sub-3F), Oak Harbor Freight Lines, Inc., now assigned for hearing on January 26, 1981 at Seattle, Wa is transferred to Modified Procedure.
- MC 135598 (Sub-30F), Sharkey Transportation, Inc., now assigned for hearing on February 19, 1981 at Chicago, IL is transferred to Modified Procedure.
- MC 732 (Sub-16F), Albina Transfer Co., Inc., now assigned for hearing on January 21, 1981 at Portland, Or is canceled and application is dismissed.
- MC 58679 (Sub-14F), Brown Transport Corp., now assigned for hearing on January 22,

- 1981 at Memphis, Tn is transferred to Modified Procedure.
- MC 115311 (Sub-396F), J & M Transportation Co., Inc., now assigned for Prehearing Conference on December 2, 1980 at Washington, D.C. is transferred to Modified Procedure.
- MC C-10637, Overland Motor Express, Inc., DBA Boulder-Denver Truck Line, Inc. -V-Arkansas-Best Freight System, Inc., now assigned for hearing on January 15, 1981 at Denver, Co is transferred to Modified Procedure.
- MC 133194 (Sub-21F), Woodline Motor Freight, now assigned for Prehearing Conference on January 8, 1981 at Washington, D.C., is transferred to Modified Procedure.
- MC 146742 (Sub-2F), H & F Trucking Company, Inc., now assigned for hearing on January 21, 1981 at Chicago, Il is transferred to Modified Procedure.
- MC 59856 (Sub-89F), Salt Creek Freightways, now assigned for hearing on February 23, 1981 at Salt Lake City, Ut is canceled and application is dismissed.
- MC 148629F, Parkhill Pipe Services Company, is dismissed.
- MC 109736 (Sub-48F), Capitol Bus Company, now assigned for hearing on January 26, 1981 at Philadelphia, Pa will be held in Room 2609, James Byrne Courthouse, 601 Market Street.
- MC 118838 (Sub-57F), Gabor Trucking, Inc., now assigned for hearing on January 20, 1981 at Seattle, Wa is transferred to Modified Procedure.
- MC 11592 (Sub-29F), Best Refrigerated Express, Inc., now assigned for hearing on January 19, 1981 at Omaha, Ne is transferred to Modified Procedure.
- MC 136782 (Sub-12F), R.A.N. Trucking Co., now assigned for hearing on January 28, 1981 at Pittsburgh, Pa is postponed to March 11, 1981 (3 days) at Pittsburgh, Pa in a hearing room to be later designated.
- MC 106398 (Sub-938F), National Trailer Convoy, Inc., now assigned for hearing on January 20, 1981 at Philadelphia, Pa is transferred to Modified Procedure.
- MC C-10339, Mclean Trucking Company and Wolverine Express, Inc.—Investigation And Revocation of Certificates, now assigned for hearing on January 14, 1981 (3 days) at Chicago, Il is canceled and reassigned to March 3, 1981 (1 day) at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 133689 (Sub-269F), Overland Express, Inc., now assigned for hearing on January 20, 1981 (9 days) at St. Paul, Mn will be held at the Court Room No. 584, Federal Building, 316 North Robert on January 20, 21, 22, 24, 25, 26, 27, 28, 29/81 and on January 23, 1981 in Room No. 586, Federal Building, 316 North Robert.
- MC 32882 (Sub-124F), Mitchell Bros. Truck Lines, now assigned for hearing on January 13, 1981 at Salt Lake City., Ut is transferred to Modified Procedure.
- MC 106863 (Sub-1F), Bacon Motor Express, Inc., now assigned for hearing on February 4, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 140611 (Sub-4F), Harkema Express Lines, Inc., now assigned for hearing on January 19, 1981 at Buffalo, N.Y., is canceled and application is dismissed.
- MC 147524 (Sub-4F), Sined Leasing, Inc., now assigned for hearing on February 9, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 14768 (Sub-2F), Landes Ozark Transfer Co., d.b.a. Ozark Transfer Company, now assigned for hearing on February 26, 1981 (2 days) at Jefferson City, Mo. in a hearing room to be later designated.
- MC 59856 (Sub-90F), Salt Creek Freightways, now assigned for hearing on February 23, 1981 at Salt Lake City, Ut is canceled and application dismissed.
- MC 115311 (Sub-397F), J & M Transportation Co., Inc., is transferred to Modified Procedure.
- MC 114552 (Sub-243F), Senn Trucking Company, now assigned for hearing on January 26, 1981 at Jacksonville, Fl is transferred to Modified Procedure.
- MC 136782 (Sub-27F), R.A.N. Trucking Company, now assigned for hearing on January 27, 1981 at Pittsburgh, Pa is transferred to Modified Procedure.
- MC 146892 (Sub-13F), R & L Transfer, Inc., now assigned for hearing on January 21, 1981 at Columbus, Oh is transferred to Modified Procedure.
- MC 123048 (Sub-462F), Diamond Transportation System, Inc., now assigned for hearing on January 22, 1981 at Nashville, Tn is transferred to Modified Procedure.
- MC 69224 (Sub-51F), H & W Motor Express Company, now assigned for hearing on January 19, 1981 (4 days) at Davenport, Ia in a hearing room to be later designated.
- MC 107605 (Sub-23F), Advance-United Expressways, Inc., now assigned for hearing on January 27, 1981 (9 days) at St. Paul, Mn in a hearing room to be later designated.
- MC 60014 (Sub-190F), Aero Trucking, Inc., now assigned for hearing on January 20, 1981 is postponed to January 27, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 37554, Cereal Food Processors, Inc., V. Norfolk And Western Railway Company, now assigned for Prehearing Conference on February 18, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 37515 Burlington Northern, Inc. V. Baltimore And Ohio Railroad Company, Et Al, now assigned for Prehearing Conference on February 19, 1981 at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 119988 (Sub-246F), Great Western Trucking Co., Inc., now assigned for hearing on February 28, 1981 (1 day) at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 135524 (Sub-149F), G. F. Trucking Company, now assigned for hearing on February 27, 1981 (1 day) at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 146962F, Mulder Trucking Company, now assigned for hearing on January 14, 1981 at St. Paul, Mn is transferred to Modified Procedure.

St. Paul, Mn is transferred to Modified Procedure.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2096 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

### Motor Carrier; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

### FINDINGS:

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 13, 1981 (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those



with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

On or before March 30, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

#### Volume No. OP4-203

Decided: January 16, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton and Liberman.

MC 150496 (Sub-8F), filed January 5, 1981. Applicant: P.A.M. TRANSPORT, INC., P.O. Box 188, Tonitown, AR 72770. Representative: Paul A. Maestri (same address as applicant). Transporting *general commodities*, between Ft. Calhoun, NE, Arbyrd, Hornersville, and Whitewater, MO, Gosnell, AR, Roseville, IL, Randolph, IA, Clayton, Commerce, and Talihina, OK, Treece, KS, Griffith and Merville, IN, Cayce, KY, Lanare and Mentone, CA, Pierce, WV, and Ballston and Milton, NY, on the one hand, and, on the other, points in the U.S.

**Note.**—The purpose of this application is to substitute motor service for abandoned rail service.

MC 151526 (Sub-1F), filed December 29, 1980. Applicant: TRIAD TRANSPORTATION SERVICES, INC., P.O. Box 20714, Greensboro, NC 27420. Representative: Jerald A. Honeycutt (same address as applicant). Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), between points in the U.S.

#### Volume No. OP2-160

Decided: January 19, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 58923 (Sub-62), filed December 19, 1980. Applicant: GEORGIA HIGHWAY EXPRESS, INC., 2090 Jonesboro Road, SE, P.O. Box 6944, Atlanta, GA 30315. Representative: Fritz R. Kahn, Suite 1100, 1660 L St., N.W., Washington, DC 20036. Transporting *general commodities*, between Lexie, MS, Warnerton, Clifton, Franklinton, Zona, and Isabel, LA, on the one hand, and, on the other, points in the U.S. Applicant intends to tack this authority with its otherwise authorized regular route authority.

**Note.**—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 153272 (Sub-1), filed December 16, 1980. Applicant: S & H CONTRACTORS, INC., Box 187 I-75 and Hwy 16, Walton, KY 41094. Representative: Rudy Yessin, 113 West Main St., Frankfort, KY 40601. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

#### Volume No. OP3-138

Decided: January 7, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier and Hill. (Member Parker not participating.)

MC 7555 (Sub-78F), filed December 24, 1980. Applicant: TEXTILE MOTOR FREIGHT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K St., N.W., Suite 300, Washington, DC 20006. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 116325 (Sub-88F), filed December 22, 1980. Applicant: JENNINGS BOND, d.b.a. BOND ENTERPRISES, P.O. Box 8, Lutesville, MO 63762. Representative: Jennings Bond (same address as applicant). Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 120364 (Sub-30F), filed December 24, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Rd., Rockford, IL 61109. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Rd., Madison, WI 53719. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 142284 (Sub-2F), filed December 16, 1980. Applicant: AIR COURIER'S INTERNATIONAL, INC., c/o James A. Ullman, 2150 E. Thomas Rd., Phoenix, AZ 85016. Representative: James A. Ullman (same address as applicant). Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 145435 (Sub-9F), filed December 29, 1980. Applicant: WESTERN AG INDUSTRIES, INC., 2750 North Parkway Dr., Fresno, CA 93711. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 145855 (Sub-7F), filed December 19, 1980. Applicant: JOHN RAY TRUCKING COMPANY, INC., Highway 93, P.O. Box 206, Eastaboga, AL 36260. Representative: John W. Cooper, 253A Desoto Parkway, Mentone, AL 35984. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

#### Volume No. OP5-03

Decided: January 5, 1981.

By the Commission, Review Board No. 1, members Carleton, Joyce and Jones.

MC 145459 (Sub-3F), filed December 8, 1980. Applicant: SERVICE EQUIPMENT & TRUCKING, INC., Box 162, Mattoon, IL 61932. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 149309 (Sub-1F), filed December 16, 1980. Applicant: MID-ISLAND MESSENGER SERVICE, INC., 1044 Northern Blvd., Roslyn, NY 11576. Representative: Piken & Piken, Queens Office Tower, 95-25 Queens Blvd., Rego Park, NY 11374. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

#### Volume No. OP5-05

Decided: January 7, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 146568 (Sub-10F), filed December 12, 1980. Applicant: PHOENIX BIRD, INC., Suite 118, 1 Neshaminy Plaza, Cornwells Heights, PA 19020. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, N.W., Washington, D.C. 20036. Transporting *general commodities* (except household goods as defined by the Commission, hazardous or secret materials and sensitive weapons ammunitions), for the U.S. Government between points in the U.S.

MC 153339F, filed December 19, 1980. Applicant: ROOSEVELT, INC., P.O. Box 1358, Peterson, NJ 07509. Representative: Harold L. Reckson, 33-28 Halsey Rd., Fair Lawn, NJ 07410. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 153359F, filed December 18, 1980. Applicant: COSMOPOLITAN EXPRESS, INC., 2881 Carl Boulevard, Elk Grove, IL 60007. Representative: Patrick H. Smyth, 19 South LaSalle Street, Suite 401, Chicago, IL 60603. Transporting (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S., and (2) *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

#### Volume No. OP5-08

Decided: January 8, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

MC 145559 (Sub-7F), filed December 18, 1980. Applicant: NORTH ALABAMA TRANSPORTATION, INC., P.O. Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between LaSalle, Hanska, Amiret, Ghent, Marshall, Minneota, Taunton, Porter, Canby and Burr, MN, Gary, SD, and Shelby, AL, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for complete abandonment of rail carrier service.

MC 149308 (Sub-8F), filed December 29, 1980. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., P.O. Box P, Sellersburg, IN 47172. Representative: William P. Jackson, JR., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities* (except household

goods as defined by the Commission, and classes A and B explosives), between Cheviot, Bridgetown, and Miami, OH, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 153308F, filed December 19, 1980. Applicant: WESLEY A. MONSHAUGEN, d.b.a. MONSHAUGEN, P.O. Box 437, Webster, SD 57574. Representative: Wesley A. Monshaugen (same address as applicant). Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, *agricultural limestone and other soil conditioners*, and *agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

#### Volume No. OP5-11

Decided: January 9, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

MC 152669 (Sub-1F), filed December 22, 1980. Applicant: C & C TRUCKING, INC., Route 9, Box 222A, Statesville, NC 28677. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting, for or on behalf of the United States government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 153358F, filed December 16, 1980. Applicant: RAY TRANSPORT, INC., d.b.a. S.E.A. FREIGHT FORWARDERS, 914 Stedman Street, Ketchikan, AK 99901. Representative: Ray Weberg, P.O. Box 81203, 850 South Othello St., Seattle, WA 98108. Transporting *general commodities* (except household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 153408F, filed December 22, 1980. Applicant: DON CASE AND SONS, INC., Box 7, Little Bear Rte., Cheyenne, WY 82001. Representative: Janice I. Case (same address as applicant). Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers*, and *other soil conditions* by the owner of the motor vehicle in such vehicle except in

emergency situations, between points in the U.S.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2933 Filed 1-26-81; 8:45 am]  
BILLING CODE 7035-01-M

#### Motor Carriers; Permanent Authority Decisions

Decided: January 7, 1981.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the *Federal Register* of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the *Federal Register* issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 13, 1981 (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to

the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

Agatha L. Mergenovich,  
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 148654 (Sub-1F), filed October 8, 1980, previously published in the Federal Register of October 24, 1980. Applicant: CLOVERLEAF TRANSPORTATION, INC., 14 Kerri Lane, Spring Valley, NY 10977. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. Transporting *beverages, and material, supplies and commodities* used in the manufacture, sale and distribution of beverages, between points in NY, NJ, PA, CT, RI, MA, NH, VT, ME, DE, MD, VA, WV, NC, SC, GA, FL, AL, MS, LA, AR, MO, IA, MN, WI, IL, KY, TN, OH, ID, MI, and TX.

Note.—This republication corrects the commodity description.

[FR Doc. 81-2029 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

#### Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon

request and payment to applicant of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipped "under contract".

#### Volume No. OP3-134

Decided: January 6, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 106074 (Sub-452F), filed December 23, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. at U.S. Hwy 221 South, P.O. Box 727, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *general commodities*

(except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 129664 (Sub-8F), filed December 19, 1980. Applicant: COMET MESSENGER AND DELIVERY SERVICE, INC., 2 River Rd., Chatham, NJ 07928. Representative: Norman Weiss, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *shipments* weighing 100 pounds or less, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 147784 (Sub-1F), filed December 16, 1980. Applicant: TRANS-WAY, INC., Rte. 1 & Inman Ave., Avenel, NJ 07001. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland, NJ 08904. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

#### Volume No. OP3-136

Decided: January 6, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 152394, filed October 14, 1980. Applicant: ROBERT S. HOSKINS, 1818 Roanoke Ave., Lakeland, FL 33803. Representative: Robert S. Hoskins (same address as applicant). Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2000 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

#### Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) will be rejected. A petition for intervention without leave

must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

#### Permanent Authority Decisions

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive

amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30

days after publication, or the application shall stand denied.

**Note.**—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

#### Volume No. 397

Decided: January 2, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

MC 142999 (Sub-19F), filed July 23, 1979 (Republication) previously noticed in *Federal Register* issue of February 12, 1980. Applicant: TRANSPORT MANAGEMENT SERVICE CORPORATION, P.O. Box 39, Burlington, NJ 08016. Representative: Ronald N. Cobert, Suite 501, 1730 M St. NW, Washington, DC 20036. Transporting *paper and paper products, and materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products, between points in CA, IL, IN, MI, OR, PA, and WA, on the one hand, and, on the other, points in AL, AZ, CA, CO, CT, DE, FL, GA, ID, IL, IN, LA, MA, MD, MI, MO, MS, NC, NJ, NM, NV, NY, OH, OR, PA, RI, SC, TX, VT, WA, and WI, under a continuing contract(s) with Simpson Paper Company, of Miquon, PA.

**Note.**—This republication shows the authority requested by the new contracting shipper.

#### Volume No. 398

Decided: January 2, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 146448 (Sub-17F), filed April 10, 1980, initially published in the *Federal Register* on July 29, 1980, and republished October 24, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *tile, and materials, equipment and supplies* used in the installation, manufacture, and sale of tile (except commodities in bulk), between the facilities of American Olean Tile Co., at (a) Roseville, CA, (b) Cloverport and Lewisport, KY, (c) Olean, NY, (d) Lansdale and Quakertown, PA, and (e) Jackson, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

**Note.**—This application is republished to show the origin point of Lewisport, KY, in lieu of Lewisburg.

#### Volume No. 399

Decided: January 2, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 119988 (Sub-249F), filed April 28, 1980. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245. Transporting (1) *power transmission machinery* (except articles requiring special equipment), and (2) *parts, attachments, accessories, and supplies* for power transmission machinery (except articles requiring special equipment), between Chambersburg, PA, Chicago, IL, Dallas, TX, Atlanta, GA, San Leandro, CA, Trenton, TN, and Tulsa, OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136228 (Sub-41F), filed March 18, 1980. Applicant: LUISI TRUCK LINES, INC., P.O. Box H, Milton-Freewater, OR 97862. Representative: Philip G. Skofstad, 1525 N.E. Weidler St., Portland, OR 97232. Transporting *beer and wine*, (except in bulk, in tank vehicles) from Portland, OR, Vancouver, WA, and points in CA to Walla Walla, Kennewick and Clarkston, WA.

MC 143059 (Sub-122F), filed May 12, 1980, initially published in the Federal Register on August 12, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Clayte Binion, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting (1) *insulating materials*, and (2) *equipment, materials, and supplies* used in the installation and production of the commodities in (1), between Pueblo, CO, and Fontana, CA, on the one hand, and, on the other, points in the United States in and west of NM, CO, WY, and MT.

Note.—This application is republished to show the corrected territorial description.

MC 148679 (Sub-2F), filed June 6, 1980, previously noticed in Federal Register issue of July 31, 1980. Applicant: SHEL PRODUCTS, INC., d.b.a. SHELTON TRUCKING, 2211 East DuPont Ave., Belle, WV 25015. Representative: John M. Freidman, 2930 Putnam Ave., Hurricane, WV 25526. Transporting *such commodities* as are dealt in by grocery houses (except commodities in bulk) between Kenova, WV, points in KY on and east of Interstate Hwy 75, those in Ohio on and south of US Hwy 50 and on and east of US Hwy 23, and those in WV on and south of US Hwy 50, on the one hand, and, on the other, points in AL, FL, GA, IN, KS, KY, MD, MO, NC, OH, PA, SC, TN, and VA.

Note.—This republication broadens the territorial description.

MC 150318 (Sub-1F), filed May 27, 1980, previously noticed in Federal Register issue of August 28, 1980. Applicant: TAYLOR WAREHOUSE &

TRUCKING COMPANY, INC., 14615 Anson Ave., Santa Fe Springs, CA 90670. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Contract carrier*, transporting *plastic materials, and materials* used in the manufacture of plastic materials, (except commodities in bulk), (1) between De Ridder, LA, Terre Haute, IN, and Mt. Vernon, NY, (2) from De Ridder, LA, Terre Haute, IN, and Mt. Vernon, NY, to points in AZ, CA, CO, NV, OR, TX, UT, and WA, and (3) from Santa Fe Springs, CA, to points in AZ, OR, and WA, under continuing contract(s) with Ampacet Corporation, of Santa Fe Springs, CA.

Note.—This republication changes the commodity description.

MC 150628 (Sub-1F), filed May 23, 1980. Applicant: IRMA SOMERS, d.b.a. BLITZ PACK, 1420 Peachtree St., NE, Atlanta, GA 30309. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Transporting *audit media, and other business records* (except as are used in the business of banks and banking institutions) and *articles* requiring security or courier type handling, between the facilities of Southern Bell Telephone & Telegraph Co., at (a) Atlanta, GA and (b) Gastonia and Charlotte, NC, under continuing contract(s) with Southern Bell Telephone & Telegraph Company, of Gastonia, NC.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2931 Filed 1-26-81; 8:45 am]  
BILLING CODE 7035-01-M

#### [Volume No. OP5-15]

#### Motor Carriers: Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of opposing verified statements must be filed with the Commission within 45 days after the date of this Federal Register notice. Applicant may file a verified statement in rebuttal within 60 days. Such pleadings shall comply with 49 CFR 1100.247 addressing specifically the issue(s) indicated as the purpose for republication. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

MC 140808 (Sub-4F) (republication), filed August 15, 1980, published in the Federal Register issue of September 10,

1980, and republished this issue. Applicant: GARY MATHENY, R.R. 1, Lebanon, NE 69036. Representative: Scott T. Robertson, P.O. Box 81849, Lincoln, NE 68501. A Decision of the Commission, Division 2, decided December 24, 1980, and served January 8, 1981, finds that the present and future public convenience and necessity require operations by applicant in Interstate or foreign commerce as a common carrier, by motor vehicle, over irregular routes, transporting non-exempt farm products, between points in Lancaster and Douglas Counties, NE, and Kansas City, MO, on the one hand, and, on the other, points in Decatur and Norton Counties, KS, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2932 Filed 1-26-81; 8:45 am]  
BILLING CODE 7035-01-M

#### [Ex Parte No. 297]

#### Rate Bureau Investigation (Shipper-Affiliation)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Reopening of Proceeding.

SUMMARY: The Interstate Commerce Commission is reopening Ex Parte No. 297, *Rate Bureau Investigation* in order to propose the elimination of Finding 11 of its decision in *Rate Bureau Investigation*, 349 I.C.C. 811 (1975), affirmed 351 I.C.C. 437 (1976). The Commission is also proposing the discontinuance of Ex Parte No. 297 *Rate Bureau Investigation* (Shipper-Affiliation) and vacation of all orders related to it.

DATES: Comments must be filed on or before February 26, 1981.

ADDRESSES: An original and 15 copies, if possible, of comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder or Jane Mackall (202) 275-7656.

SUPPLEMENTARY INFORMATION: Finding 11 of the Interstate Commerce Commission's (Commission) decision in *Rate Bureau Investigation*, 349 I.C.C. 811 (1975), affirmed 351 I.C.C. 437 (1976), prohibits carriers affiliated with shippers (shipper-affiliated carrier) from

serving on a rate bureau's board of directors, general rate committee, or any other committee affecting the ratemaking function without specific prior Commission approval. This prohibition was adopted after a rate bureau investigation conducted by the Commission's field personnel and after consideration of comments received in the course of that proceeding.

To administer Finding 11, the Commission instituted Ex Parte No. 297, *Rate Bureau Investigation* (Shipper-Affiliation), and by order served August 25, 1975, [40 FR 36206, Aug. 19, 1975], required shipper-affiliated carriers to apply for approval to participate on ratemaking boards and committees, and to submit detailed data concerning their shipper-affiliate relationships. A large number of shipper-affiliated carriers applied for approval and submitted the required data. Our proposal to eliminate Finding 11 and discontinue Ex Parte No. 297, *Rate Bureau Investigation* (Shipper-Affiliation), is based upon our review of that data, as well as on our reevaluation of the initial reasons for adopting the prohibition, and the prohibition's relation to some of the Commission's more recently established policies.

We no longer believe that the potential for anticompetitive behavior warrants retention of the elaborate filing and screening procedures. The prohibition was intended to prevent two possible forms of favoritism: (1) where a carrier assured traffic from an affiliated shipper obtains a competitive advantage over other carriers, and (2) where a commonly controlled carrier favors its affiliate's interests over the interests of other shippers. In adopting the prohibition the Commission stated that its investigation had revealed a number of questionable relations and practices, and that the investigative reports revealed documented examples of undue influence. It also emphasized the importance of eliminating even the appearance or possibility of malfeasance, misfeasance, undue influence, or conflict of interest.

However, the Commission admitted that there were no overt patterns of undue pressure, discrimination, or anticompetitive practices. It cited no specific abuses or problems. The prohibition was based largely on the belief that the mere existence of a shipper-affiliated relationship created a strong likelihood that favoritism would occur.

Our review of the applications for approval later submitted under Finding 11 shows that the shipper-affiliate relationship has not resulted in favoritism. The carrier applications have revealed that the amounts (or

percentages) of control which shipper-affiliated carriers exercise over their affiliated shippers (or vice versa), and the amounts (or percentages) of transportation services performed for or revenues received from their affiliated shippers have been minute. Where the amount of control of, or service performed for the affiliate is so small, it is doubtful that there would be even an appearance of undue influence or conflict. In short, our experience in administering Finding 11 convinces us that continued pre-screening is unnecessary.

The Motor Carrier Act of 1980 and the Commission's more recent policies concerning motor carrier entry protect against the potential forms of favoritism with which the prohibition is concerned, making the prohibition unnecessary. Shippers will have a wider choice of price and service options offered by an ever-expanding pool of carriers. This new competitive environment reduces the opportunity to engage in anticompetitive conduct. The carrier which attempts to favor its affiliated shipper will lose the business of other shippers to other carriers.

We note that the prohibition was challenged by parties in court, and affirmed in *Motor Carriers Traffic Ass'n, Inc. v. United States*, 559 F. 2d 1251 (4th Cir. 1977), cert. denied, 435 U.S. 1006 (1978). The Court's support of the prohibition does not negate our present power to remove it. The Court stated that the possibility of a conflict of interest was self evident, although none was actually shown. It further stated that it was rational for the Commission to enforce the prohibition where the possibility of conflict of interest was high, and to permit exemptions on a case by case basis.

In proposing elimination of the prohibition we do not retract our earlier statements, affirmed by the courts, that a possibility of conflict exists. But, based on our examination of the applications for approval submitted under Finding 11, we now believe that the likelihood of conflict of interest or undue influence is extremely low. A general prohibition, with approval only on a case by case basis, no longer appears necessary.

If Finding 11 is eliminated, there will be no need for the proceeding which administers it. Therefore, we also propose the discontinuance of Ex Parte No. 297, *Rate Bureau Investigation* (Shipper-Affiliation), and the vacation of the Commission's orders in that proceeding, served August 25, 1975; September 24, 1975; January 23, 1978; and February 15, 1978.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

This proceeding is instituted under the authority of 49 U.S.C. 10706, and pursuant to 5 U.S.C. 553.

Dated: January 14, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2028 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

### Long- and-Short-Haul Application for Relief (Formerly Fourth Section Application)

January 19, 1981.

This application for long-and-short-haul relief has been granted by the I.C.C.

No. 43893, Southwestern Freight Bureau, Agent (No. B-210), increased rates on common salt, in carloads, from origins in Kansas and Southwestern Territory, to destinations in Illinois, Northern, Southwestern, and Western Territories, in Supplement 97 to its Tariff ICC SWFB 2006-K, effective January 19, 1981. Grounds for relief—need for additional revenue.

The effective date of the involved schedules was advanced (on short notice authority) from January 25, 1981 to January 19, 1981. This precluded the Commission's Suspension Board from publishing the requested relief in the *Federal Register* in order to give interested parties an opportunity to protest.

By action of January 16, 1981, The Commission, Suspension Board, Members Fitzgerald, Halvarson, and O'Malley unanimously concluded to grant the requested relief in Thirty-Fourth Supplemental Long- and-Short-Haul Order No. 19743, subject to the proviso that the authority will expire 30 days' from January 16, 1981.

This notice is to advise that the Commission's Suspension Board will reopen this proceeding on its own motion (if not protested), to consider the expiration date of the authority. Interested parties wishing to object may file objections with the Suspension Board no later than the 10th day before the expiration date.

By the Commission,  
Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2703 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

**Expedited Procedures for Recovery of Fuel Costs Decision**

Decided: January 21, 1981.

In our decision of January 13, 1981, a 15.5-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 16.1 percent. Accordingly, we are authorizing that the surcharge for this traffic be increased to 16-percent. All owner-operators are to receive compensation at this level.

In addition, the surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators is increased to 2.8-percent, and that for the bus carriers to 6.0-percent. No change is authorized in the 1.7-percent surcharge for United Parcel Service.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

*It is ordered that:* This decision shall become effective Friday 12:01 a.m. January 23, 1981.

By The Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clepp, Trattum, and Gilliam. Chairman Gaskins absent and not participating.

Agatha L. Mergenovich,  
Secretary.

**Appendix.—Fuel Surcharge**

Base date and price per gallon (Includes tax)	
January 1, 1979	63.5¢
Date of current price measurement and price per gallon (including tax)	
January 19, 1981	123.9¢

	Transportation performed by—			
	Owner operator <sup>1</sup>	Other <sup>2</sup>	Bus carrier	UPS
Average percent fuel expenses (including taxes) of total revenue	(1)	(2)	(3)	(4)
	16.9	2.9	6.3	3.3

	Transportation performed by—			
	Owner operator <sup>1</sup>	Other <sup>2</sup>	Bus carrier	UPS
Percent surcharge developed	16.1	2.8	6.0	2.5
Percent surcharge allowed	16.0	2.8	6.0	1.7

<sup>1</sup> Apply to all truckload rated traffic.  
<sup>2</sup> Including less-than-truckload traffic.  
<sup>3</sup> The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).  
<sup>4</sup> The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 81-2904 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

[No. 37403]

**Consolidated Rail Corporation—Petition To Eliminate Docket No. 28300 Class Rate Prescription**

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision.

**SUMMARY:** By final decision issued January 19, 1981, the Commission has vacated its earlier orders in docket No. 28300. Those orders established a mandatory nationwide system of uniform railroad classification. The Commission found that continuing the prescription would be inconsistent with the 4R Act and the Staggers Rail Act of 1980.

**FOR FURTHER INFORMATION CONTACT:** Richard Felder or Jane Mackall; (202) 275-7656.

**SUPPLEMENTARY INFORMATION:** Copies of the complete decision are available from the Secretary, I.C.C., Washington, D.C., 20423.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

Dated: January 9, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trattum, Alexis, and Gilliam.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-2702 Filed 1-26-81; 8:45 am]

BILLING CODE 7035-01-M

**DEPARTMENT OF JUSTICE****Antitrust Division****United States v. United Technologies Corporation**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)

[APPA], the Antitrust Division publishes the following public comments on the proposed final judgment in the case of *United States v. United Technologies Corporation*. 78 CV 580, Northern District of New York. Also published, herewith, are the responses of the Department of Justice to such comments. This publication completes compliance with the provisions of the APPA.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

November 21, 1980.

Mr. Ralph T. Giordano,  
Chief, New York Office, Antitrust Division,  
Department of Justice, Room 3620, New  
York, NY 10278

Subject: Comments on the Proposed Consent Judgement in the Matter of *United States v. United Technologies Corporation*, 78 CV 580.

Dear Mr. Giordano: The Trane Company, as a major manufacturer of heating, ventilating, and air conditioning (HVAC) equipment and building control systems and a competitor of Carrier Corporation, has a direct interest in the proposed Consent Judgement. We have identified several areas that we believe should be changed. The following comments are provided in accordance with 15 U.S.C. 16 (b) through (h).

We find the proposed Consent Judgement unacceptable because it is replete with provisions which will lessen competition in the manufacture and sale of HVAC products and because such provisions further entrench Carrier Corporation as the largest competitor in the HVAC market by its preferential access and the use of United Technologies' broad technology base. This is of particular concern to us in the areas of design and analysis software for turbo machines, such as axial flow turbines and centrifugal compressors, and solid state microprocessor technology for use in controlling HVAC equipment and systems. Several preferential effects of the proposed Consent Judgement are discussed in the following paragraphs:

**1. Time of Disclosure and Relative Effects.**—United Technologies may fully disclose to Carrier any of its patents, enabling know how, or trade secrets without any disclosure to Carrier's competitors (Exhibit A people) unless and until Carrier licenses or uses such technology to make an HVAC product in the United States.

This will permit Carrier to completely develop an HVAC product using United Technologies' trade secrets or technology over a period of many years, including the manufacturing and marketing of the product in foreign countries, without United Technologies being obligated to disclose such technology to competitors. This condition can occur at all times before Carrier makes, uses or sells the product in the United States. This lead time, during which competitors have no access to the technology, could easily be five or more years.

The aforementioned delay in disclosing technology to competitors will also permit Carrier considerable time to develop its own improvement inventions pertaining to HVAC

products and control systems before disclosure to competitors. Thus, competitors, in addition to loss of lead time, would also face Carrier's patent rights, which may bar them from the best and most practical uses of technology in the HVAC industry.

Once all of the conditions have occurred to make United Technologies' trade secret information available to competitors, the competitor can be required to take a license for at least one year in order to gain access this information under the terms of the Consent Judgement and agree to maintain such information confidential for an indefinite period of time, with no limitation as to the possible magnitude of the damages in the event of the competitors' disclosure. There is no requirement that Carrier be treated equally, therefore, an unreasonable advantage is provided to Carrier.

**2. Use of a Third Party Manufacturer.**—Carrier could be given a right to disclosure of United Technologies' trade secret to a third party for purposes of manufacturing a product for Carrier's sale, while a similar right of a competitor can be withheld because of the competitor's obligation not to disclose to a third party. This gives Carrier preferential access to trade secrets and will lessen competition.

**3. Relative Cost of User and License Rights.**—Carrier could be given a royalty-free right to license or use of United Technologies' patents, patent enabling know how, or trade secrets while competitors can be obligated to pay a royalty, including a royalty for one full year, merely to obtain access to the know how and trade secret information. Such costs are unrelated to costs borne by Carrier for similar rights and create a competitive advantage for Carrier.

**4. Relative Foreign Country Use and License Rights.**—Carrier can be given full rights to license or use of United Technologies' patents, enabling know how, and trade secrets in foreign countries while competitors are denied any similar rights. Carrier could manufacture a product using such patents, know how or trade secrets in Canada for distribution in the United States while competitors are denied access to such information on the basis that Carrier does not make the product in the United States.

Moreover, the agreement would permit a situation in which Carrier is given the right to use United Technologies' patents, enabling know how, and trade secrets in the United States and foreign countries while competitors could be denied all foreign country rights, thereby forcing competitors using licensed technology in the United States to develop two different designs at additional costs in order to compete in world market areas with Carrier.

**5. Consent Agreement Coverage of Trade Secrets.**—Non-written trade secrets, such as oral communications, floppy disc machine readable only computer programs or mechanical services rendered by United Technologies for Carrier, would not appear to fall within the scope of the Consent Judgement because they are not written trade secrets. These items should be included within the scope of the judgement to minimize Carrier's preferential access to trade secrets.

**6. Special Use of Technical Know How Not Covered by the Consent Decree Available Only to Carrier.**—Trade secrets and enabling know how technology disclosed to and used by Carrier merely to avoid or terminate a product design, even though of high value in terms of possible savings, would not be made available to competitors because such technology is not used to make a product. Similarly, computer programs that could save design, manufacturing or marketing costs would not be available under the proposed Consent Decree terms. Both situations could enhance Carrier's competitive position, yet neither is covered by the proposed Consent Judgement.

**7. Transfer Sales and Effect on Competition.**—United Technologies could build products and sell them to Carrier with unreasonable profit margins and also sell them to Carrier's competitors on a non-discriminatory basis at equal prices. This would create conditions for Carrier to sell these products at discounts below those possible by competitors, yet allowing United Technologies to realize significant profits. The effect of these situations is to reduce competition. To prevent these situations, the transfer prices for products sold by United Technologies to Carrier must be policed to ensure that sales to Carrier are at fair market prices with reasonable margins, to allow Carrier's competitors to market these products at reasonable and competitive prices.

Under the terms of the proposed Consent Judgement, Carrier's competitors are likely to find themselves with clear disadvantages in the areas of lead time, improvement inventions, cost of product development, cost of access to United Technologies' information, limitations on third party suppliers, cost of licenses and competitive positions in foreign markets. The net effect of these disadvantages placed upon Carrier's competitors, we believe, will be to lessen their competitive position and shift a greater portion of the HVAC market to Carrier. Further, we are concerned about enforcement of the proposed Consent Judgement against United Technologies. We question whether the government will aggressively enforce the judgement or if enforcement will be left to individual actions.

We believe that the proposed Consent Judgement does not eliminate anti-competitive effects and is not a proper solution to the antitrust problem flowing from the acquisition of Carrier by United Technologies. The judgement should be revised to address the points we have raised and an effective enforcement plan should be developed and implemented.

Very truly yours,  
James Wolf.

U.S. Department of Justice,  
Antitrust Division,  
New York Office, January 15, 1981.

Re United States v. United Technologies Corporation, 78 CV 580 (N.D.N.Y.)

Mr. James E. Wolf,  
Vice-President, The Trane Company,  
Washington Government Relations, 2020  
14th Street, North Arlington, Virginia  
22201.

Dear Mr. Wolf: In accordance with the provisions of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), this response is made by the Government to the written comments concerning the proposed final judgment in the captioned action submitted by The Trane Company ("Trane") on November 21, 1980, to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice.

The proposed judgment and a competitive impact statement were filed with the Court on September 11, 1980 and published in the Federal Register on September 24, 1980. The written comments from Trane will also be filed with the Court and published in the Federal Register together with this response.

The proposed judgment provides important relief in three areas: a) it requires United to grant to any person who makes a written application within ten years of the entry of the judgment a license to practice the patents, the related know how necessary to practice the patents and any unpatented heating and air conditioning Trade Secrets<sup>1</sup> which United owns or may acquire within seven years of the entry of the judgment, and which—in the case of patented technology—has been licensed to or used by Carrier and—in the case of related know-how and Trade Secrets—has been used by Carrier to make heating and air conditioning equipment or components; b) it restricts United from acquiring any other domestic manufacturer of heating and air conditioning equipment for a period of ten years; and c) it imposes certain duties and restrictions upon United designed to prevent the occurrence of reciprocity effects and reciprocal dealing.

United may restrict the use of any licenses which it grants under the judgment to the manufacture and sale of heating and air conditioning equipment or to the manufacture of components for use on such equipment produced by the licensee.

The proposed consent judgment is designed to prevent the occurrence of the anticompetitive effects of the acquisition alleged in the complaint. The technology licensing provisions of the proposed judgment are aimed at preventing Carrier from enhancing its position in the heating and air conditioning equipment market as a result of technology received from United with resultant permanent and significant structural changes in that market. These licensing provisions seek to protect against any likelihood that Carrier will receive so significant a competitive advantage as a result of the transfer of technology from United that it will be entrenched as a dominant leader in the manufacture and sale of that equipment.

The proposed judgment protects against this anticompetitive danger by mandating that any technology, subject to the proposed judgment, that United transfers to Carrier be made available for a reasonable royalty or

<sup>1</sup>The decree defines Trade Secret to mean: Any written information that discloses any unpatented invention, process, formula, method or computer software which is treated as secret by defendant . . . is unobvious . . . and is novel in that it has no commercial equivalent that is used by, or is commercially available to, any of Carrier's competitors . . .



fee to any person for use in the manufacture in the United States of heating and air conditioning equipment, or of components made for such person's heating and air conditioning equipment. Thus, it eliminates the primary competitive advantage which it was alleged that Carrier would obtain from the acquisition. Additionally, by enabling such persons to avail themselves of United's technology (provided it has been licensed to or used by Carrier), the judgment may affirmatively stimulate competition in research and development to improve the performance and efficiency of heating and air conditioning equipment and components, including controls, because companies other than Carrier will be able to add United's store of knowledge to their own and use it to produce newer, better and more efficient products.

The provision of the proposed judgment that prohibits United from acquiring any other domestic manufacturer of heating and air conditioning equipment without the consent of the Government or the approval of the Court likewise protects against the entrenchment of Carrier in the heating and air conditioning industry by preventing it from increasing its share of the market through an anticompetitive acquisition.

Finally, the proposed judgment provides safeguards designed to prevent United from exploiting any reciprocal structure in the magnet wire industry created by the acquisition and to discourage reliance upon that structure by suppliers of fan and hermetic motors.

#### Comment 1

Trane comments that the proposed judgment allows United to disclose technology to Carrier without concomitant disclosure to Carrier's competitors until Carrier is granted a license by United or uses such technology to make a HVAC product in the United States. Trane fears that Carrier may gain a significant advantage over its competitors as a result of having substantial lead time to develop a product through technology which United transfers to it for development work, without a formal license, and not to actually make a product. Trane also raises the same concern through a variation, that is, it envisions United turning over technology to a foreign subsidiary or affiliate of Carrier for use and manufacture outside the United States. Under the proposed judgment such a turnover would not have to be disclosed nor would such technology have to be made available for licensing.

The Government believes that any possible advantages that might accrue to Carrier in the United States by reason of United's transfer of technology to a foreign subsidiary or affiliate of Carrier has been eliminated by amendments in Paragraphs IV (A), (C) and (D) of the proposed judgment which have been agreed upon by the parties. Set forth below are the related provisions of the proposed judgment with the additions italicized and the deletions placed in brackets.

IV

(A) Defendant is ordered and directed to grant to any person who makes a written

application therefor within a period of ten (10) years from the date of entry of this Final Judgment, a non-exclusive license to make, use and vend HVAC Equipment or HVAC Components in the United States under any United States letters patent which defendant, or any foreign subsidiary or affiliate of defendant, owns or may acquire within a period of seven (7) years from the date of entry of this Final Judgment, such license to be for the full unexpired term of each licensed patent; provided that such patent has been licensed to or used by Carrier or any foreign subsidiary or affiliate to make HVAC Equipment or HVAC Components [in the United States] \* \* \*.

(C) Defendant is further ordered and directed to grant to any person who has been granted a patent license pursuant to Paragraph (A) of this Section, and who makes written application therefor within a period of ten (10) years from the date of entry of this Final Judgment, a non-exclusive license to use for the purpose of making, using and vending HVAC Equipment or HVAC Components in the United States, any written technical information which defendant, or any foreign subsidiary or affiliate of defendant, owns or may acquire within a period of seven (7) years from the date of entry of this Final Judgment and which is necessary to enable a person reasonably skilled in the art to practice any invention claimed in the licensed patents to make HVAC Equipment or HVAC Components, such license to be terminable by the licensee if the technical information lawfully becomes within the public domain; provided that such written technical information has been used by Carrier or any foreign subsidiary or affiliate to make HVAC Equipment or HVAC Components [in the United States] \* \* \*.

(D) Defendant is further ordered and directed to grant to any person who makes a written application therefor within a period of ten (10) years from the date of entry of this Final Judgment, a non-exclusive license to use for the purpose of making, using and vending HVAC Equipment or HVAC Components in the United States any HVAC Trade Secret which defendant, or any foreign subsidiary or affiliate of defendant, owns or may acquire within seven (7) years from the date of entry of this Final Judgment, such license to be terminable by the licensee if the HVAC Trade Secret lawfully becomes within the public domain; provided that such HVAC Trade Secret has been used by Carrier or any foreign subsidiary or affiliate, to make HVAC Equipment or HVAC Components [in the United States] \* \* \*.

These changes require United to make available for licensing any of its patents and related technology which have been licensed to or used by Carrier or any of its foreign subsidiaries or affiliates, as well as any United trade secrets which have been used by Carrier or any of its foreign subsidiaries or affiliates, to make HVAC equipment and components. The Government believes that these changes also address the concerns raised by Trane's Fourth Comment.<sup>2</sup>

<sup>2</sup> Trane's Fourth Comment reads as follows: Carrier can be given full rights to license or use of United Technologies' patents, enabling know-how,

The Government believes that Trane's comments concerning the lead time available to Carrier to apply United's technology to the manufacture of HVAC equipment but not available to Carrier's competitors does not require amendment of the proposed judgment nor withdrawal of the Government's consent to the entry thereof. United is obligated under the proposed judgment to license its patents and related know-how to competitors at the time Carrier receives a license. This would put such competitors on an equal footing regarding the lead time available for research towards product development.

United and the Government agree that, in the absence of a license to Carrier, Paragraph IV (G) of the proposed judgment requires United to promptly disclose, on the public record, the fact that it has determined to allow Carrier to use a patent, related know-how or trade secret, whether it is used to make HVAC equipment or components or not. In pertinent part, Section IV (G) provides:

"Thereafter, upon, or as promptly as reasonably practicable after, a determination by defendant to license to Carrier or permit Carrier to use any HVAC Patent or HVAC Trade Secret, but in no event later than forty-five (45) days after the use by Carrier of any HVAC Patent or HVAC Trade Secret, or later than fifteen (15) days after the grant by defendant of a written license to Carrier of any HVAC Patent or HVAC Trade Secret, or of the written determination by defendant to permit Carrier to use any HVAC Patent or any HVAC Trade Secret, defendant shall file with this Court on the public record and submit in writing to all those persons described in this Paragraph (G) who have requested such information in writing, a listing of such HVAC Patents or HVAC Trade Secrets, together with a statement as to the availability of technical information related to each such HVAC Patent as provided in Paragraph (C) of this Section."

While the right to seek a license may not arise until Carrier first uses the United patent to make HVAC equipment or components, nothing would prevent a competitor from doing research in the designated area before that time. Our investigation in connection with this case indicates that it is generally not too difficult to design around technological patents in the HVAC area. Moreover, it is generally accepted, according to information obtained during our investigation, that once some technology has been developed by one firm, applied to

and trade secrets in foreign countries while competitors are denied any similar rights. Carrier could manufacture a product using such patents, know-how or trade secrets in Canada for distribution in the United States while competitors are denied access to such information on the basis that Carrier does not make the product in the United States.

Moreover, the agreement would permit a situation in which Carrier is given the right to use United Technologies' patents, enabling know-how, and trade secrets in the United States and foreign countries while competitors could be denied all foreign country rights, thereby forcing competitors could be denied all foreign country rights, thereby forcing competitors using licensed technology in the United States to develop two different designs at additional costs in order to compete in world market areas with Carrier.

HVAC equipment and components and introduced, competitors need substantially less time to duplicate the development through reverse engineering—a relatively common industry practice.

The early identification of the United patent at the time United first permits Carrier to use it, the availability of the patent and related know-how at the inception of any manufacturing use and access to the end product of the patent's application once it is introduced, make it unlikely that Carrier's use of that patent will serve to confer so substantial a competitive advantage as to entrench Carrier in the sale of HVAC equipment and components.

In any event, Trane's concern is not primarily focused on Carrier's use of United patents where the technology so applied is not the result of a prolonged developmental effort by Carrier ("five years or more" to use Trane's example) or where the fruits of Carrier's effort are reasonably susceptible to reverse engineering. In either instance, Carrier will have achieved little real advantage in terms of lead time. Similarly, Carrier's use of any United trade secret in either instance would afford little competitive advantage. It should also be noted that a patent (and related know-how) or trade secret so used by Carrier would, under the proposed judgment, have been described in a listing filed with the Court and mailed to interested parties when United first licensed or determined to permit Carrier to first use the patent or trade secret in any fashion—thus possibly alerting Carrier's competitors to at least the general areas of Carrier's developmental plans.

Trane's major concern seems to be that developmental work on a trade secret transferred by United to Carrier will take a long period of time to produce some HVAC equipment or component. Trane fears that it might take a competitor just as long to produce a comparable product and, since under the proposed judgment it would be unable to obtain a license for the trade secret prior to Carrier's use of it to actually make such equipment, Carrier would be selling its product for many years while the competitor was still trying to develop its product. It seems unlikely that any United technology which would require an extended effort over a prolonged period in order to develop an application to HVAC equipment or components would spawn so significant an application as to entrench Carrier, and would, at the same time, remain so obscure as to not be reasonably susceptible to reverse engineering.

In sum, the Government believes there is little, if any, real chance of Carrier gaining anything from United—which would not be made available pursuant to our proposed judgment or in some other fashion to Carrier's competitors—that would allow Carrier to obtain so significant a competitive advantage in the sale of HVAC equipment or components as to markedly change the structure or tip the competitive balance in the marketplace as it exists today.

In its First Comment Trane also expresses concern about the terms and conditions of any license granted to any of Carrier's competitors. The Government believes the

proposed judgment not only requires negotiation between United and any potential licensee but also enables a potential licensee to seek redress with the Court if it believes that United has acted unreasonably in the negotiating process. In such instance, the burden is upon United to prove that it has acted reasonably.

#### Comment 2

Trane comments that the proposed judgment provides Carrier with preferential access to and use of United's trade secrets. Trane notes that Carrier may disclose a United trade secret to a third party to manufacture a product for Carrier whereas a competitor who is licensed to use that trade secret under the proposed judgment may be precluded from taking similar action.

The Government believes that Carrier's ability to disclose United's trade secrets to third parties is not likely to confer so significant a competitive advantage on Carrier that it would become entrenched in the manufacture and sale of heating and air conditioning equipment. It seems improbable that Carrier would reveal a United trade secret that would confer such a significant competitive advantage. The unauthorized disclosure of trade secrets is difficult to police especially where they involve complex technology. High technology corporations such as United generally use every effort to avoid the disclosure of valuable technological trade secrets—particularly those susceptible to reverse engineering. In addition, in the past, Carrier has sought to avoid disclosing trade secrets to third parties engaged in the research, development and manufacture of HVAC components. Also, United is engaged in the manufacture and sale of a large array of other high technology equipment and any trade secret applicable to Carrier's lines of heating and air conditioning equipment may be equally applicable to United's other product lines. This too militates against any disclosure to third parties to manufacture heating and air conditioning equipment.

Even should Carrier disclose a United trade secret to a third party to manufacture heating and air conditioning equipment, it is unlikely—where the trade secret confers a significant competitive advantage—that the competitor licensee will not seek to maintain a substantial, secure in-house ability to utilize the technology. Many firms, including Trane, strive to maintain substantial in-house manufacturing capability for critical components. Finally to require that United permit all trade secret licensees to disclose the licensed trade secrets to third party manufacturers would—even where United retained the right to restrict disclosure by the third party manufacturers—result in such a proliferation of these secrets as to make meaningless the provisions of the proposed judgment that enable United to protect against unauthorized disclosure.

#### Comment 3

Trane is concerned that Carrier can be given royalty-free rights to United's technology while its competitors have to pay a fee to obtain access to that technology.

The proposed judgment safeguards against this concern by enabling anyone who applies

for a license to raise with the Court the question of what constitutes reasonable royalties, fees and other consideration for a license. The Court may assess the relative costs to Carrier and, for that matter other licensees, in determining a reasonable royalty fee. Under the circumstances, the difference in the cost of the technology to Carrier as compared to the cost to others is not likely to provide Carrier with any substantial competitive advantage in the sale of heating and air conditioning equipment.

#### Comment 4

See our response to Comment 1.

#### Comment 5

Trane notes that non-written trade secrets are not included in the definition of "HVAC Trade Secret." It states that oral communications, floppy disc machine readable only computer programs and mechanical services rendered by United for Carrier should be included within the definition of "HVAC Trade Secret."

Counsel for United has confirmed that United understands that floppy disc machine readable only computer programs are "written information" within the definition in the proposed judgment of "HVAC Trade Secret." Oral communications and mechanical services are not within this definition. It would be impractical for either the Government or United to seek to regulate or police every oral communication between United and Carrier personnel over a seven-year period. Moreover, such an attempt is unnecessary to guard against the possibility that Carrier will receive a significant competitive advantage in the manufacture and sale of heating and air conditioning equipment by reason of access to some oral trade secret or mechanical service. Our investigation in this case and in other cases and matters leads us to conclude that it is likely that any technological trade secret of significance owned by United is in some written form.

#### Comment 6

Trane states that United's technology, which is used by Carrier to avoid or terminate a product design, and computer programs that can save design, manufacturing or marketing costs will not be available for license under the proposed judgment. Trane notes that either use by Carrier could "enhance" Carrier's competitive position.

It is not the purpose of the proposed judgment to make all technology disclosed to or used in any fashion by Carrier available for licensing, nor to substitute United's and Carrier's research and development activities for those of other firms engaged in the manufacture and sale of heating and air conditioning equipment. The proposed judgment requires United to grant an applicant a license to practice the patents, related know-how necessary to practice those patents, and unpatented heating and air conditioning trade secrets which United owns or may acquire within seven years of the entry of the proposed judgment, and which—in the case of patented technology—has been licensed to or used by Carrier and—in the case of related know-how and trade secrets—

has been used by Carrier to make heating and air conditioning equipment or components. As such it seeks to protect—not against every conceivable benefit that Carrier may derive from United—but rather against the likelihood that Carrier will receive so significant a competitive advantage as to entrench it as a leader in the manufacture and sale of heating and air conditioning equipment. Based on our investigation in this case we have concluded that it is unlikely that a use by Carrier of United technology to avoid or terminate a product design would prove so significant as to entrench Carrier.

Moreover, any written computer program received from United and used by Carrier to make heating and air conditioning equipment and components would, if it were treated as a trade secret by United, and is unobvious and novel in that it had no commercial equivalent available to Carrier's competitors, be available for licensing pursuant to the proposed judgment.

#### Comment 7

Trane notes that the proposed judgment would permit United to sell products to Carrier at a high profit margin and to sell the same products to Carrier's competitors at a high but nondiscriminatory price thus allowing Carrier to discount the prices at which it sells its products below those of its competitors while United realizes significant profits on its sales of the product to third parties at high but nondiscriminatory prices.

This comment appears to be prompted by the fact that the proposed judgment provides that there is no obligation on United's part to license any patent or trade secret solely because of the sale by United to Carrier of an HVAC component where United makes the component available for purchase to other domestic manufacturers of HVAC equipment on a nondiscriminatory basis.

The proposed judgment does not relate to the transfer of products by United to Carrier because the Complaint in this case does not allege any anticompetitive effects resulting from any such product transfers.

The hypothesis raised by this comment is also in contract to United's assertion that it has for some time operated on a corporate profit center basis with incentives provided to the managers of its various divisions on the basis of each division's profitability.

Trane's concern in this regard may be somewhat unrealistic. It assumes that United, having some product which will confer a significant competitive advantage upon Carrier, will seek to avoid the licensing provisions of the decree and forego reasonable royalties—which would be considerable in view of the assumed importance of the product to the manufacture and sale of heating and air conditioning equipment—by instead transferring the product to Carrier at a high corporate charge in the hope of being able to gouge other equipment manufacturers in the sale of the product on the open market.

Trane is also concerned whether the Government will aggressively enforce the judgment.

The proposed judgment, when entered by the Court, will be enforced by the Government as is any consent judgment to

which the Government is a party. The proposed judgment contains provisions which will aid the Government in any enforcement efforts and protect against any failure by United to implement the requirements of the judgment.

For the reasons discussed above, the Government believes that the entry of the proposed judgment in the form modified to eliminate any advantage to Carrier from the use of United's technology outside the United States is in the public interest.

Sincerely yours,

Philip F. Cody,  
Attorney, Antitrust Division.

Duane, Morris & Heckscher,  
Attorneys at Law,  
Philadelphia, Pa. November 20, 1980.

Ralph T. Giordano, Esquire, Chief  
Phillip F. Cody, Esquire, Asst. Chief  
Antitrust Division, Department Justice, 36th  
Floor, 26 Federal Plaza, New York, NY  
10007.

Dear Mr. Giordano and Mr. Cody: These comments, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (Supp.) are submitted on behalf of members of the Air Conditioning Contractors of America ("ACCA") with its principal offices at 1228 17th Street, NW, Washington, DC 20036, to the proposed Final Judgment in *United States v. United Technologies Corp.*, 78 CV 580 (N.D. N.Y., filed but not entered, September 11, 1980).

These comments are submitted because the proposed Final Judgment against United Technologies Corporation ("United") does not address the anti-competitive impact which United's acquisition of Carrier Corp. ("Carrier") will have upon the market for repair and service of air conditioning equipment manufactured by Carrier. This is a serious omission in view of the plain fact that the after installation service of Carrier equipment was part of the Government's complaint and the subject of extensive testimony at the hearing on the Motion for Preliminary Injunction. For the reasons set forth below, ACCA and its members request that the proposed Final Judgment be modified before it is approved and entered by the Court.

ACCA's suggested modifications to the proposed consent judgment fall into two broad categories:

(1) Additional provisions are needed to overcome obvious anti-competitive effects of the acquisition on the service and repair market.

The principal suggestion in this category is that United divest itself of the servicing and repair of Carrier applied system equipment.

(2) Certain present provisions of the proposed judgment should be modified to extend any competitive benefits of the licensing provisions to the service and repair market.

These comments can be supplemented by affidavits, testimony, or ACCA's participation in negotiations with the Department of Justice and United counsel.

ACCA's comments follow this outline:

1. Description of ACCA and its membership.
2. The Government's complaint alleged adverse competitive effects from the

acquisition on the market for maintenance repair and service of Carrier air-conditioning equipment, but the consent judgment ignores this market.

3. Summary of reasons why the United acquisition of Carrier has serious anti-competitive consequences in the servicing of Carrier equipment.
  4. Description of Carrier and servicing of carrier air-conditioning equipment.
  5. Summary of Carrier's actions in restraint of trade in the servicing and repair of applied systems.
  6. Otis Elevator Co. (already owned by United) and Carrier, are natural partners to monopolize the entire market for servicing building equipment.
  7. Evidence in this case shows that United's acquisition of Carrier will have substantially anti-competitive effects in the market for servicing and repairing Carrier applied equipment.
  8. Additional provisions are necessary if the proposed consent judgment will be effective in preventing the acquisition from injuring competition in the after-installation service and repair market.
  9. Certain present provisions of proposed judgment should be modified to prevent competition from being further threatened by the acquisition.
  10. The proposed consent judgment is a major retreat by the Government from aggressive enforcement of section of the Clayton Act.
  11. Modification of the proposed judgement is superior to private litigation.
- Conclusion.

#### 1. Description of ACCA and Its Membership

ACCA was formed in 1968, and currently has over 1300 members. From 1968 through 1977, it was known as the National Environmental Systems Contractors Association, (NESCA). ACCA is incorporated under the laws of the State of Illinois.

The members of ACCA are engaged in the business of servicing air conditioning equipment in all 50 states of the United States. They range in size from small "one-man shops" to large organizations with 100 or more service employees. Generally, ACCA members maintain their business in cities with a population of 100,000 or over, with a service area radius up to 100 miles of their place of business. ACCA members' work consists of the servicing and repair of air conditioning equipment of all types and manufacture. Since Carrier is the largest single manufacturer of air conditioning equipment, most members of ACCA must acquaint themselves with Carrier equipment and often compete with Carrier's own repair and service function, but at the same time are dependent upon Carrier as the sole source of most replacement parts for Carrier brand air conditioning equipment.

The members of ACCA play a key role in the after installation market for the servicing and repair of air conditioning equipment. Air conditioning equipment is widely used throughout the United States, and is of vital importance to homebuilders and businessmen for enjoyable and healthy environments, particularly during the warm summer months. The air conditioning repair industry is a billion dollar-plus per year industry. A non-

functioning air conditioner can cause businessmen to lose revenues, can endanger the health of persons who cannot be subjected to extreme temperatures, and can close office buildings.

*2. The Government's Complaint Alleged Adverse Competitive Effects From the Acquisition on the Market for Maintenance Repair and Service of Carrier Air-Conditioning Equipment, but the Consent Judgment Ignores This Market*

The broad allegations of the Government's Complaint include the after installation service and repair market. It is of course obvious that a complex air conditioning system can not be "plugged in" and be expected to run forever. Maintenance, service and repair are essential. The Complaint notes that United is already engaged in "servicing of elevators, escalators and energy management systems". The testimony revealed how easily United's dominant position in elevator servicing could be extended to air conditioners and total building maintenance.

The Complaint alleges (§18) that "Control devices are used to monitor and govern the operation of the equipment . . . to improve the efficiency and performance of the system and/or to prevent damage to the machinery during its operations". This of course describes a maintenance and service function.

Similarly, in §18, the allegation that "Diagnostic and testing equipment . . . serve to locate potential malfunctions . . ." described a service and repair function. In §19 the allegation that United "possesses substantial technology . . . applicable to the improvement and more efficient use of . . . air conditioning system" directly puts the effect of the acquisition on the "use" of equipment in issue—and "use" is impossible without maintenance, service and repair. And §22 further alleges that United's ownership of Carrier will link together two companies engaged in the development of "associated equipment capable of use in connection with the improvement of the operation and efficiency of unitary and applied systems."

The testimony produced by the government at the hearing on the motion for preliminary injunction was greatly concerned with the anti-competitive effect of the acquisition on the servicing of Carrier equipment. See excerpts at pp. 18-24 below.

The Complaint's allegations cover both the manufacture and operation of air conditioning systems. The Complaint did not pretend that the anti-competitive effect of the acquisition terminated when the equipment left the manufacturer's door. However, the proposed consent judgment does stop at the factory door, and ignores the entire anti-competitive effect this acquisition will have on the maintenance, service and repair of Carrier equipment once it is installed.

*3. Summary of Reasons Why United's Acquisition of Carrier Has Serious Anticompetitive Consequences in the Servicing of Carrier Equipment*

1. The acquisition has horizontal aspects which concentrate a huge share of the market for servicing and repair of commercial building equipment in one company, United.

2. The acquisition will tend to preclude independent contractors from servicing Carrier equipment in buildings which have Otis elevators, which will deny building owners the benefits of competition.

3. The acquisition will preclude independent contractors from access to components and parts used in Carrier equipment, particularly when manufactured by United, which will tend to raise prices for components.

4. The acquisition will entrench Carrier in its monopoly power in the after-installation market for service and repair of Carrier applied equipment.

*4. Description of Carrier and Servicing of Carrier Air-Conditioning Equipment*

Judge Munson's Opinion 1978-79 Trade Cases ¶62, 393, (Dec. 5, 1978) explains the difference between unitary and applied systems. (See §§ II(A)5-33 of the opinion). Carrier has adopted a different policy and practice for the repair and servicing of its residential and unitary systems as opposed to applied systems.

a. *Residential and Unitary Systems*  
Carrier itself does not repair and service residential or unitary systems. Rather, Carrier appoints a distributor of Carrier parts in different cities throughout the United States, and authorizes independent service contractors to use the Carrier logo and service mark in repairing and servicing Carrier brand residential and unitary systems.

ACCA and its members do not seek any modification of the proposed judgment with respect to Carrier's policies or practices in the servicing of residential or unitary systems, because Carrier's practices in this market do not appear to be affected by the United acquisition of Carrier.

b. *Applied Systems*  
Carrier is itself heavily involved in the repair and servicing of its applied systems, which are used in large office buildings and apartment house complexes.

Carrier distributes parts for applied systems (centrifugal and absorption machines) through its Machinery & Systems Division (MSD), which also runs a Carrier-owned service component operating through local branch offices. Carrier makes replacement parts available to independent contractors through its Syracuse, New York headquarters. Independent contractors must buy through Syracuse. The same parts are available directly to building owners through the local Carrier-owned branch offices in major metropolitan areas, at the same price charged contractors.

Carrier is the dominant manufacturer of applied systems in the United States. The government's competitive impact statement adopts the allegations of the Complaint that "Carrier produced approximately 45% of the applied systems sold in the United States in 1977." (p. 3) and also states "the applied market is highly concentrated with three producers, including Carrier, accounting for about 90% of total industry sales." (p. 4). ACCA believes that Carrier's service work on its applied systems generates \$100 million annually in revenues. Thus, it is a substantial market.

ACCA and its members assert that the proposed consent judgment, unless modified, will dangerously increase the market power which Carrier now has and uses in the servicing and repair of its applied systems, to the prejudice of independent contractors and owners of Carrier applied systems.

For the reasons set forth below, the public interest requires a modification of the proposed consent judgment to protect against the decidedly anti-competitive impact the United acquisition of Carrier will have on the servicing and repair of Carrier applied system air conditioning equipment.

*5. Summary of Carrier's Actions in Restraint of Trade in the Servicing and Repair of Applied Systems*

Carrier's policies and trade practices in the servicing and repair of applied systems constitute a restraint of trade, exclude independent contractors from the share of the service and repair market they would otherwise enjoy, insulate owners of air conditioning equipment from competition by independent contractors, and increase the cost of service and repair over what it would be if Carrier's trade practices were restrained. The acquisition of Carrier by United will only further Carrier's ability to restrain trade in this market.

Two important facts serve as the backdrop for this discussion:

(1) Carrier enjoys approximately 45% of the sale of applied systems. Trane has most of the remaining share of the market with York the only other manufacturer.

(2) Replacement parts, which are a key aspect of the after-installation service and repair market, are not interchangeable among manufacturers of equipment. Thus, the owner of Carrier equipment is dependent on Carrier as the source of most replacement parts for applied systems. ACCA believes that the after-installation repair and service of Carrier equipment is a recognizable market or line of commerce or sub-market for antitrust purposes.

A summary of the most egregious trade practices by Carrier to the prejudice of the public and independent contractors is as follows:

(1) Carrier, the sole source of replacement parts for Carrier equipment, as well as a competitor in the service business, uses order information for replacement parts by independent contractors to go directly to the customer to get the service business.

A number of instances have been cited by different contractors where they have ordered a replacement part from Carrier, and then a serviceman employed by Carrier is given this information by Carrier's MSD parts unit, goes directly to the customer and offers to do the job at a cheaper price. This behind-the-scenes maneuver is sometimes compounded by Carrier's MSD parts unit advising the independent contractor that the part is "not in stock" or delivery must be delayed. However, somewhat miraculously, the part becomes available from Carrier's service component almost immediately if the customer will agree it can be installed and the equipment serviced by Carrier.

(2) *Pricing*  
Carrier sells replacement parts to independent contractors at the same price it

sells the same replacement parts to the building owner. Thus, the independent contractor is not allowed any mark-up, even though he has the expenses of determining which part should be ordered, its availability, pick up and delivery, and storage. Until several years ago, Carrier gave independent contractors a 25% discount. When Carrier began losing a substantial part of its servicing business for its MSD (applied systems) equipment, Carrier raised the price to independent contractors by canceling the discount. The net effect is that Carrier can now generally underbid independent contractors on the total service contract, because independent contractors need some margin of profit on replacement parts to recover their costs of operation. If the contractor must attempt to recover his costs completely on the labor charges he will not be competitive.

(3) Refusal to provide technical assistance, booklets, specifications and schooling. Although Carrier offers some kind of schooling for service work, it is largely theoretical in nature. Carrier also does not make technical bulletins available that would enable the independent contractor to do a satisfactory job. The significance of technical material is recognized in §IV(c) of the proposed consent judgment, where a patent licensee may also secure a license to use "technical information" which United owns or may acquire.

(4) Restricted access to components needed as replacement parts. Many components and replacement parts for Carrier equipment are not manufactured by Carrier. Component manufacturers for Carrier generally refuse to sell their products directly to independents, which forces independent contractors to purchase from Carrier. Although some contractors, with a great deal of imagination and ingenuity—but also some risk, are able to secure components from the component manufacturer directly, the great majority of contractors indicate this was extremely difficult. Even where the components can be purchased, on a generic (non-Carrier brand) basis, the high degree of engineering involved in applied systems makes it very risky to install a non-specified or non-manufacturer part in a customer's machine.

Some replacement component parts sold by Carrier are identical to parts sold by the component manufacturer on a generic basis. However, Carrier uses a 9-12 digit serial number, which makes cross-referencing almost impossible. Purchasing a part from Carrier at a double or triple mark-up over the price from a component manufacturer, amounts to a substantial disadvantage to the independent. Independent contractors assert that Carrier's policies in this area are designed to protect Carrier's position as the sole source for replacement parts for Carrier equipment.

*6. Otis Elevator Co. (already owned by United) and Carrier, are Natural Partners To Monopolize the Entire Market for Servicing Building Equipment*

In 1975, United made a tender offer for a substantial portion of the common stock of Otis Elevator Co. ("Otis"). The acquisition

strategy of United against Otis and Carrier is strikingly similar. On October 29, 1975, the U.S. District Court in the Southern District of New York found that United had violated the Williams Act and issued a preliminary injunction against United, forbidding United from pursuing its tender offer. *Otis Elevator Co. v. United Technologies Corp.*, 405 F. Supp. 960 (S.D. N.Y. 1975).

In the course of its opinion, the Court noted that Otis alleged that United had failed to reveal the antitrust implications of United's acquisition, 405 F. Supp. at 963, and also Otis apparently alleged that the acquisition would violate the antitrust laws. However, no findings were made on this issue. *Id.* at n.7, and ACCA does not have knowledge of the ultimate disposition of that claim. However, Otis became a part of United in 1975.

The United Form 10-K Annual Report filed with the Securities and Exchange Commission describes Otis as follows, at p. 5:

"The Otis Group is the free world's leading producer and servicer of elevators and escalators for the construction industry. Elevator and escalator sales and service ranged from 34% to 52%, and averaged approximately 44% of total sales of industrial products and services for the years 1976 through 1979.

"Otis manufactures a wide range of passenger and freight elevators, including geared and hydraulic elevators for low speed passenger and freight applications and gearless elevators for high speed passenger operations in high rise buildings. Otis also produces a complete line of escalators and moving sidewalks for horizontal transportation, and modernizes older elevators and escalators.

"Otis services a substantial portion of the elevators and escalators which it has sold in the past. As of December 31, 1979, Otis has more than 397,000 elevators and escalators under regularly monthly service."

Otis was accused of an antitrust violation in *Otis Elevator Co. v. John J. Reynolds Inc.*, 1975-2 Trade Cases ¶60, 485 (N.Y. Sup. Ct., 1975). Otis was accused of threatening defendant that, unless defendant signed a service contract with Otis, defendant would not be able to secure necessary parts. ACCA has no knowledge if this allegation was true, but it is similar to complaints ACCA members frequently make about Carrier. If true, the allegations against Otis would show that both Otis and Carrier engage in similarly restrictive trade practices.

The proposed judgment omits any facts about Otis, even though there was substantial testimony before Judge Munson on the anti-competitive effects on servicing from combined Otis-Carrier service teams. The facts above serve as a backdrop for the discussion which follows below.

#### *7. Evidence in This Case Shows That United's Acquisition of Carrier Will Have Substantially Anticompetitive Effects in the Market for Servicing and Repairing Carrier Applied Equipment*

As noted above, the government's Complaint against United encompasses the service and repair aspect of Carrier's business. The Complaint addresses the technological interest of Carrier in improving

energy efficiency. (¶s 18-22) and that United's acquisition would entrench Carrier's dominant position. Energy efficiency is, of course, also of great interest to the general public, to independent service contractors and equipment owners. Servicing air conditioning equipment is key in maintaining the energy efficiency built into the equipment at the time of manufacture.

Thus, although the anticompetitive impact of United's acquisition of Carrier in the servicing market was included in the government's Complaint relief in this market is not included in the consent judgment. Although the consent judgment puts brakes on United's control of Carrier in the manufacturing area, restraints need to be put on United in the servicing area.

A synthesis of the Complaint, the transcript of the hearing on the Motion for Preliminary Injunction, the Government's Post-Hearing Memorandum and Judge Munson's decision (the only materials available to ACCA at this time), show significant anti-competitive impact on the servicing of Carrier equipment by United's acquisition.

#### *(a) Development Of Energy Management Systems*

The evidence showed that United, prior to the acquisition of Carrier, had developed electronic and diagnostic testing equipment, and energy management systems ("EMS") through its Hamilton-Standard Division. Mr. Cody, counsel for the government, described these systems in his opening argument, at N.T. 26:<sup>1</sup>

"The industry is also moving towards the application of electronic diagnostic and electronic testing equipment in connection with their air-conditioning equipment. What these electronic and diagnostic devices do is, they help air-conditioning manufacturers stop malfunctions in equipment earlier. They assist in the maintenance of the equipment and they also enable a manufacturer to learn a lot about the actual operation and the performance of his equipment, thereby enabling him to improve its operation, to improve its design, to improve its performance. Again, this movement towards diagnostic controls in the long run translates into competition."

If United did not already own Carrier, the dominant air-conditioning manufacturer with an obvious desire for exclusive use of an EMS, United would probably sell its EMS system to others, such as independent contractors. If it was particularly expensive, several contractors in the same city might form a joint venture to share the expense, to assist them in offering better service to their customers and competing against the service offered by the equipment manufacturer. However, with the United acquisition of Carrier, United's Hamilton-Standard EMS is now "captive" and no longer in the competitive stream. The consent decree does nothing to change this.

Mr. William Roth, President of Trane, Carrier's chief competitor, testified that availability of Hamilton-Standard's abilities would greatly aid Trane; N.T. 93-4:

<sup>1</sup> The references to Notes of Testimony refer to the hearing before Judge Munson on the Motion for Preliminary Injunction, held in November, 1978.

Q. "Would the use of such electronic diagnostic and testing equipment in connection with unitary, applied air-conditioning equipment benefit Trane?"

A. I believe that it could, yes.

Q. How?

A. Well, it obviously adds an additional selling feature to the product, in that you are able to offer a system to the owner that provides benefit to him in being able to monitor unit performance. Having that capability, also, it occurs to me to enhance the ability of the equipment manufacturer to participate in the service, the after the sale service, and service contract on the equipment after it is installed and operating.

Q. Would the possession of such technology by and (sic) air-conditioning manufacturer in any way be helpful to him in improving his own equipment?

A. I believe that it would if it was set up in such a way as to get statistical data to improve performance or reliability.

Q. Does the use of such a system in connection with air-conditioning equipment have any effect one way or another upon the maintenance of that equipment?

A. My belief is that it would, in that having such equipment available and such diagnostic procedures could make the equipment easier and less costly to maintain.

Mr. Roth also commented on the great advantage a competitor would have in offering air-conditioning service plus an EMS system, at N.T. 98:

Q. You mentioned that there could be a tie-in between an EMS system with a maintenance capability, and the basic service business that you are in, I gather, and is that correct?

A. I believe that there could be such a tie-in, yes.

Q. And how would it work?

A. Well, having a capability to serve not only the heating and ventilating and air-condition equipment, and service it, but also having the capability of servicing the devices that are important to its control and operation gives you quite a selling story as far as the building owner is concerned; the ability to do the complete package.

Mr. E. Douglas Kenna, President of Carrier, also testified about the EMS area, at N.T. 422-3:

Q. In general, the energy management systems area, can you tell us whether that is an established business, a business that is sort of maturing or in its infancy, can you give us some idea of where it stands?

A. It is a business very much in its infancy. It is a business, in my opinion, that has enormous future market potential, occasioned by the constantly rising cost of energy which has triggered off the whole business.

Q. Minneapolis Honeywell and Johnson controls you testified were two of the leaders in that market in its present state; is that correct?

A. That's correct.

Q. Do either of those companies or any of the other leading companies in that area, to your knowledge, have access to proprietary knowledge of the H.V.A.C industry comparable to Carrier's?

A. I don't believe so.

(b) *Combined Carrier-Otis Repair And Service Teams*

The government adduced a great deal of testimony that United's acquisition of Carrier would allow a joint approach to building owners to allow combined Carrier-Otis service teams to handle all building service functions. Needless to say, this would preclude competition from independent service contractors.

Mr. Roth, President of Trane, (which does not itself service its applied systems equipment), testified a combined elevator-air conditioning service would be a great advantage in securing the entire service business from a building owner; at N.T. 130-1:

Q. Do you know, sir, whether it is required by law to have a service contract for an elevator?

A. I believe in most states it is, yes.

Q. Can you see any advantage to a combined company which offers air conditioner service and elevator service to the fact that elevator service contracts are required?

A. I believe it would be an advantage, yes.

Q. And what would the advantage be?

A. Well, you already are there servicing the elevator, and dealing with the building manager, or the building operator, and that would be an opportunity to sell you service capabilities for other products as well.

Mr. Roth also noted that a combined air conditioning, elevator, and EMS capability (such as United may have under the consent judgment, unless modified), would offer great advantages, and that, at the time of the hearing (1978) no other company had this ability; at N.T. 99:

Q. Do you see any anti-competitive consequences to having a package, and that is for sale, involving some of the things that we have talked about; that is to say a good H.V.A.C. system in the applied system level, and good H.V.A.C. machinery, and EMS capability, with this maintenance aspect that we are talking about, and a leading position in an elevator company, and would there be anything to gain in a competitive view from having a package to offer, plus the service capability?

A. My belief is that such a package could be very effectively marketed, and the reason for that belief is that not only are you providing; if you will, almost a single source responsible for the equipment, but I would assume that the firm that could do that would have the service capability on an on-going basis to service the entire package. That would be my view that it would be an attractive package to an owner.

Q. Do you know of any companies which are among the leading H.V.A.C. companies, and the leading elevator companies, which also have this EMS ability, and do you know of any such companies?

A. I do not.

Mr. Kenna, President of Carrier, noted that service of applied systems was "the highest return on investment business that we can get into \* \* \* \* (N.T. 260)

This is, indeed, a highly significant statement in an antitrust context. It means, in essence, that Carrier already has great market power in the servicing of its own equipment, and that the absence of strong competition (i.e. Carrier's marketing practices

summarized above preclude real competition from independent contractors) allows Carrier to earn the highest level of profits, i.e., monopoly profits resulting from an absence of competition. The United acquisition of Carrier will only serve to further strengthen Carrier's market power, further increase the cost of service to consumers, and reduce competition from independent contractors.

Mr. Kenna also stated that United's combined Otis Elevator, Carrier and EMS abilities would greatly aid Carrier; at N.T. 282:

Q. Mr. Kenna, as president of Carrier, do you believe that the ability to offer a package of Otis Elevators and EMS service, Carrier, and H.V.A.C. equipment would enhance your ability to sell the products and services that Carrier presently markets?

A. I do.

The Witness. I believe that the ability to offer an entire package would be the single most important marketing step that could be taken in the construction of commercial buildings to the extent that I think that it could, indeed, change the basic structure of how these equipments are procured.

Q. Would it have an impact, do you believe, on your competitive position in the market?

A. It, without question, would have.

The Witness. Obviously I would make the entire package available as a group.

Q. Do you have any reason to believe that even if you were king so to speak, and you offered elevators and air conditioning, for example, and EMS together that you would get any more business than you would if you had them separately offered?

A. Yes; I do. But I think that we would get a considerable amount more of business because of the ability of the owner to consider life cycle costing, to consider maintenance, to consider all of the favorable aspects of dealing with one service, parts and maintenance organization. I would consider that to be a major marketing plus.

Indeed, Mr. Kenna was not bashful in predicting that a combined United-Carrier could just about take over the commercial building servicing function in the United States; at N.T. 424-6:

Q. In the E.M.S. area, do you believe that Carrier U.T.I. would have any special marketing advantages in the E.M.S. area?

A. First, I believe that Carrier by itself has enormous marketing advantages in this business, primarily because of all the commercial buildings that are standing out today. We believe that some 40 percent of them are populated with Carrier central systems. We have, therefore, a potential list of customers that I believe very sincerely is perhaps exceeded only by those of Otis Elevator Company, as far as hardware and commercial businesses. Further, and I am absolutely convinced, we are convinced that the key to the E.M.S. business does not lie with the Honeywell's and the control suppliers of the world, but rather with the people that have the technical know-how to deal with the energy using pieces of that equipment.

Q. How large is your sales force with respect to the large H.V.A.C. systems?

A. Our total sales and service group is approximately 1000.

Q. Do you believe that a combined company, U.T.I. Carrier, will have any special advantages in servicing, would you expect to, the R.M.S. area?

A. Absolutely.

Q. What would those be, sir?

A. It would be the ability to organize a central servicing organization that could comprise practically every energy absorbing device within a commercial building.

The Court summarized this testimony in findings 69-76 and concluded that "this matter warrants further examination at a trial on the merits." ACCA and its members can provide detailed evidence of how the United acquisition will dampen competition in the servicing of office buildings with Otis elevators and Carrier air conditioning equipment. In view of the testimony summarized above, it is indeed surprising (and disappointing) that the consent judgment ignores the service market. The government has a real opportunity to cure the anti-competitive effects of the acquisition and insure healthy competition in this \$100 million market.

#### (c) *United's Increased Power In The Component Market*

ACCA members already have great difficulty in purchasing components for Carrier equipment from the component manufacturer. Carrier is generally the sole source of components, even though Carrier itself manufactures only a small portion of the components. If components were available directly from the component manufacturer, independent contractors would be able to purchase them at substantially reduced cost, compared to the cost from Carrier.

Controls are some of the most important components to an air conditioning system. The Complainant in this case stated, "Control devices \* \* \* monitor and govern the operation of the equipment in the system \* \* \* are designed to improve the efficiency and performance of the system and/or to prevent damage to the machinery during its operation." (§ 18), and alleged that Carrier is a substantial purchaser of controls, purchasing over \$30 million worth of control devices annually. (§ 20). United, through its Essex and Hamilton-Standard divisions, is a leading manufacturer of controls (§ 21).

The Court found that Carrier's access to Essex's control capability "presents sufficiently serious questions going to the merits to make them a fair ground for litigation." (finding no. 65).

Fans and hermetic motors are also significant components in air conditioning equipment and United manufactures magnet wire, a necessary component of these fans and motors (§s 25-27).

The government's proposed consent judgment attempts to deal with the competitive aspects of the acquisition on the component market by establishing a comprehensive patent licensing program, and attempts to prevent reciprocal dealing.

However, these provisions miss the mark with respect to the after-installation service

and replacement parts market. Components are not just original equipment; they are also replacement parts. Controls, fans and motors often need replacing, either of the entire unit or a component of the unit. The consent judgment and Competitive Impact Statement ignore or overlook this important area.

Independent contractors will be further precluded from purchasing components from the component manufacturer by United's acquisition of Carrier. Those components actually heretofore manufactured by United will assuredly now be available only through Carrier. Moreover, because United, a highly diversified conglomerate, is such a powerful market force in so many industries, component suppliers to United which were reluctant to sell to independent contractors when Carrier was an independent company will now be even more reluctant to sell to independent contractors. A component manufacturer's fear that, by selling directly to independent contractors, the manufacturer will not be able to sell to United, is a real one. And of course, business with a single major company such as United, is much more lucrative than selling to hundreds of individual contractors across the country.

In addition, independent control manufacturers increasingly compete for service/work on Carrier air conditioning equipment. Thus, replacement parts may not be available from these control manufacturers to independent contractors who attempt to purchase controls for repair and service work on Carrier equipment. Thus, there is a strong public policy need to keep open as many competitive lines of supply as possible. However, the proposed Consent judgment closes off, rather than increases, the meager supply lines that presently exist for replacement parts.

ACCA submits that the consent judgment should be modified to prevent United from taking any action to impede the availability of replacement parts for Carrier air conditioning equipment to independent contractors.

#### *8. Additional Provisions are Necessary if the Proposed Consent Judgment Will be Effective in Preventing the Acquisition From Injuring Competition in the After-Installation Service and Repair Market*

ACCA submits that the proposed Consent Judgment be modified before it is formally approved by the Justice Department for submission to the Court, or approved by the Court.

Representatives of ACCA are prepared to submit affidavits and meet with attorneys in the Antitrust Division, and/or representatives of United, to discuss modifications that will ensure competitive conditions in the after-installation market of service and repair to Carrier applied systems air conditioning equipment.

Subject to the approval of the Court, ACCA members will present testimony to further explain the important role of independent contractors in ensuring healthy competition in the repair and service of Carrier equipment, and why, if the proposed consent judgment is not modified, competition in this market will be adversely affected.

The proposed consent judgment should be modified by adding several new provisions:

(1) United should be required to divest itself of the business of servicing Carrier equipment. ACCA believes this relief is essential to prevent the combined EMS-Otis-Carrier trioka from taking over the entire servicing of those buildings with Otis and Carrier equipment. A totally separate service organization would be much more competitive and better serve the industry. The concept is not revolutionary. Carrier does not service its unitary systems and Trane does not service its applied systems, or its unitary systems.

(2) Alternatively, United must adopt a program for service similar to the program for equipment patent licensing set forth in the proposed consent judgment. Several important provisions would be:

(a) All technical data for the repair and service of Carrier equipment is made available to independent contractors;

(b) Independent contractors are invited to attend all of the same training sessions given to United service employees on the service and repair of Carrier applied systems;

(c) Replacement parts for Carrier equipment manufactured by United are made available to independent contractors on the same price, terms and conditions as made available to Carrier's service unit.

(3) Alternatively, United may not combine its Otis and Carrier service units, and may not offer any combined EMS and service packages to owner of buildings with both Otis elevators and Carrier air conditioning equipment.

#### *9. Certain Present Provisions of Proposed Judgment Should Be Modified To Prevent Competition From Being Further Threatened by the Acquisition*

ACCA asserts that, in addition to the suggestions for additional provisions required, as discussed above, which will directly prevent United's acquisition of Carrier from further diminishing competition in the after-installation service and repair market, certain modifications should also be made to present provisions of the proposed judgment which will indirectly (but substantially) aid competition. These modifications are:

(1) To require Carrier to license its own HVAC equipment, components, trade secrets and technical information to its competitors, including independent contractors.

(2) To include HVAC components and manufacturers of HVAC components in all notifications and reports required in the proposed consent judgment.

(3) To preclude United from future acquisition of any manufacturers of HVAC components.

(4) To require United to publish now, rather than after the proposed judgment is approved, the patents, etc., that will be made available for licensing.

The seemingly broad patent licensing provisions in §§IV-V of the Proposed Consent Judgment lose much of their effectiveness by the exclusion of Carrier itself from the licensing requirements. This is the clear import of § II(A) of the proposed judgment, which states that Carrier is not considered part of United for "purposes of Sections IV and V of this Final Judgment."

With this limitation, the licensing provisions of § IV and V are quite innocuous. They only apply to patents for HVAC equipment, HVAC trade secrets and technical information actually transferred to and used by Carrier. There is no requirement that Carrier must offer a license for the use of its own patents, trade secrets or technical information. Further, there is nothing to prevent Carrier (which has been a wholly-owned subsidiary of United for some time) from using the increased financial resources it now has, as part of United, as well as United's research capability (the excellence of which was extensively testified to at the hearing before Judge Monson), to itself develop new technology, new trade secrets and new technological information—all of which is not subject to the licensing provision of § IV-V.

ACCA has discussed above the key nature of components in the after-installation market for repair and service of Carrier equipment. Nonetheless HVAC components are not included in many of the provisions of § IV-V.

"HVAC components" are defined in the proposed consent judgment as follows:

(E) "HVAC Components" shall mean controls or other components or parts for HVAC equipment, and, when used in reference to a licensee or applicant for a license, shall mean controls or other components or parts for HVAC Equipment which Equipment is manufactured by such licensee or applicant for a license.

Section IV(G) does not apply to manufacturers of HVAC components. The independent manufacturers of HVAC components are some of the last vestiges of potential competition in this market, along with independent contractors. The omission of HVAC component manufacturers from notification of patents and HVAC trade secrets transferred from United to Carrier means that an entire segment of this industry may never be able to enjoy even the most minimal competitive benefits from the proposed judgment. See also § V(I) and § VI, which does not require United to send a copy of the judgment to HVAC-component manufacturers, or to report HVAC components available for license.

Another drastic limitation on the effectiveness of the proposed consent judgment is the omission, in § X, of component manufacturers from future acquisitions by United.

United should make public now, prior to the finalization of the proposed judgment, those patents and HVAC trade secrets licensed to or used by Carrier. However, under § IV(G), United need not make this disclosure until fifteen days after entry of the final judgment.

The public filing of this list would provide a good indication whether the final judgment is truly curative of the anticompetitive dangers from the acquisition, as alleged in the Complaint. If there is a long list of patents and HVAC trade secrets, then, indeed, perhaps the licensing requirements will be an aid to protect and further competition.

However, ACCA and its members strongly suspect that there is no "list," and that United has not licensed or provided Carrier with any patents or other items which are the subject

matter of § IV, and has no intention of doing so in the future. If this "limit" is indeed non-existent, the public and court should know right now that they will not secure any benefits from this portion of the proposed judgment.

The "Competitive Impact Statement" (pp. 8-9) describes the competitive effects of the licensing provisions of the proposed judgment as follows:

"The proposed consent judgment is designed to prevent the occurrence of the anticompetitive effects of the acquisition alleged in the complaint. The main thrust of count one of the complaint is that Carrier will be entrenched as the leading seller of unitary and applied heating and air conditioning equipment as a result of the transfer of technology from United. The proposed judgment protects against this anticompetitive danger by mandating that any technology, subject to the judgment, that is transferred by United to Carrier be made available for a reasonable royalty or fee to any person for use in the manufacture in the United States of heating and air conditioning equipment or components made for such person's heating and air conditioning equipment. Thus, it eliminates the primary competitive advantage which it was alleged that carrier would obtain from the acquisition. Additionally, by giving such persons the opportunity to avail themselves of United's technology (provided it has been licensed to or used by Carrier), the judgment may affirmatively stimulate competition in research and development to improve the performance and efficiency of heating and air conditioning equipment and components, including controls, because companies other than Carrier will be able to add United's store of knowledge to their own and use it to produce newer, better and more efficient products."

ACCA submits that there are so many loopholes for United in the judgment that it will have little if any of the beneficial effects suggested above.

First of all, the relief agreed to by United and the government doesn't even come close to remedying the anticompetitive economic consequences of entrenchment, nor does the relief measure up to the allegations of the Complaint. For example, compare the provisions of the final judgment with ¶22 of the Complaint:

"22. If United acquires Carrier, it will link by ownership the research and development resources, technological abilities and manufacturing and marketing capabilities of two firms engaged in the development and manufacture of heating and air conditioning control devices and associated equipment capable of use in connection with the improvement of the operation and efficiency of unitary and applied systems. No other full line manufacturer and seller of unitary and applied heating and air conditioning systems has such a combination linked by ownership. In addition, the combination of United and Carrier will eliminate United as an independent source of control device and diagnostic technology for other manufacturers of unitary and applied heating and air conditioning systems. Furthermore, the acquisition will create a firm possessing

financial and broad-based technological resources far in excess of the resources possessed by the vast majority of Carrier's competitors in unitary and applied system."

There is nothing to prevent Carrier from using, directly, United's research capabilities and having new technology developed by Carrier, as a United subsidiary. The exclusion of Carrier from Section IV of the proposed judgment creates a huge loophole for United-Carrier to structure corporate development to evade licensing their technological developments.

For independent contractors, and the consumer of repair and service (i.e., the owners of Carrier equipment), the proposed consent judgment does nothing to prevent further entrenchment of Carrier's market power. The exclusion of component manufacturers from the notification provisions means that only by happenstance or luck will a component manufacturer be able to participate in the licensing provisions (if there is anything to license).

The license provisions also do nothing to protect against the other anticompetitive effects of the acquisition described in ¶22 of the Complaint; i.e., the improved research and development resources which Carrier can use directly to evade the license provisions, or the marketing capabilities for "control devices and associated equipment capable of use in connection with the improvement of the operation and efficiency of unitary and applied systems." The entrenchment of Carrier in these areas is not affected one iota by the proposed judgment.

In fact, the *only* part of the Complaint which the proposed judgment attempts to deal with by the complex yet innocuous licensing provisions is a single sentence in ¶22: "In addition, the combination of United and Carrier will eliminate United as an independent source of control device and diagnostic technology for other manufacturers of unitary and applied heating and a conditioning system." The rest of ¶22 is ignored.

Thus, for these reasons, ACCA submits that the present provisions of the proposed judgment are totally inadequate to protect competition in the after installation service and repair market, and that the modification suggested above should be made, in addition to adding the provisions suggested at pp. 27-28 above.

*10. The Proposed Consent Judgment Is a Major Retreat by the Government From Aggressive Enforcement of Section 7 of the Clayton Act*

ACCA believes the discussion above demonstrates how the proposed judgment falls short of remedying the anticompetitive effects alleged in the Complaint and the Competitive Impact Statement. A brief word is in order on the public policy issues involved in this case. This is certainly one of the largest, if not the largest, acquisition in the United States in recent years, the 34th largest corporation in the United States acquiring the 191st largest.

If the doctrine of entrenchment is to have any meaning, the government should either secure meaningful relief by a consent judgment or take the case to trial. If the



government loses after a full trial on the merits (as opposed to a hearing on a Motion for Preliminary Injunction) then Congress will be faced with a major policy issue on acquisitions of this nature—and will either amend Section 7 to explicitly cover acquisitions by already huge conglomerates, or decide that these acquisitions are beneficial to the economy.

But the proposed consent judgment in this case is like using a sling shot to bring down an airplane. If the government thinks it was a mistake to bring the case in the first place, it should say so. The Competitive Impact Statement purports to claim that the consent judgment secures almost as such relief as a full victory would bring after a full trial. As these comments have demonstrated, just limited to the after-installation service and repair market, the government's claim is without basis. The testimony at the hearing, let alone ACCA's claims of adverse competitive impact demonstrate the inadequacy of the consent judgment now before the Court.

The acquisition will particularly entrench Carrier's already monopoly hold over the repair and servicing of Carrier equipment. The "Merger Guidelines" of the Antitrust Division, § 20, note the anticompetitive dangers of an acquisition that "may serve to entrench or increase the market power" of "a leading firm in a relatively concentrated" market. This case fits that description like a glove. The Supreme Court has squarely held that entrenchment is grounds for relief under Section 7, in *Federal Trade Commission v. Procter & Gamble Co.*, 388 U.S. 568 (1967).

The Antitrust Division's own Guidelines describe three possible dangers from entrenchment:

"(i) A merger which produces a very large disparity in absolute size between the merged firm and the largest remaining firms in the relevant market, (ii) a merger of firms producing related products which may induce purchasers, concerned about the merged firm's possible use of leverage, to buy products of the merged firm rather than those of competitors, and (iii) a merger which may enhance the ability of the merged firm to increase product differentiation in the relevant markets."

United's acquisition of Carrier presents dangers in all of these areas. The Antitrust Division should recognize the long term adverse economic consequences that will flow from the entrenchment of Carrier, and either modify the judgment or proceed to trial.

#### 11. Modification of the Proposed Judgment Is Superior to Private Litigation

ACCA and its members are well aware of the availability of private litigation for injunctive relief and/or damages, as described at p. 14 of the Competitive Impact Statement. Indeed, one ACCA member, Edwin Haller of New Orleans, has instituted antitrust litigation against Carrier, which is now pending (Civil Action No. 78-2723, Eastern District of La.). Even assuming that one or more ACCA members could represent a class of all other independent contractors in seeking redress for Carrier's monopoly control over the after-installation repair and

service market, the government now has the opportunity, by appropriate negotiation and modification, and without expensive and lengthy separate litigation, to insure competitive conditions in the market.

ACCA, in furtherance of these comments, is willing to present witnesses (including experts), cooperate with a master or consultant, or participate in the proceedings in this case—all of which is in the discretion of the Court and authorized under 15 U.S.C. 16(f).

ACCA also requests that its comments be submitted to the Court for an independent judicial determination of whether one or more of the provisions of section 16(f) should be utilized. ACCA requests notification of the government's decision of whether and in what format these comments will be presented to the Court.

#### Conclusion

For the reasons set forth above, ACCA and its members request that the proposed final judgment be modified before it is approved and entered by the Court.

Michael M. Baylson,

*Duane, Morris, & Heckscher.*

U.S. Department of Justice,

Antitrust Division,

New York, N.Y., January 15, 1981.

Re United States v. United Technologies Corporation 78 CV 580 (N.D.N.Y.)

Michael M. Baylson, Esquire,

*Duane, Morris & Heckscher, 100 South Broad Street, Philadelphia, Pennsylvania 19110.*

Dear Mr. Baylson: In accordance with the provisions of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), this response is made by the Government to the written comments concerning the proposed final judgment in the captioned action submitted by The Trane Company ("Trane") on November 21, 1980, to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice.

The proposed judgment and a competitive impact statement were filed with the Court on September 11, 1980 and published in the *Federal Register* on September 24, 1980. The written comments from ACCA will also be filed with the Court and published in the *Federal Register* together with this response.

The proposed judgment provides important relief in three areas: (a) it requires United to grant to any person who makes a written application within ten years of the entry of the judgment a license to practice the patents, the related know-how necessary to practice the patents and any unpatented heating and air conditioning Trade Secrets<sup>1</sup> which United owns or may acquire within seven years of the entry of the judgment, and which—in the case of patented technology—has been licensed to or used by Carrier and—in the case of related know-how and Trade

<sup>1</sup>The decree defines Trade Secret to mean: Any written information that discloses any unpatented invention, process, formula, method or computer software which is treated as secret by defendant \* \* \* is unobvious \* \* \* and is novel in that it has no commercial equivalent that is used by, or is commercially available to, any of Carrier's competitors. \* \* \*

Secrets—has been used by Carrier to make heating and air conditioning equipment or components; (b) it restricts United from acquiring any other domestic manufacturer of heating and air conditioning equipment for a period of ten years; and (c) it imposes certain duties and restrictions upon United designed to prevent the occurrence of reciprocity effects and reciprocal dealing.

United may restrict the use of any licenses which it grants under the judgment to the manufacture and sale of heating and air conditioning equipment or to the manufacture of components for use on such equipment produced by the licensee.

The proposed consent judgment is designed to prevent the occurrence of the anticompetitive effects of the acquisition alleged in the complaint. The technology licensing provisions of the proposed judgment are aimed at preventing Carrier from enhancing its position in the heating and air conditioning equipment market as a result of technology received from United with resultant permanent and significant structural changes in that market. These licensing provisions seek to protect against any likelihood that Carrier will receive so significant a competitive advantage as a result of the transfer of technology from United that it will be entrenched as a dominant leader in the manufacture and sale of that equipment.

The proposed judgment protects against this anticompetitive danger by mandating that any technology, subject to the proposed judgment, that United transfers to Carrier be made available for a reasonable royalty or fee to any person for use in the manufacture in the United States of heating and air conditioning equipment, or of components made for such person's heating and air conditioning equipment. Thus, it eliminates the primary competitive advantage which it was alleged that Carrier would obtain from the acquisition. Additionally, by enabling such persons to avail themselves of United's technology (provided it has been licensed to or used by Carrier), the judgment may affirmatively stimulate competition in research and development to improve the performance and efficiency of heating and air conditioning equipment and components, including controls, because companies other than Carrier will be able to add United's store of knowledge to their own and use it to produce newer, better and more efficient products.

The provision of the proposed judgment that prohibits United from acquiring any other domestic manufacturer of heating and air conditioning equipment without the consent of the Government or the approval of the Court likewise protects against the entrenchment of Carrier in the heating and air conditioning industry by preventing it from increasing its share of the market through an anticompetitive acquisition.

Finally, the proposed judgment provides safeguards designed to prevent United from exploiting any reciprocal structure in the magnet wire industry created by the acquisition and to discourage reliance upon that structure by suppliers of fan and hermetic motors.

ACCA comments that the proposed judgment fails to provide relief with regard to

the after-installation service and repair market for applied systems air conditioning equipment. It states that Carrier is the leading manufacturer of applied air conditioning equipment, and also offers maintenance and repair services for such equipment. ACCA alleges that Carrier presently engages in anticompetitive trade practices in competing against independent service contractors, including the refusal to sell replacement parts to contractors. ACCA believes that United's acquisition of Carrier concentrates a huge share of the market for servicing and repair of commercial building equipment in United; tends to preclude independent contractors from servicing Carrier equipment in buildings which have Otis elevators and from access to components and parts used in Carrier equipment and energy management systems; and will entrench Carrier in the after-installation market for service and repair of Carrier applied equipment.

ACCA suggests three alternative forms of relief directed to the after-installation service and repair market. It proposes the divestiture of the Carrier service organization. Alternatively, it proposes that United be required to make available to independent contractors technical data and training sessions regarding the service and repair of Carrier applied air conditioning equipment and to sell replacement parts to contractors for the same price and on the same conditions as it sells such parts to Carrier's service organization. The third alternative is a proposal that United be prohibited from combining the Otis Elevator Company<sup>2</sup> and Carrier service organizations and from offering a package of the energy management system and services to owners of buildings having both Otis elevators and Carrier air conditioning equipment. Additionally, in its comments, ACCA urges that a provision be included in the proposed judgment to prevent United from taking any action to impede the availability of replacement parts to independent contractors.

ACCA also suggests several modifications of existing provisions in the proposed judgment, stating that such modifications would serve indirectly to aid competition in the after-installation service and repair market. The modifications are:

1. To require Carrier to license its own air conditioning equipment, components, trade secrets and technical information to its competitors, including independent contractors.
2. To include air conditioning components in all reports and component manufacturers in all notifications required under the proposed judgment.
3. To preclude United from future acquisition of any manufacturers of HVAC components.
4. To require United to publish the list of technology available for licensing prior to the approval of the judgment.

Finally, ACCA comments that the proposed judgment is inadequate in that it permits Carrier to develop new technology using United's technological capability and

financial resources, which may result in the entrenchment of Carrier in the manufacture and sale of air conditioning equipment.

After careful consideration of ACCA's comments, the Government has concluded that the public interest is served by entry of the proposed judgment in—*with one exception—its present form.*<sup>3</sup> We have also concluded that the additions and modifications to the proposed judgment suggested by ACCA are not necessary to obtain effective relief against the occurrence of the anticompetitive effects of the acquisition alleged in the Government's complaint.

In response to ACCA's proposals for relief directed to the after-installation service and repair market, the Government notes that its case at no time involved that market. The Government's complaint clearly defines the markets in which the effects of the acquisition are to be tested as the manufacture and sale of unitary and applied heating and air conditioning systems in the United States, markets distinct and separate from the after-installation service and repair market. The Government's complaint does not allege any anticompetitive effects in the after-installation service and repair market nor does it make any reference to practices of any firm engaged in that market. The complaint does not refer to a combination of the service organizations of Otis and Carrier and alleges no anticompetitive effect flowing therefrom. Allegations in the Government's complaint which refer to devices used to improve the efficiency and energy consumption of air conditioning equipment relate solely to Carrier's ability to compete in the sale of such equipment. The Government did not offer any proof regarding the after-installation service and repair market at the hearing on its motion for an injunction to preliminarily enjoin the acquisition pending a full trial on the merits.<sup>4</sup>

Additionally, even within the context of the after-installation service and repair market, it is clear from the nature of the alternative relief proposals made by ACCA that the

<sup>3</sup> In response to a comment made by the Trane Company, the Government and United have agreed to modify Paragraphs (IV) (A), (C) and (D) of the proposed judgment to include United technology licensed to a foreign subsidiary or affiliate of Carrier or used overseas by Carrier or any foreign subsidiary or affiliate of Carrier to make HVAC equipment or components. For a fuller explanation of this modification, see the comments by the Trane Company and the Government's responses to the comments which have been filed with the Court simultaneously with this response.

<sup>4</sup> The Government's motion to preliminarily enjoin United from acquiring Carrier was filed together with its complaint on November 13, 1978. A hearing on this motion began on November 14, 1978 and ended on November 23, 1980. The District Court for the Northern District of New York denied the Government's motion. The hearing was consolidated with Carrier's motion for a preliminary injunction to halt the acquisition. Carrier had filed a five count complaint alleging anticompetitive effects in markets other than the manufacture and sale of unitary and applied heating and air conditioning systems. At that hearing, Carrier offered some evidence with regard to all of its allegations including some relating to the after-installation service and repair market, which was a part of its complaint.

practices it seeks to prevent and the circumstances it seeks to relieve did not principally arise as a result of the acquisition.

Moreover, based on our conference with you and representatives of ACCA on December 5, 1980, we understand that the references in your comments to the proposed judgment's alleged adverse effects upon the after-installation service and repair market relate to the proposed judgment's silence on relief in this area and not to any adverse impact triggered by the operation of any provision of the proposed judgment.

ACCA's comments involve a market and postulate anticompetitive conduct in that market which is clearly outside of the scope of the violation alleged by the Government and for which it sought relief. For that reason, the Government believes the ACCA comments to be inapposite.

As to ACCA's suggested modifications to the proposed judgment, we respond *seriatim* as follows:

The proposed judgment requires United to make available for licensing to Carrier's competitors in the manufacture of air conditioning equipment technology which United licenses to Carrier or which comes from United and is used by Carrier to make HVAC equipment. ACCA proposes that the judgment should also apply to technology developed by Carrier unilaterally, whether before or after the acquisition. The Government did not seek to make Carrier's own technology available for licensing under the proposed judgment because such technology was not obtained as a result of the acquisition. The Government, in challenging the acquisition, sought to prevent Carrier from becoming entrenched in the manufacture and sale of unitary and applied heating and air conditioning systems as a result of the acquisition and not to discourage Carrier's own research and development—as well as that of others—by making all Carrier research and development available to the world at-large.

Under the proposed judgment, United is required to file listings identifying technology which United licenses or permits Carrier to use, including technology used by Carrier to make air conditioning components. As ACCA notes, the proposed judgment does not require United to send these listings to component manufacturers as such. This is unnecessary in that under the proposed judgment, United may require a licensee to agree to use the technology solely to make air conditioning equipment or components for its own air conditioning equipment. The proposed judgment permits United to limit the use of the technology to a licensee's manufacture of HVAC equipment, and HVAC components for use on his own equipment because the manufacture and sale of heating and air conditioning systems—not just components—is the market which was the subject of the Government's complaint and in which it seeks to provide relief. In any event, United must file with the Court—where it will be available to the public—copies of the above-mentioned listings.

The Government believes that it is unnecessary for the proposed judgment to prohibit future acquisitions of air conditioning components manufacturers by

<sup>2</sup> Otis manufactures, installs, services and repairs elevators. It was acquired by United in November, 1975.

United because such acquisitions are subject to review under the antitrust laws and the determination whether to challenge any such acquisition will be made by the Antitrust Division on a case-by-case basis. The Government does not believe that every acquisition by United of a manufacturer of air conditioning components would necessarily result in an unlawful lessening of competition in the manufacture and sale of air conditioning equipment. In any event, the Government does not believe that such a prohibition is necessary to prevent Carrier from enhancing its position in the heating and air conditioning equipment market as a result of technology received from United with resultant permanent and significant structural changes in that market.

United cannot be required to perform any undertaking pursuant to the proposed judgment until the judgment becomes effective. Thus, ACCA's suggestion that United presently publish a list of technology available for licensing is inappropriate. Furthermore, United has informed the Government that it has refrained from the transfer of technology to Carrier while this action has been pending.

The proposed judgment seeks to stimulate the research efforts of Carrier as well as its competitors in order to promote the development of improved, more energy-efficient air conditioning equipment. To prohibit Carrier from the use of United's research facilities or funding might retard Carrier's research efforts. As noted, the Government is not seeking to put Carrier in a worse position after the merger than before, but rather to ameliorate what it perceives to be the anticompetitive effects which could flow from the acquisition. As a result, the Government expects Carrier to continue its own independent research. By not requiring the licensing of the results of Carrier's research, the Government feels the proposed judgment creates an incentive for Carrier to carry forward on its own and a disincentive to others to cut back on their research and rely upon Carrier to do their research and product development for them. It should be noted that United asserts that it operates on a profit center basis under which Carrier would have to pay its share of the costs for the use of United's research and development facilities.

For the reasons discussed, the Government believes that the entry of the proposed consent judgment—with the modification as noted above—is in the public interest notwithstanding the comments submitted by ACCA in this regard.

Sincerely yours,

Philip F. Cody,

Attorney, Antitrust Division.

[FR Doc. 81-2863 Filed 1-26-81; 8:45 am]

BILLING CODE 4410-01-M

### Drug Enforcement Administration

#### Importer of Controlled Substances; Application of Dow Chemical Co.

Pursuant to § 1311.42(a) of Title 21, Chapter II of the Code of Federal

Regulations (CFR), this is notice that on August 19, 1980, Dow Chemical Company, 1200 Madison Avenue, Indianapolis, Indiana 46225, made application to the Drug Enforcement Administration (DEA) for registration as an importer of the Schedule II controlled substance bulk dextropropoxyphene (non-dosage forms).

Any other such applicant, and any person who is presently registered with DEA as a bulk manufacturer of such substance may file comments or objections to the issuance of the proposed registration and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than February 27, 1981.

Dated: January 19, 1981.

Peter B. Bensinger,

Administrator.

[FR Doc. 81-2715 Filed 1-26-81; 8:45 am]

BILLING CODE 4410-09-M

#### Manufacture of Controlled Substances; Application of Eli Lilly and Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations, this is notice that on August 7, 1980, Eli Lilly and Company, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic class of controlled substance,

Dextropropoxyphene (drug code 9273).

Any other such applicant, and any other person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, Northwest, Washington, D.C. 20537, Attn: DEA Federal Register Representative (Room 1203), and must be filed no later than February 27, 1981.

Dated: January 19, 1981.

Peter B. Bensinger,

Administrator.

[FR Doc. 81-2716 Filed 1-26-81; 8:45 am]

BILLING CODE 4410-09-M

#### Manufacture of Controlled Substances; Application of Ganes Chemical Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 8, 1980, Ganes Chemicals, Inc., Lessee of Siegfried Chemical, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a manufacturer of the Schedule II controlled substance bulk dextropropoxyphene (non-dosage forms).

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than February 27, 1981.

Dated: January 19, 1981.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 81-2717 Filed 1-26-81; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-12]

#### David W. Warren, D.O.; Denial or Registration

On April 2, 1980, the Administrator of the Drug Enforcement Administration [DEA] directed to David W. Warren, D.O. [Respondent], of Kansas City, Missouri, an Order to Show Cause proposing to deny the Respondent's application for registration as a practitioner under the Controlled Substances Act for reason that in 1976, the Respondent had been convicted of a felony offense related to controlled substances. The Respondent filed a timely request for a hearing and this matter was placed on the docket of the Honorable Francis L. Young, Administrative Law Judge.

Following the completion of prehearing procedures, the hearing in this matter was held in Kansas City, Missouri, on July 15 and 16, 1980. On October 3, 1980, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Subsequently, on October 31, 1980, Judge Young certified the record of these proceedings to the Administrator. The record included, *inter alia*, the Administrative Law Judge's report or opinion, the hearing transcript, all of the exhibits which had been placed in the record, proposed findings of fact and conclusions of law which had been filed by the parties, and exceptions to Judge Young's report which had been filed on behalf of the Respondent.

The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge's report has been extremely helpful in this matter. Judge Young has carefully identified the issues and has clearly, thoroughly and fairly summarized the evidence in this case. The Administrator hereby adopts the findings of fact and conclusions of law recommended by the Administrative Law Judge in their entirety.

In 1974, the Respondent was the subject of an investigation conducted by the Drug Enforcement Administration and the DEA Kansas City Task Force. During the course of this investigation, an informant was sent into the Respondent's office to purchase prescriptions for controlled substances. This occurred on several occasions. A standard procedure was used each time. Prior to going into the Respondent's office, the informant was searched by a female police officer and she was relieved of all personal funds, drugs or prescriptions. Her vehicle was also searched for such items. The informant was then equipped with a concealed transmitter which was monitored by law enforcement officers; when possible, the conversations of the informant and the Respondent and his office personnel were recorded. After leaving the Respondent's office, the informant and her vehicle were again searched and she was debriefed with respect to the visit.

On four occasions, June 14, June 20, June 21, and July 1, 1974, a period of less than three weeks, the informant purchased from the Respondent 34 prescriptions for ten dollars each. The prescriptions authorized the dispensing of 2,000 dosage units of Ritalin, 1200 dosage units of Quaalude and 120

dosage units of Biphedamine. All of the drugs so prescribed were Schedule II controlled substances. There was no pretense of a medical reason for the prescribing of such drugs. The Respondent issued these prescriptions in the names of persons given to him by the informant. Most of the names came from the Respondent's files, to which the informant was given access by the Respondent. Several of the names were those of DEA and Task Force personal, none of whom were ever patients of the Respondent.

Subsequent to the undercover investigation, a search warrant was executed at the pharmacy where the informant was having the Respondent's prescriptions filled. Included in the items seized at the pharmacy were a number of purported prescriptions written by the Respondent. These prescriptions were subjected to a verification process in which the names and addresses of the named patients were checked to see if the persons named were real. If the individuals were located, they were interviewed to ascertain whether they had in fact received the drugs prescribed. The verification process was carried out by a number of DEA agent and compliance investigators under the general supervision of the regional compliance program manager.

Of the prescriptions investigated in this manner, only about eight percent were fully verified; that is, the person whose name and address appeared on the prescription had actually received the drug prescribed. The largest number were found to have non-existing or invalid addresses. In many cases, where a valid address was found, there was no record or recollection of the named "patient" having lived there. In several instances, the name and address of a real patient was found, but that person stated that he or she had never been given the particular drug prescribed and had never taken a prescription to be filled at the pharmacy in which these prescriptions had been located.

The results or findings of the prescription verification survey lead the Administrator to conclude that the writing of unlawful prescriptions was a major component of the Respondent's practice. He was responsible for diverting, through his prescribing, large quantities of controlled substances from legitimate medical channels and into, presumably, the hands of drug abusers.

On February 19, 1975, the Respondent was named in a two-count indictment charging him with violations of 21 U.S.C. 841(a)(1). The first count relates to the distribution of methaqualone and dl-amphetamine, Schedule II controlled

substances, on June 14, 1974. This charge arises from the Quaalude and Biphedamine prescriptions which the Respondent sold to the informant on that date. The second count, charging unlawful distribution of methylphenidate on June 21, 1974, related to the prescriptions for Ritalin which the Respondent sold on that date. On February 9, 1976, the Respondent entered a plea of *nolo contendere* to the second count of the indictment and he was thereafter adjudged convicted of violating 21 U.S.C. 841(a)(1), a felony offense relating to controlled substances. The imposition of sentence was suspended and the Respondent was placed on probation for a period of five years.

Dr. Warren currently holds a valid controlled substance registration issued by the Missouri Bureau of Narcotics and Dangerous Drugs. Subsequent to the Respondent's conviction, the Director of the Missouri Division of Health attempted to deny him such State registration. On appeal, the Missouri courts held that "a doctor who pled *nolo contendere* to federal charges of distribution of contraband drugs, whose sentence on that charge was suspended, and who was placed on probation, was not 'convicted' within the language of the statute providing for denial of a license \* \* \* Warren v. Director, Missouri Division of Health, 565 S.W.2d 740 (1978).

The Drug Enforcement Administration is not bound by the decision of the State Appellate tribunals, as was the Missouri Bureau of Narcotics and Dangerous Drugs. This agency has consistently held that a conviction entered following a plea of *nolo contendere* is a "conviction" within the meaning and intent of Sections 303 and 304 of the Controlled Substances Act (21 U.S.C. 823 and 824). The United States Courts of Appeal, which have considered the question, have held that such convictions provide the basis for the denial or revocation of a Federal controlled substances registration. See, *Sokoloff v. Saxbe*, 501 F.2d 571 (2nd Cir. 1974); *Noell v. Bensinger*, 586 F.2d 554 (5th Cir. 1978). The Administrator, therefore, concludes that the Respondent has been convicted of a felony offense relating to controlled substances. There is a lawful or statutory basis for the denial of his application for registration under the Controlled Substances Act. See, *In the Matter of Raphael C. Cilento, M.D.*, Docket No. 79-2, 44 FR., 30466 (1979), and cases cited therein.

Having concluded that he may lawfully deny the Respondent's

application for registration, the Administrator must determine whether the public interest favors such registration in spite of the applicant's prior conviction record. The Administrative Law Judge, who presided at the hearing and had an opportunity to observe the Respondent's testimony, concluded that such testimony was insufficient to provide reasonable assurance that the Respondent would not again divert controlled substances if he were granted a registration. The Administrator concurs in this conclusion. Once a practitioner has been convicted of a controlled substance-related felony, particularly where he has abused and misused the very same type of registration which he is now seeking, he has the difficult burden of showing that he should once more be entrusted with the power to dispense highly abusable and dangerous controlled substances. In support of his position that he should be registered, the Respondent presented testimony by four other physicians. Three of these witnesses were asked if they knew in any detail the facts underlying the criminal charges which had been brought against the Respondent. All three of them admitted that they did not. As Judge Young stated in his opinion, it is even less likely that they knew the full extent of the Respondent's prescription writing activity which was not included in the indictment but was shown by the results of the verification survey of the Respondent's prescriptions. One of these witnesses stated that he did not accept the fact that the Respondent had knowingly written numerous prescriptions for which there was no color of medical need. His subsequent testimony indicated that he was under the impression that the Respondent had been victimized by addicts who fraudulently, articulately and convincingly described imaginary symptoms. The possibility of this having occurred is completely foreclosed by the conversations which took place between the Respondent and the informant in the presence of a hidden transmitter. Judge Young concluded that the testimony of these doctors with respect to the Respondent's character, and the community's need for his services, could be given little weight. The Administrator agrees with this analysis.

Further consideration was given to the testimony of the clergyman and the judge who testified on the Respondent's behalf. However, in view of the preponderance of the evidence, both the Administrative Law Judge and the

Administrator conclude that the registration of the Respondent would be contrary to the public interest.

Accordingly, pursuant to the authority vested in the Attorney General by Sections 303 and 304 of the Controlled Substances Act, 21 U.S.C. 823 and 824, and redelegated to the Administrator of the Drug Enforcement Administration, it is the Administrator's decision that the application of David W. Warren, D.O., be, and it hereby is, denied.

Dated: January 19, 1981.

**Peter B. Bensinger,**  
Administrator, Drug Enforcement  
Administration.

[FR Doc. 81-2731 Filed 1-26-81; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Federal-State Unemployment Compensation Program, Extended Benefits; National "Off" Indicator for Extended Benefits

This notice announces the occurrence of a National "off" indicator for Extended Benefits, and the ending of Extended Benefit Periods in all but 26 States effective on January 24, 1981.

#### Background

The Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. 3304 note, as implemented in State unemployment compensation laws, created the Extended Benefit Program as a permanent feature of the Federal-State Unemployment Compensation Program. Extended Benefits are payable for up to 13 weeks to individuals who have exhausted their rights to regular benefits under the State laws or under permanent federal unemployment compensation laws administered by the States. Extended Benefits are payable only during an Extended Benefit Period, which may be triggered "on" in a State by either a State or National indicator, when insured unemployment in the State or in the Nation reaches the high rates set in the Act. Similarly, an Extended Benefit Period will end in a State or in all States when insured unemployment drops below the high rates set in the Act.

There was a National "on" indicator for the week ending on July 5, 1980, and an Extended Benefit Period therefore commenced with the week beginning on July 20, 1980, in all States in which an

Extended Benefit Period was not already in effect. Extended Benefit Periods have remained in effect in all States since that date by reason of the National "on" indicator. Now that there has been a National "off" indicator for the week ending on January 3, 1981, the Extended Benefit Program will no longer remain in effect in many States after the week which ends on January 24, 1981.

#### Determination of "Off" Indicator

I have determined in accordance with the Act, and as authorized by Secretary of Labor's Order 4-75, dated April 16, 1975 (40 FR 18515), that there was a National "off" indicator for Extended Benefits for the week ending on January 3, 1981, and that Extended Benefit Periods terminate with the week ending on January 24, 1981, in all States with respect to which there was also a State "off" indicator for the week ending on January 3, 1981.

In the following 26 States, however, Extended Benefit Periods will continue in effect after January 24, 1981, because State indicators remain "on" in those States:

Alabama	Montana
Alaska	New Jersey
Arkansas	Ohio
California	Oregon
Delaware	Pennsylvania
Idaho	Puerto Rico
Illinois	Rhode Island
Indiana	South Carolina
Kentucky	Tennessee
Maine	Vermont
Michigan	Washington
Mississippi	West Virginia
Missouri	Wisconsin

#### Information for Claimants

Individuals currently filing claims for Extended Benefits in States in which Extended Benefit Periods will end on January 24, 1981, will receive written notice from the employment security agency of their State, advising them of the end of the Extended Benefit Period with respect to that State and the termination of further payments of Extended Benefits.

Persons who wish information about their rights to Extended Benefits in any State should contact the nearest employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on January 22, 1981.

**Lawrence E. Weatherford,**  
Acting Assistant Secretary for Employment  
and Training.

[FR Doc. 81-3007 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-30-M

**Mine Safety and Health Administration**

[Docket No. M-80-153-C]

**AMOCO Minerals Co.; Petition for Modification of Application of Mandatory Safety Standard**

AMOCO Minerals Company, 7000 South Yosemite Street, Post Office Box 3299, Englewood, Colorado 80155, has filed a petition to modify the application of 30 CFR 75.1700 (barriers around oil and gas wells) to its Emerald Mine Corporation's Mine No. 1 located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The large majority of oil and gas wells were drilled and abandoned between 1900 and 1950 with oil and gas sands now nearly depleted.

2. As an alternative to establishing and maintaining barriers, petitioner proposes to:

(a) Plug the affected wells using a technique developed by the U.S. Bureau of Mines, U.S. Department of Energy, and the coal industry which involves the placing of plugs in the wellbore below the base of the Pittsburgh coalbed which will prevent any natural gas from entering the mine after the well is mined through;

(b) Perform various tests and surveys to determine the location of the wellbore in the coalbed;

(c) Plug the wells back to the base of the Pittsburgh coalbed using an expandable cement and fly-ash-gel water slurry;

(d) Mine through and remove that segment of the plug existing between the mine pavement and the roof;

(e) Instruct all personnel in the affected areas to proceed with caution when mining into and through the well-support pillar, with diligent efforts made at all times to assure a gas-free atmosphere in the affected areas. The petitioner will cooperate with MSHA in sampling for gas immediately before, during and after mining through the well;

(f) Make methane examinations by qualified personnel using approved methane detection equipment at least once during each shift during development and/or retreat mining and record results on a fireboss dateboard placed in the area.

3. Petitioner states that the proposed alternative method will guarantee at all times the miners no less than the same measure of protection as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 26, 1981. Copies of the petition are available for inspection at that address.

Dated: January 14, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-3002 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-107-M]

**IMCO Services; Petition for Modification of Application of Mandatory Safety Standard**

IMCO Services, 2400 West Loop South, P.O. Box 22605, Houston, Texas 77027, has filed a petition to modify the application of 30 CFR 55.13-20 (compressed air) to its Houston Plant located in Harris County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of compressed air to blow dirt and dust from employees' clothing.

2. Compressed air is currently used in the petitioner's plant to blow off electrical control panels during plant operations which run 24 hours per day.

3. Petitioner suspects that employees are using the compressed air to blow dirt and dust from their clothes even though the petitioner has posted "Do not use compressed air" signs at each compressed air installation.

4. Fans and blowers have been tried but were unsuccessful in blowing dirt and dust from employees' clothes.

5. As an alternate method, petitioner proposes to install an adjustable air regulator and gauge in a lockable box, where employees can use a regulated 15 pounds per square inch (psi) of compressed air for cleaning dirt and dust from clothes. Safety glasses will be worn by all employees using the compressed air as well as by those employees working nearby. When the electrician needs the higher compressed air, he or she can unlock the box containing the regulator, turn up the pressure as needed to clean the control

panels and then turn the regulator back down to 15 psi and lock up the regulator.

6. Petitioner states that this system and procedure will satisfy the control panel clean-up task and also satisfy the employees by allowing the use of 15 psi of compressed air to clean off their clothes and protect them from injecting air into the blood system.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 26, 1981. Copies of the petition are available for inspection at that address.

Dated: January 14, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-3003 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-164-C]

**Round Mountain Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard**

Round Mountain Coal Co., Inc., P.O. Drawer 517, Oneida, Tennessee 37841 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms and guards) to its No. 2 Mine located in Anderson County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. Petitioner states that:

a. The haul road leading to the mine site is approximately one-fourth of a mile long, and the visibility on the road is very good;

b. The road is elevated with good drainage, and it is wide enough for two large, coal-hauling vehicles to pass safely;

c. Safety signs have been posted and rock piles are located on the wider parts of the haul road;

d. There has not been an accident on this road since the opening of the mine fourteen months ago.

3. Petitioner states that the use of the safety devices and procedures outlined

above will provide a greater degree of safety than that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 26, 1981. Copies of the petition are available for inspection at that address.

Dated: January 14, 1981.

Frank A. White,  
Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-3004 Filed 1-26-81; 8:45 am]  
BILLING CODE 4510-43-M

[Docket No. M-80-110-M]

#### Sunshine Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sunshine Mining Company, Post Office Box 1080, Kellogg, Idaho 83837 has filed a petition to modify the application of 30 CFR 57.4-27 (fire extinguishers on self-propelled mobile equipment) to its Sunshine Mine located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a suitable fire extinguisher be readily accessible whenever self-propelled mobile equipment is used.
2. Petitioner is seeking a modification of the standard only as it applies to battery-powered locomotives.
3. In support of this request for a modification, petitioner states that:
  - a. The only flammable material on the battery-powered locomotives is electrical insulation;
  - b. A fire extinguisher cannot extinguish a fire in the insulation unless the power is first shut off;
  - c. When the power is shut off, the fire will self-extinguish;
  - d. All locomotives are provided with a quick release main power interrupter which can be used quicker than a fire extinguisher, and is completely effective; and
  - e. The extremely limited space available in the locomotive cab for narrow gauge track haulageways makes

the installation of a fire extinguisher very difficult.

4. Petitioner further states that to be available to the operator of the locomotive, the extinguisher must be located in the cab. It cannot safely be mounted on top of the battery box, and if it were mounted on the front of the locomotive, quick access could not be assured in all locations in a haulageway.

5. For these reasons, petitioner requests a modification of the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 26, 1981. Copies of the petition are available for inspection at that address.

Dated: January 14, 1981.

Frank A. White,  
Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-3005 Filed 1-26-81; 8:45 am]  
BILLING CODE 4510-43-M

[Docket No. M-80-120-C]

#### Triple M & K Coal Co.; Petition for Modification of Application Mandatory Safety Standard

Triple M & K Coal Company, Post Office Box 14, Elkhorn City, Kentucky 41522, has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 36 Mine located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the installation of cabs and canopies on the mine's four-wheel motors, loader and pinning machine.
2. The coal seam ranges in height from 43 to 48 inches with ascending and descending grades, resulting in dips in the coal seam.
3. Petitioner states that the installation of cabs or canopies on the mine's equipment would result in a diminution of safety to the miners affected because:
  - a. The 3-inch capblocks in the roof support would be hit by the canopy, tearing the blocks away from the pins, thus destroying the roof support, and
  - b. The equipment operator would be forced into a cramped position, resulting

in operator fatigue and reduced operator visibility.

4. For these reasons, petitioner requests a modification of the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 26, 1981. Copies of the petition are available for inspection at that address.

Dated: January 14, 1981.

Frank A. White,  
Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-3006 Filed 1-26-81; 8:45 am]  
BILLING CODE 4510-43-M

#### Office of the Secretary

##### Certain Motor Vehicles

On November 10, 1980, the U.S. International Trade Commission (ITC) determined that increased imports of "Certain Motor Vehicles" are not a substantial cause of serious injury, or the threat thereof, to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974 (45 FR 85194).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on "Certain Motor Vehicles". The report found as follows:

1. From the beginning of the adjustment assistance program in April 1975 through fiscal year 1979, the U.S. Department of Labor certified about 60 petitions covering workers producing automobiles, light trucks, and components and parts therefor. About 100 petitions covering some 38,000 such workers were denied. Under the certifications some 82,000 workers received \$145 million in trade readjustment allowances. About 250 of these

workers received job search benefits, 100 relocated, and more than 1,000 were retrained for new jobs. Since the beginning of fiscal year 1980 an unprecedented increase in adjustment assistance activity occurred. In that period the Department has certified about 400 petitions covering well over 300,000 autoworkers. Denials have been issued for about 350 petitions covering less than 50,000 workers. Because of the severe overload on the State delivery and reporting system, current data on benefit outlay are not yet available. It is estimated, however, that more than \$1.2 billion in trade readjustment allowances were paid to more than 350,000 autoworkers in fiscal year 1980. It is likely that fiscal year 1981 payments will exceed those of last fiscal year by a considerable amount and that an additional 50,000 to 100,000 autoworkers will receive benefits. Most certified Chrysler workers have likely exhausted their benefits and significant numbers of Ford and General Motors workers have begun to exhaust their benefits.

2. Average employment of production and related workers engaged in automobile and light truck assembly and integrated component and part production increased steadily from 1975 through 1978, reaching a level of about 796 thousand workers. Production employment fell 308 percent in 1979 and declined further by 25.5 percent to 613 thousand workers in the first half of 1980 compared to the corresponding period of 1979. Average total employment and person-hours worked by production and related employees closely followed this trend from 1975 to June 1980. Employment developments in the next 12 months will depend on the pace of recovery from the recent economic downturn, changes in interest rates, and the possible continued impact of imports. Most of the unemployed workers separated from automobile manufacturing companies have been certified as eligible to apply for trade adjustment assistance benefits.

3. Based on local unemployment rates, Employment Service vacancy data, and data available for individual automobile assembly plants, prospects for separated workers range from poor to good. On balance, however, overall prospects must be characterized as poor. Sixteen of the thirty-one areas reported unemployment rates for August 1980 above the national rate of 7.6 percent (unadjusted). In the ten areas of Michigan, Ohio, and Missouri, where fully half of the plants are located, prospects are either poor or unfavorable. In only eight areas, covering nine plants, can prospects be termed better than fair. In general, the near depression-level conditions in the automobile industry indicate discouraging prospects for most present and potentially separated workers.

4. Workers formerly employed in the automobile industry will likely be the predominant beneficiaries of current training benefits, but funding is expected to be clearly inadequate to meet demand. While \$13.7 million in CETA Title III funds were allocated to States for purchasing training spaces and related activities in fiscal year 1980, virtually all States with heavy demand for training depleted their CETA Title III resources before the end of the fiscal year. For the first quarter of fiscal year 1981, an allocation of

approximately \$8 million in CETA Title III funds was made to States for training, job search, and relocation. Most of the first quarter allocation is expected to be used to meet demand for job search and relocation benefits. Although an additional \$25 million may be allocated if Congress approves the Department of Labor's supplemental request, the Employment and Training Administration has informed the State Employment Security Agencies that they should treat their share of the \$8 million as an annual allocation and that priority emphasis should be placed on the payment of job search and relocation allowances which are mandatory under the Trade Act legislation.

Copies of the Department report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting the Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (phone 202-523-7665).

Signed at Washington, D.C. this 15th day of January 1981.

**Dean Clowes,**

*Deputy Under Secretary, International Affairs.*

[FR Doc. 81-3000 Filed 1-29-81; 8:45 am]

BILLING CODE 4510-28-M

#### [TA-W-9131]

#### **Wagner Electric Corp.; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 30, 1980 in response to a petition received on May 20, 1980 which was filed by the International Brotherhood of Electrical Workers on behalf of workers at Wagner Electric Corporation, Parsippany, New Jersey.

Section 221(a) of the Trade Act of 1974 states that a petition for certification of eligibility to apply for adjustment assistance may be filed with the Secretary of Labor by a group of workers or by their certified or recognized union or other duly authorized representative. During the course of the investigation, it was established that the International Brotherhood of Electrical Workers is not an authorized representative of the workers at the Parsippany, New Jersey facility of Wagner Electric Corporation. Consequently, continuation of this investigation would serve no purpose. Therefore, the investigation has been terminated.

Signed at Washington, D.C. this 21 day of January, 1981.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 81-3006 Filed 1-29-81; 8:45 am]

BILLING CODE 4510-28-M

#### **Tripartite Advisory Panel on International Labor Standards; Meeting**

In accordance with Section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby given of a meeting of the Tripartite Advisory Panel on International Labor Standards, which is a subcommittee of the President's Committee on the International Labor Organization.

Name: Tripartite Advisory Panel on International Labor Standards.

Date: February 10, 1981.

Time: 2:00 p.m.

Place: Department of Labor, 3rd and Constitution Avenue, NW, Room C-5515, Washington, D.C. 20210.

This meeting will be closed to the public under authority of Section 10(d) of the Federal Advisory Committee Act, as amended. The meeting will involve discussion of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. It is not practicable to segregate a portion of the meeting to permit public participation.

All communications regarding this subcommittee should be addressed to Alfred G. Albert, Acting Solicitor of Labor, U.S. Department of Labor, 3rd and Constitution Avenue, NW, Washington, D.C. 20210, Telephone (202) 523-7684.

**Alfred G. Albert,**

*Acting Solicitor of Labor.*

[FR Doc. 81-2983 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-28-M

#### [TA-W-9726]

#### **R. C. Allen Co., Inc., Grand Rapids, Mich.; Negative Determination Regarding Application for Reconsideration**

By letter of November 18, 1980, (copy attached), the petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of that company. The determination was published in the Federal Register on October 17, 1980, (45 FR 69076).



Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioners challenge the Department's denial which indicated that the workers at R. C. Allen Company's Grand Rapids, Michigan plant did not produce an article within the meaning of Section 222(3) of the Act by claiming that electronic cash registers were produced at the firm prior to its initial closing.

The Department's review shows that the R. C. Allen Company does not produce an article within the meaning of Section 222(3) of the Act but serves as a distribution and servicing center for electronic cash registers. The Department has consistently determined that the performance of services does not constitute the production of an article, as required by the Trade Act; and this determination has been upheld in the U.S. Court of Appeals.

The Department's files indicate that all manufacturing of electronic cash registers ceased in July, 1978 more than one year prior to the date of the petitioners' application of June 27, 1980. Since July, 1978, R. C. Allen's only activities have been in the marketing and servicing of electronic cash registers. According to Section 223(b)(1) of the Trade Act, workers cannot be covered by a certification to apply for trade adjustment assistance who were laid off more than one year prior to the date of their petition. The Act does not provide any exceptions to this rule.

#### Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 14th day of January 1981.

James F. Taylor,  
Director, Office of Management,  
Administration and Planning.

[FR Doc. 81-2871 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,264]

#### Carla Leather, Inc., New York City, N.Y.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 1980 in response to a petition received on October 6, 1980 which was filed on behalf of the workers at Carla Leather Incorporated, New York City, New York, New York.

An active certification applicable to the petitioning group of workers remains in effect (TA-W-5284). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 19th day of January 1981.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-2968 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-28-M

#### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period January 12-16, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-9088; Maxson Corporation; St. Paul, MN

Investigation revealed that criterion (3) has not been met. Aggregate U.S.

imports of fabricated structural steel did not increase as required for certification.

TA-W-10,508; Quaker Alloy Casting Co., Myerstown, PA

Investigation revealed that criterion (3) has not been met. Sales of steel castings by the subject firm increased in the first eight months of 1980 compared to the first eight months of 1979. Employment declines were minor and attributable to normal business fluctuations.

TA-W-8752; Great Lakes Casting Corp., Ludington, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9589; Allen Industries, Inc., Richmond, VA

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8734; International Telephone & Telegraph Corp., ITT Hancock Industries Div., Elsie, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9122; Wagner Electric Corp., Boyertown, PA

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8596; Houdaille Industries, Inc., Hydraulics Div., Buffalo, NY

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8663; Grand Machining Co., Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8594; Production Stamping, Inc., Mt. Clemens, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased

imports did not contribute importantly to worker separations at the firm.

*TA-W-8651; Kiesel Die Casting Works, Inc., Batavia, NY*

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-9599; Bennett Importing Company, Inc., Farmington, ME*

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-10,489; Modern Machine, Inc., Bay City, MI*

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-9309 & 9312; Chripler Outboard Corp., Hartford, WI*

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-8696; Mantex Corp., Oxford, MI*

Investigation revealed that criterion (2) has not been met.

*TA-W-8422; Fabristeel Products, Inc., Southfield, MI*

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of pierce nuts are negligible.

*TA-W-9144; Mohawk Liqueur Corporation, Detroit, MI*

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-9050; Allen Group, Inc., Crown Fiberglass Div., Orrville, OH*

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-8055, 8056, 8057, & 8058; The Arrow Company, Atlanta, GA, Bremen, GA, Buchanan, GA, and Cedartown, GA*

Investigation revealed that criterion (3) has not been met. Separations from the subject facilities were due to normal

business fluctuations and were not the result of increased import competition.

*TA-W-9173 & 9174; The Arrow Company, Albertville, AL and Jasper, AL*

Investigation revealed that criterion (3) has not been met. Separations from the subject facilities were due to normal business fluctuations and were not the result of increased import competition.

*TA-W-9237 & 9238; The Arrow Company, Elysburg, PA and Lewistown, PA*

Investigation revealed that criterion (3) has not been met. Separations from the subject facilities were due to normal business fluctuations and were not the result of increased import competition.

#### Affirmative Determinations

*TA-W-9605; Satralloy, Incorporated, Steubenville, OH*

A certification was issued covering all workers of the firm separated on or after January 1, 1980.

*TA-W-10,028; Maida Development Co., Hampton, VA*

A certification was issued covering all workers of the firm separated on or after October 13, 1979.

I hereby certify that the aforementioned determinations were issued during the period January 12-16, 1981. Copies of these determinations are available for inspection Room S-5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: January 19, 1981.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-2976 Filed 1-26-81; 8:45 am]  
BILLING CODE 4510-28-M

#### [TA-W-9952]

#### Illinois Tool Works, Inc., Deltar Division, Frankfort, Ill.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 1980 in response to a petition received on July 24, 1980 which was filed on behalf of workers at Illinois Tool Works, Inc., Deltar Division, Frankfort, Illinois. The workers produce fasteners for automotive use.

The petitioning company official requested in a letter that the petition be withdrawn. On the basis of this request,

continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 13th day of January 1981.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-2967 Filed 1-26-81; 8:45 am]  
BILLING CODE 4510-28-M

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 6, 1981.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 6, 1981.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International

Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 19th day of January 1981.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

## Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
B. & W. Shake Co. Inc., (workers & company)	Forks, WA	1-12-81	1-5-81	TA-W-12,092	Hand split resawed shakes and shingles.
Corlin & Roberts (workers)	San Francisco CA	1-12-81	1-7-81	TA-W-12,093	Manufacturing steel cargo containers.
Cracker Barrel Dress, Ltd. (workers)	New York, NY	1-12-81	1-6-81	TA-W-12,094	Sew ladies jumpers.
Fagle Tool Co. (UAW)	Dearborn, MI	1-12-81	1-7-81	TA-W-12,095	Manufacturing dies.
Goodyear Tire & Rubber Co. (workers)	St. Mary's, OH	1-12-81	1-11-81	TA-W-12,096	Molded and extruded rubber products.
Hy-Ka Cedar Products (workers)	Sedro Woolley, WA	1-12-81	1-5-81	TA-W-12,097	Cedar shakes.
Kranco Manufacturing, Inc., Morey Boogies Division (workers)	Oceanside, CA	1-12-81	1-9-81	TA-W-12,098	Water sports equipment.
Oak Rubber & Oak Medical Supply Co. (URW)	Ravenna, OH	1-12-81	12-19-81	TA-W-12,099	Balloons and vinyl gloves.
Porton King, Inc. (workers)	Perth Amboy, NJ	1-12-81	1-6-81	TA-W-12,100	Bonless meat products.
William Atkin Co., Inc. (ACTWU)	Allentown, PA	1-12-81	1-9-81	TA-W-12,101	Men's sport shirts.
Brixham Stamping Co. (workers)	Oshkosh, WI	1-13-81	1-6-81	TA-W-12,102	Metal stampings.
Colt Industries—Trent tube (USWA)	East Troy, WI	1-12-81	1-7-81	TA-W-12,103	Welded stainless steel pipe and tubing.
Continental Rubber Works (URW)	Erie, PA	1-13-81	1-9-81	TA-W-12,104	Hose, extruded rubber products.
Dorcy Frocks, Ltd. (workers)	New York, NY	1-13-81	1-6-81	TA-W-12,105	Dresses and sportswear.
Waspac, Inc. (workers)	Parkside, PA	1-14-81	1-10-81	TA-W-12,106	Intimate apparel.
Keystone Fireworks Manufacturing Co., Inc. (USWA)	Dunbar, PA	1-13-81	1-8-81	TA-W-12,107	Commercial and display fireworks.
Mil Garment Co., Inc. (AFL-CIO)	Red Bank, NJ	1-13-81	12-15-80	TA-W-12,108	Ladies coats.
Pacific Northwest Cedar Product, Inc., (company)	Forks, WA	1-13-81	12-31-80	TA-W-12,109	Shakes.
Quinault Tribal Shake (workers)	Moclips, WA	1-13-81	1-8-81	TA-W-12,110	Shakes and shingles.
Salant & Salant, Inc. (AFL-CIO-CLC)	Union City, TN	1-13-81	1-8-81	TA-W-12,111	Pants.
B & B Coat Corp. (ILGWU)	Paterson NJ	1-14-81	1-12-81	TA-W-12,112	Contractor of ladies' coats.
Gracinda Fashions, Inc. (ILGWU)	Newark, NJ	1-12-81	1-5-81	TA-W-12,113	Ladies' coats.
High Fashion Sportswear (ILGWU)	Paterson, NJ	1-14-81	1-12-81	TA-W-12,114	Contractor of ladies' coats.
Mayflower Coat Co., Inc. (ILGWU)	Paterson, NJ	1-14-81	1-12-81	TA-W-12,115	Contractor of ladies' coats.
Misty Harbor, Ltd.—Eutaw, Manufacturing (ILGWU)	Baltimore, MD	1-12-81	1-5-81	TA-W-12,116	Men's and ladies' rainwear.
Misty Harbor, Ltd.—Misty Manufacturing (ILGWU)	Baltimore, MD	1-12-81	1-5-81	TA-W-12,117	Ladies' and men's rainwear.
Misty Harbor, Ltd.—Aero Manufacturing (ILGWU)	Baltimore, MD	1-12-81	1-5-81	TA-W-12,118	Ladies' and men's rainwear.
Misty Harbor, Ltd. (ILGWU)	Baltimore, MD	1-12-81	1-5-81	TA-W-12,119	Men's and ladies' rainwear.
N & R (ILGWU)	Paterson, NJ	1-14-81	1-12-81	TA-W-12,120	Contractor of ladies' coats.
Selby, Battersby & Co. (RUMSWA)	Quincy, MA	1-14-81	12-18-81	TA-W-12,121	Ship building and repair.
Style Sportswear, Inc. (ILGWU)	New York, NY	1-14-81	1-12-81	TA-W-12,122	Contractor of ladies' coats.
Brown Shoe Co. (workers)	Houston, MO	1-14-81	1-5-81	TA-W-12,123	Ladies shoes.
Buckeye Steel Casting (workers)	Columbus, OH	1-15-81	12-1-80	TA-W-12,124	Steel casting.
McQuay-Norris, Inc. Indianapolis Division (UAW)	Indianapolis, IN	6-20-80	6-18-80	TA-W-12,125	Miscellaneous bearings and bearing shells.
McQuay-Norris, Inc. Warehousing & Packaging Plant (UAW)	Casey, IL	6-20-80	6-18-80	TA-W-12,126	Stores, packs, and ships replacement parts for autos.
R & S Garments, Inc. (ILGWU)	Passaic, NJ	1-14-81	1-12-81	TA-W-12,127	Contractor of ladies coats.

(FR Doc. 81-3074 Filed 1-26-81; 8:40 am)

BILLING CODE 4510-26-M

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive

with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial

separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 6, 1981.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 6, 1981.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International

Labor Affairs, U.S. Department of Labor,  
200 Constitution Avenue, N.W.,  
Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of  
December 1980.

Marvin M. Fooks,  
Director, Office of Trade Adjustment  
Assistance.

## Appendix

Petitioner—Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Alison Ayres (ILGWU)	New York, NY	1-12-81	1-7-81	TA-W-12,071	Ladies dresses.
Ely Walker Shirt Factory (workers)	Kennett, MO	1-12-81	1-1-81	TA-W-12,072	Western shirts.
Johnson Steel & Wire Co., Inc. (USWA)	Worcester, MA	1-12-81	1-6-81	TA-W-12,073	Wire goods and wire products.
Kingman Bros., Inc. (workers)	Sedro-Woolley, WA	1-12-81	12-19-80	TA-W-12,074	Manufacturing shales and shingles.
M.C.S. Fashions, Inc. (workers)	Hialeah, FL	12-18-81	12-8-80	TA-W-12,075	Contractor ladies and men's topwear.
Modulus Corp., Mount Pleasant Plant (USWA)	Mt. Pleasant, PA	1-12-81	1-7-81	TA-W-12,076	Nuts, bolts and industrial fasteners.
Pelle Dreamwear, Inc. (company)	Brooklyn, NY	1-12-81	1-8-81	TA-W-12,077	Knitwear garments: sweaters, dresses, etc.
Saco Tanning Corp. (company)	Saco, ME	1-12-81	1-8-81	TA-W-12,078	Leather.
Townsend Fasteners Systems (USWA)	Fallston, PA	1-12-81	1-9-81	TA-W-12,079	Industrial fasteners.
Townsend Fasteners Systems (USWA)	Ellwood City, PA	1-12-81	1-9-81	TA-W-12,080	Industrial fasteners.
Walter Dyer Leather, Inc. (company)	Lynn, MA	1-12-81	1-5-81	TA-W-12,081	Moccasins and garments.
Boris Smoler & Sons, Inc. (workers)	LaPorte, IN	12-4-80	12-2-80	TA-W-11,878	Dresses and pant suits.
C. V. Rubin Leather Inc. (workers)	Brookton, MA	12-4-80	11-25-80	TA-W-11,879	Cut leather for shoe and handbag companies.
Falcon Coat & Suit Co., Inc. (workers)	Richmond Hill, NY	12-5-80	12-1-80	TA-W-11,880	Ladies coats and suits.
Forest Hills Sportswear (workers)	Lawrenceburg, TN	12-5-80	12-2-80	TA-W-11,881	Men's pants.
Foseco, Inc., Corporate & Foundry Division (workers)	brook Park, OH	12-5-80	12-2-80	TA-W-11,882	Metallurgical chemicals.
Hartman Lincoln Mercury (workers)	Oshkosh, WI	12-3-80	11-28-80	TA-W-11,883	Auto dealership.
Lundberg Screw Products (workers)	Lansing, MI	12-4-80	12-1-80	TA-W-11,884	Parts for caterpillar tractor.
M.C.P. Industries (formerly Midwest Heat Treat) (workers)	Romulus, MI	12-4-80	12-1-80	TA-W-11,885	Heat treat fasteners.
Nomis Industries, Inc. McIntosh Division (USWA and company)	Berne, IN	12-5-80	12-3-80	TA-W-11,886	Rotor segments, power steering pistons, brake plates for auto manufacturers.
OMC Johnson (IMMA)	Waukegan, IL	12-4-81	12-1-80	TA-W-11,887	Outboard motors and all die castings for outboard motors.
RCA, Distributor and Special Products Division (company)	Deptford, NJ	12-8-80	12-2-80	TA-W-11,888	Electronic receiving tubes.
Bart Show Co., Inc. (workers)	Union, MO	12-8-80	12-1-80	TA-W-11,889	Men's and women's house shoes and women's sandals.
Columbia Industries, Inc., Columbia Belt & Novelty (workers)	Boston, MA	12-8-80	12-4-80	TA-W-11,891	Men's and women's belts.
Imperial Glass Corporation (Amer. Flint Glassworkers' Union)	Bellaire, OH	12-4-80	12-1-80	TA-W-11,892	Manufacture glass.
I.S. Sifton Sons, Inc. (Amal'd Industrial Toys & Novelty Wrks)	Newark, NJ	12-8-80	12-1-80	TA-W-11,891	Stuffed toys.
Pittsburgh Conneaut Dock Company (USWA)	Conneaut, OH	12-5-80	12-2-80	TA-W-11,893	Transport ore.
Ronnie Girl, Inc. (workers)	New York, NY	12-5-80	12-3-80	TA-W-11,894	Girl's coats and jackets.
Schott Bros. & Schott Sportswear (ACTWU)	Perth Amboy, NJ	12-5-80	12-1-80	TA-W-11,895	Leather outerwear and cloth sportswear.
Technical Plastic Extruders, Inc. (company)	Keamy, NJ	12-8-80	12-3-80	TA-W-11,896	Thermo plastic film and sheet.
Wells Mfg. (company)	Fond du Lac, WI	12-8-80	12-2-80	TA-W-11,897	Condensers, tune-up kits, PCV valves, switches and coils.
Dito of California (workers)	Coffax, LA	12-8-80	12-3-80	TA-W-11,898	Ladies' jeans and tops.
General Motors Corp., Central Office, (workers)	Cleveland, OH	12-1-80	11-25-80	TA-W-11,899	Training services for various GM divisions.
Herbert Kenzer (workers)	New York, NY	12-8-80	12-4-80	TA-W-11,900	Ladies' wool coats.
Horizon Screw Machine Products, Inc. (workers)	Taylor, MI	12-8-80	12-1-80	TA-W-11,901	Automotive hardware.
Huntington Alloys, Inc., Burnaugh Plant (USWA)	Catslettsburg, KY	12-5-80	12-2-80	TA-W-11,902	Nickel alloy products.
International Shoe Company (workers)	Hopkinsville, KY	12-9-80	12-4-80	TA-W-11,903	Men's shoes.
Mid-State Plating Co., Inc. (workers)	Flint, MI	12-8-80	12-4-80	TA-W-11,904	Zinc plating-phosphate coating.
Peninsular Steel Co.—Warehouse (workers)	Warren, MI	12-8-80	12-2-80	TA-W-11,905	Cold rolled steel bars.
Russell, Burdsall & Ward Corp. (company)	Los Angeles, CA	12-8-80	12-3-80	TA-W-11,906	Steel nuts and bolts or iron or steel.
Sweden Freezer Manufacturing Co. (IBEW)	Columbus, OH	12-9-80	12-2-80	TA-W-11,907	Soft ice-cream machines.
Arvin Industries (IBEW)	Columbus, TN (Gladstone Ave.)	12-8-80	11-25-80	TA-W-11,908	Automotive exhaust systems, catalytic converters.
Arvin Industries (IBEW)	Columbus, TN (17th St.)	12-8-80	11-25-80	TA-W-11,909	Vinyl metal laminators, catalytic converters.
Arvin Industries, Tech Centers (IBEW)	Columbus, TN	12-8-80	11-25-80	TA-W-11,910	Research and development of automotive exhaust systems and catalytic converters.
Bethlehem Steel Corp., Johnstown Plant (USWA)	Johnstown PA	12-5-80	12-2-80	TA-W-11,911	Railroad cars, carbon and alloy bars, coke and manganese.
Clear Shake, Inc. (company)	Clear Lake, WA	12-10-80	12-5-80	TA-W-11,912	Shakes and shingles.
ITT United Plastics (UPIU)	Medara, IN	12-10-80	11-31-80	TA-W-11,913	Molded chrome plastic parts for interior and exterior of cars.
Lee Cylinders, Inc. (workers)	Cambridge City, IN	12-8-80	11-14-80	TA-W-11,914	Low pressure propane and chemical storage tanks.
Smalwood Packing Co., Inc. (workers)	Middlefield, OH	12-5-80	12-1-80	TA-W-11,915	Boneless processing beef.
Vassarette Div. of Munsingwear (workers)	Arkadelphia, AR	12-8-80	12-3-80	TA-W-11,916	Lingerie—gowns and panties.
Bethlehem Steel Corp., Conemaugh & Backlick Railroad (USA)	Bethlehem, PA	12-5-80	12-2-80	TA-W-11,917	Railroad facility.
Chicago Pneumatic Tool Co., (IAMAW)	Utica, NY	12-10-80	12-8-80	TA-W-11,918	Pneumatic and rotary tools.
King Shake Mill (workers)	Concrete, WA	12-5-80	12-2-80	TA-W-11,919	Cedar shakes.
Marx-Hess (shipping facility) (ACTWU)	St. Louis, MO	12-10-80	12-8-80	TA-W-11,920	Tailored clothing (shipping facility).
Monroe Auto Equipment Co. Div. of Tenneco (UAW)	Monroe, MI	12-10-80	12-8-80	TA-W-11,921	Experimental shocks.
Rawlings Manufacturing Co. (ACTWU)	Willow Springs, MO	12-10-80	12-8-80	TA-W-11,922	Baseball gloves.
Schwad & Schwad (workers)	New York, NY	12-10-80	11-17-80	TA-W-11,923	Dresses.
Standard Plastic Product (ILGPNWU)	So. Plainfield, NJ	12-8-80	12-5-80	TA-W-11,924	Toys.
Standard Plastic Product (Kaiser plant) (ILGPNWU)	Edison, NJ	12-8-80	12-5-80	TA-W-11,925	Toys.
Universal Fashions, Inc. (workers)	Newark, NJ	12-5-80	12-3-80	TA-W-11,926	Ladies raincoats.
Allen Manufacturing Co. (UAW)	Bloomfield, CT	12-11-80	12-9-80	TA-W-11,927	Metal fasteners.
American Brush Co. (workers)	Brookton, MA	12-11-80	12-8-80	TA-W-11,928	Manufacturing all types of brushes and rollers.
E. M. Lawrence, Ltd. (ACTWU)	Jersey City, NJ	12-11-80	12-4-80	TA-W-11,929	Children's sportswear.
Francois Gee Garment Co. (workers)	Kansas City, MO	12-11-80	11-25-80	TA-W-11,930	Uniforms for nurses and waitresses.

## Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Frances Gee Garment Co. Higginville factory (workers)	Higginville, MO	12-11-80	11-25-80	TA-W-11,931	Uniforms for nurses and waitresses.
Frank Foundries Inc. (workers)	Muncie, In.	12-11-80	12-5-80	TA-W-11,932	Iron castings for bell houses, compressor housings transmission cases for auto industry.
Garden City Apparel Co. (workers)	Garden City, MO	12-11-80	11-25-80	TA-W-11,933	Dresses, sportswear, maternity wear.
J. C. Glenser Co. (UAW)	Ferndale, MI	12-11-80	12-9-80	TA-W-11,934	Tool holders.
Phil Jacobs Inc. (workers)	Kansas City, MO	12-11-80	11-25-80	TA-W-11,935	Dresses sportswear maternity wear.
Princess Stitching, Inc. (workers)	Keene, NH	12-11-80	12-9-80	TA-W-11,936	Ladies and men leather shoes and boots.
Dynalor Corp. Belvidere Assembly (company)	Belvidere, IL	12-10-80	12-8-80	TA-W-11,937	Production of Omni and Horizon subcompact cars.
Edmos Corp. (ILGWU)	Glen Cove, NY	12-11-80	12-8-80	TA-W-11,938	Manufacturing of double knit fabrics.
Elkhart Rubber Inc. (URW)	Elkhart, IN	12-12-80	12-8-80	TA-W-11,939	Industrial rubber molding.
Metalock Castings Reclamation Corp. Inc. (workers)	Pinckney, MI	12-11-80	12-8-80	TA-W-11,940	Salvage Ford auto parts.
Pantosote Inc. Apparel Div. (UTWA)	Escondido, CA	12-10-80	12-5-80	TA-W-11,941	Vinyl and plastic baby pants, baby sleepers, sewing operations.
Viner Brothers, Inc. (workers)	Bangor, ME	12-10-80	12-5-80	TA-W-11,942	Produce shoes.
Viner Brothers, Inc. (workers)	Belfast, ME	12-10-80	12-5-80	TA-W-11,943	Produce shoes.
Viner Brothers, Inc. (workers)	Presque Isle, ME	12-10-80	12-5-80	TA-W-11,944	Shoes.

[FR Doc. 81-2975 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-28-M

## [TA-W-11,042]

**Lustre Plating Co., Detroit, Mich.; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 22, 1980 in response to a petition received on September 17, 1980 which was filed on behalf of the workers at Lustre Plating Company, Detroit, Michigan.

A negative determination applicable to the petitioning group of workers was issued on November 10, 1980 (TA-W-10,607). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 19th day of January 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-2968 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-28-M

## [TA-W-11,857]

**M & A Manufacturing Corp., Newark, N.J.; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 8, 1980 in response to a petition received on November 26, 1980 which was filed on behalf of the workers at M & A Manufacturing Corporation, Newark, New Jersey.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-11,091). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 19th day of January 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-2969 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-28-M

## [TA-W-10,028]

**Maida Development Co., Hampton, Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on August 11, 1980 in response to a petition which was filed on behalf of workers at Maida Development Company, Hampton, Virginia. The workers produce ceramic capacitors.

U.S. imports of ceramic fixed capacitors increased both absolutely and relative to domestic production in each year from 1975 through 1979 and increased absolutely in the January-June period of 1980 compared to the same period in 1979.

The Department conducted a survey of major customers which decreased their purchases of ceramic capacitors from Maida. Customers accounting for a substantial portion of Maida's sales decline decreased purchases from Maida and increased purchases of

imported ceramic capacitors in the January through September period of 1980 compared to the same period in 1979. Customers in general increased their reliance on imported ceramic capacitors from 1978 to 1979 and in January-September 1980 compared to the same period in 1979.

**Conclusion**

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ceramic capacitors produced at Maida Development Company, Hampton, Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Maida Development Company, Hampton, Virginia who became totally or partially separated from employment on or after October 13, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 14th day of January 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-2970 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-28-M

## [TA-W-10,925]

**Spectator Casuals, Inc., New York No. Y.; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 22, 1980 in response to a petition received on August 29, 1980 which was filed (by) International Ladies' Garment Workers' Union on behalf of the workers at

Spectator Casuals, Incorporated, New York, New York.

A negative determination applicable to the petitioning group of workers was issued on April 3, 1980 (TA-W-6909). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 19th day of January 1981.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-2972 Filed 1-26-81; 8:45 am]  
BILLING CODE 4510-28-M

[TA-W-11,027]

**Standard Products Co., Cee Bee Division, Brooklyn, N.Y.; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 22, 1980 in response to a petition received on September 17, 1980 which was filed on behalf of the workers at Standard Products Company, Cee Bee Division, Brooklyn, New York.

A negative determination applicable to the petitioning group of workers was issued on May 13, 1980 (TA-W-6852). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 19th day of January 1981.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-2973 Filed 1-26-81; 8:45 am]  
BILLING CODE 4510-28-M

**Steel Tripartite Advisory Committee; Notice of Renewal**

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, it was determined that the renewal of the Steel Tripartite Advisory Committee was in the public interest in connection with the performance of duties imposed on the Departments of Labor and Commerce.

The Committee will advise the Secretaries of Labor and Commerce on such matters as problems within the basic steel industry and provide advice

and make recommendations with respect to such international and domestic issues as trade and trade adjustment questions, tax policy, technological research and development, environmental protection and controls, occupational safety and health regulations, and structural readjustments with respect to plant and labor.

The Committee will consist of eight representatives of management and eight representatives of organized labor in the basic steel industry; representatives of the U.S. Government, including the Secretaries of Labor and Commerce, United States Trade Representative, Administrator of the Environmental Protection Agency, and a designee of the Secretary of Treasury, as appointed jointly by the Secretaries of Labor and Commerce; and other appropriate individuals appointed jointly by the Secretaries of Labor and Commerce.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Signed at Washington, D.C., this 18th day of January 1981.

Ray Marshall,  
Secretary of Labor.

[FR Doc. 81-2414 Filed 1-19-81; 3:09 pm]  
BILLING CODE 4510-28-M

**NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE**

**Meeting**

Pursuant to Sec. 10(a)(2), of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Marine Transportation Subgroup of the Independent Area Task Force (IATF) of the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet Thursday and Friday, February 26-27, 1981. The Subgroup will meet in the B-100 conference room of Page Building #1, 2001 Wisconsin Avenue, NW., Washington, D.C.

Each session which will be open to the public, will convene at 9:00 a.m. and adjourn at 4:00 p.m. The subject of this meeting will be U.S. Coastal and Inland Waterborne Shipping.

NACOA has initiated a study to formulate national goals and objectives for the oceans in the decade of the 1980's and beyond. To support the conduct of this study, the Secretary of Commerce has established the IATF for NACOA. The IATF will be responsible for the preparation of preliminary recommendations in the areas of energy, fisheries, marine transportation, ocean

minerals, ocean operations and services, pollution, and waste management.

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairperson of the Subgroup on Marine Transportation, Dr. Don Walsh, in advance of the meeting. The Chairperson retains the prerogative to impose limits on the duration of oral statements and discussion. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven N. Anastasion, or CDR Carl Moritz, the Staff Director for the Marine Transportation Subgroup. The mailing address is: NACOA, 3300 Whitehaven Street, NW. (Suite 438, Page Building #1), Washington, DC 20235. The telephone number is (202)653-7818.

Dated: January 22, 1981.

Steven N. Anastasion,  
Executive Director.

[FR Doc. 81-2958 Filed 1-26-81; 8:45 am]  
BILLING CODE 3510-12-M

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 81-8]

**Direct Awards of \$10 Million or More; List of Aerospace Contractors**

The following is a list of aerospace contractors which received direct NASA awards totaling \$10 million or more during Fiscal Year 1980. This list is published pursuant to section 6 of Pub. L. 91-119, as amended by section 7 of Pub. L. 91-303 (84 Stat. 372; 42 U.S.C. 2462, 1970 Supp.) and Pub. L. 94-273 (90 Stat. 375). For related NASA reporting requirements, see 14 CFR Part 1208.

Air Products & Chemicals, Inc., P.O. Box 538, Allentown, PA 18105  
Ball Corporation, 345 South High Street, Muncie, IN 47305  
The Bendix Corporation, Executive Offices, Bendix Center, 20650 Civic Center Drive, Southfield, MI 48037  
The Boeing Company, P.O. Box 3707, Seattle, WA 98124  
Boeing Services International, Inc., P.O. Box 3707, Seattle, WA 98124  
California Institute of Technology, 1201 E. California Blvd., Pasadena, CA 91125  
Canadian Commercial Corporation, 11 Laurier Street, Hull, Quebec Canada 21A0S5  
Christie-Willamette (JV), P.O. Box 8887, Emeryville, CA 94662  
Computer Sciences Corporation, 650 Sepulveda Blvd., El Segundo, CA 90245  
Computer Sciences—Technicolor Assoc. (JV), 10210 Greenbelt Road, Seabrook, MD 20601

Fairchild Industries, Inc., Sherman Fairchild Technology Center, 2001 Century Blvd., Germantown, MD 20767

Ford Aerospace & Communications Corp., 300 Renaissance Center, 20th Floor, P.O. Box 43342, Detroit, MI 48243

The Garrett Corporation, 9851 Sepulveda Blvd., Box 92248, Los Angeles, CA 90009

General Dynamics Corporation, Pierre Laclade Center, 7733 Forsyth Blvd., St. Louis, MO 63105

General Electric Company, 3135 Easton Turnpike, Fairfield, CT 06431

General Motors Corporation, 767 Fifth Avenue, New York, NY 10022

Honeywell Information Systems, Inc., 200 Smith Street, Waltham, MA 02154

Hughes Aircraft Company, Centinela Ave. and Teale St., Culver City, CA 90230

International Business Machines Corp., Old Orchard Road, Armonk, NY 10504

Kentron International, Inc., 2345 W. Mockingbird Lane, Dallas, TX 75235

Lockheed Corporation, 2555 N. Hollywood Way, Box 551, Burbank, CA 91520

Lockheed Engineering & Management Services Co., Inc., 1830 NASA Road One, Houston, TX 70058

Lockheed Missiles & Space Co., Inc., P.O. Box 504, Sunnyvale, CA 94086

Martin Marietta Corp., 6801 Rockledge Drive, Bethesda, MD 20034

Massachusetts Institute of Technology, Administrative Offices, 77 Massachusetts Avenue, Cambridge, MA 02139

McDonnell Douglas Corp., P.O. Box 516, St. Louis, MO 63166

Mechanical Technology, Inc., 968 Albany-Shaker Road, Latham, NY 12110

Northrop Services, Inc., 500 E. Orangethorpe Avenue, Anaheim, CA 92801

Pan American World Airways, Inc., 200 Park Avenue, New York, NY 10166

Perkin Elmer Corporation, 761 Main Avenue, Norwalk, CT 06856

Planning Research Corporation, Suite 1100, 1850 K Street, N.W., Washington, DC 20006

RCA Corporation, 30 Rockefeller Plaza, New York, NY 10020

Raytheon Service Company, 2 Wayside Road, Burlington, MA 01803

Rockwell International Corp., 600 Grant Street, Pittsburgh, PA 15219

The Singer Company, 10 Stamford Forum, Stamford, CT 06904

Smithsonian Institution, 1000 Jefferson Drive, S.W., Washington, DC 20560

Sperry Corporation, 1290 Avenue of the Americas, New York, NY 10019

TRW, Incorporated, 23555 Euclid Avenue, Cleveland, OH 44117

Teledyne Industries, Inc., 1901 Avenue of the Stars, Los Angeles, CA 90067

Thiokol Corporation, P.O. Box 1000, Newtown, PA 18940

United Space Boosters, Inc., P.O. Box 1626, Huntsville, AL 35807

United Technologies Corp., One Financial Plaza, Hartford, CT 06101

Vought Corporation, P.O. Box 225907, Dallas, TX 75285

L. E. Hopkins,

Deputy Director of Procurement, National Aeronautics and Space Administration.

[FR Doc. 81-2954 Filed 1-26-81; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL SCIENCE FOUNDATION

[Task Group No. 14]

### Advisory Council; Amended Meeting

Task Group 14 had originally scheduled a meeting in Washington, D.C. for February 10, 1981.

Please change the date from February 10 to February 11, 1981. The meeting will be held in Room 523.

There are no other changes to the meeting notice.

The original notice for this meeting appeared in the *Federal Register* on January 19, 1981. For additional information, please contact Mrs. Lois Hamaty at 357-9471.

M. Rebecca Winkler,

Committee Management Coordinator.

January 22, 1981.

[FR Doc. 81-2962 Filed 1-26-81; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-361 and 50-362]

### Southern California Edison Co., et al.; Availability of a Supplement to the Draft Environmental Statement for San Onofre Nuclear Generating Station, Units 2 and 3

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Supplement to the Draft Environmental Statement (NUREG-0490) has been prepared by the Commission's Office of Nuclear Reactor Regulation. The DES Supplement relates to accident considerations relative to the proposed operation of the San Onofre Nuclear Generating Station, Units 2 and 3, in San Diego County, California. Copies are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. and in the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, California. The Supplement to the Draft Statement is also being made available at the Office of the Governor, Office of Planning and Research, 1400 Tenth Street, Sacramento, California, and at the San

Diego County Comprehensive Planning Organization, Security Pacific Plaza, 1200 Third Avenue, San Diego, California. Requests for copies of the Draft Environmental Statement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Director, Division of Licensing.

The Applicant Environmental Report, as supplemented, submitted by Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California, and the City of Anaheim, California is also available for public inspection at the above-designated locations. Notice of availability of the Applicant's Environmental Report was published in the *Federal Register* on April 7, 1977 (42 FR 18460).

Pursuant to 10 CFR Part 51, interested persons may submit comments on the Supplement to the Draft Environmental Statement for the Commission's consideration. Federal and State agencies have been provided with copies of the Applicant's Environmental Report and are being provided with the Supplement to the Draft Environmental Statement (local agencies may obtain these documents upon request).

Comments are due by March 9, 1981. Comments by Federal, State, and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C., and the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, California. Upon consideration of comments previously submitted with respect to the Draft Environmental Statement, and at this time with respect to the Supplement to the Draft Environmental Statement, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the *Federal Register*.

Comments on the Supplement to the Draft Environmental Statement from interested persons of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 16th day of January 1981.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 81-2704 Filed 1-26-81; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974; Amendment of Notice of System of Records

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice; Amendment of notice of  
system of records.

**SUMMARY:** The purpose of this notice is to amend a previously published notice of a system of records by adding a routine use that was inadvertently omitted.

**EFFECTIVE DATE:** January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:**  
William H. Lynch, Work Force  
Information Division, (202) 254-9790/  
9793.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its annual publication of notices of Privacy Act systems of records on November 25, 1980 (45 FR 78378). Among those notices appeared OPM/GOVT-1, General Personnel Records, which contained routine uses from a. to ee. One routine use (ff.) was inadvertently omitted from that notice. This routine use, dealing with disclosure of records to the Federal Acquisition Institute, was added to this system of records by Federal Register notice of May 2, 1980 (45 FR 29454). The complete text of the routine use section with routine use ff. included appears below.

Office of Personnel Management.

Beverly M. Jones,

*Issuance System Manager.*

OPM gives notice of the addition of routine use ff. to the OPM/GOVT-1, General Personnel Records systems of records as follows.

#### OPM/GOVT-1

##### SYSTEM NAME:

General Personnel Records.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to educational institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working under the

Cooperative Education, Volunteer Service, or other similar programs where necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to: the Department of Labor, Veterans Administration, Social Security Administration; Department of Defense; Federal agencies that have special civilian employee retirement programs; or a national, state, county, municipal, or other publicly recognized charitable or Social Security Administration agency (e.g., State unemployment compensation agencies), where necessary to adjudicate a claim under the retirement, insurance or health benefits program(s) of the Office of Personnel Management or an agency cited above, or to conduct an analytical study of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

f. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program. Information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

i. To consider employees for recognition through quality step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel

policies, practices, and matters affecting working conditions.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

m. To disclose information to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation or an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

p. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

q. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

r. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are



collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

s. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

t. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

u. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with a psychiatric examination ordered by the agency under:

- (1) fitness-for-duty examination procedures; or
- (2) agency-filed disability retirement procedures.

v. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

w. To disclose to a requesting agency, organization, or individual the home address and other relevant information concerning those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while employed in the Federal work force.

x. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve, to assure continuous mobilization readiness of Ready Reserve units and members.

y. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, United States Public Health Service, and the United States Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

z. To disclose information to officials of the Merit Systems Protection Board,

including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

aa. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

bb. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

cc. To disclose to prospective non-Federal employers, the following information about a current or former Federal employee:

- (1) Tenure of employment;
- (2) Civil Service status;
- (3) Length of service in the agency and the Government; and
- (4) When separated, the date and nature of action as shown on the Notification of Personnel Action, Standard Form 50.

dd. To disclose information on employees of Federal health care facilities to private sector (i.e., non-Federal, State, or local government) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only where the disclosing agency determines that it is the government's best interest (e.g., to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from a public criticism of the facility's failure to obtain such approval) to obtain accreditation or other approval rating and only to the extent that the information disclosed is relevant and necessary for that purpose.

ee. To disclose information to any member of an agency's Performance Review Board or other board or panel (e.g., one convened to select or review nominees for awards of merit pay increases), when the member is not an

official of the employing agency; information would then be used for the purposes of approving or recommending selection of candidates for executive development programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

ff. To disclose information to the Federal Acquisition Institute about Federal employees in procurement occupations and positions in other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the FAI shall only use the data for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the Federal Register on February 7, 1980 (45 FR 8399).

\* \* \* \* \*

[FR Doc. 81-2850 Filed 1-26-81; 8:45 am]  
BILLING CODE 6325-01-M

### Renewal of the President's Commission on White House Fellowships

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The President's Commission on White House Fellowships (the Commission) has been renewed by Executive Order 12258 of December 31, 1980, Continuation of Certain Federal Advisory Committees. The Commission administers a program under which hundreds of the Nation's most talented men and women compete for 14 to 20 one-year appointments as special assistants at the subcabinet or higher level. This program provides each White House Fellow with intensive education and hands-on experience at the highest administrative levels of Government. Graduates of the Program generally return to their geographic communities or at least their original disciplines where they can share new knowledge and enhance their professions through a greater understanding of the workings of Federal government.

Although the Commission is an independent agency, the OPM is responsible for providing its administrative support.

**EFFECTIVE DATE:** January 1, 1981.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey M. Wisoff, 202-632-4533.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

The OPM gives notice of the Commission's renewed charter as follows:

**The President's Commission on White House Fellowships**

*Charter*

A. *Official Designation.* The President's Commission on White House Fellowships.

B. *Objectives and Scope.* To provide gifted and highly motivated Americans with firsthand experience in the process of governing the Nation and a sense of personal involvement in the leadership of the society.

C. *Duration.* The duration of this Committee is indefinite. A new determination will be made not more than 60 days prior to January 1, 1983.

D. *Responsible Agency and Official.* The President.

E. *Agency Providing Support.* The Office of Personnel Management.

F. *Committee Responsibilities.* (1) To identify prospective candidates for White House Fellowships and (2) to recommend to the President candidates for selection as White House Fellows.

G. *Estimated Annual Operating Costs.* Approximately \$320,000 and 6 staff years.

H. *Estimated Number and Frequency of Meetings.* Eleven Regional Committees which meet approximately one time each. One Presidential Commission which meets two times for one to four days. The regional meetings are of one to two day duration.

I. *Date Filed.* January 1, 1981.

[FR Doc. 81-3020 Filed 1-26-81; 8:45 am]

BILLING CODE 6325-01-M

securities, while Class B alternate specialists would function as such in every security traded on the BSE. Class A and Class B alternate specialists would differ in that Class B alternates must establish any long or short positions only on the BSE floor. Alternate specialists of either class would be required to make a bid or offer at a floor broker's request, which must either improve the price or the depth of the existing quote in the stock to which it relates.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16656, March 14, 1980) and by publication in the Federal Register (45 FR 18527, March 20, 1980). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and in particular, the requirements of Section 6 and the rules and regulations thereunder, in particular Section 6(b)(5) in that the proposed rule change will remove impediments to a free and open market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2793 Filed 1-26-81; 8:45 am]

BILLING CODE 8010-01-M

Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Maryland corporation. On June 5, 1969, Applicant registered under the Act and filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") with respect to 2,500,000 shares of capital stock, par value \$1.00 per share. This 1933 Act registration statement was declared effective on November 20, 1969, and Applicant commenced the initial public offering of its shares on that date. Applicant further states that on December 31, 1979, there were 340,337,647 outstanding shares of its capital stock, and that its aggregate net asset value was \$5,506,663.12, or \$16.18 per share.

Applicant represents that on September 19, 1979, its board of directors unanimously adopted and recommended to Applicant's shareholders that they approve an Agreement and Plan of Reorganization ("Plan") under which (i) all the assets of Applicant (other than a cash reserve for the payment of liquidation expenses) would be exchanged for shares of Oppenheimer Directors Fund, Inc. ("Oppenheimer"), an open-end, diversified management investment company under the Act; (ii) shares of Oppenheimer would be distributed to the shareholders of Applicant; and (iii) Applicant would be dissolved and liquidated and its registration as an investment company under the Act would be terminated. At a special meeting of Applicant's shareholders held on December 31, 1979, the holders of 76% of the outstanding shares of Applicant approved the Plan. The Commission issued an order (Investment Company Act Release No. 10997) on December 28, 1979, exempting the proposed acquisition from Sections 22(c) and 17(a) of the Act and permitting Oppenheimer's investment adviser to participate in the proposed transaction. According to the application, both Applicant and Oppenheimer filed Articles of Transfer under the laws of the State of Maryland on December 31, 1979 in connection with the reorganization.

Applicant states that, pursuant to the Plan, for each share of Applicant's stock owned of record on December 28, 1979, Applicant's shareholders were credited with 1.03255306 shares of Oppenheimer on December 31, 1979. Applicant represents that it has no assets, debts or security holders, and that it is not a party to any litigation or administrative proceedings. Applicant further represents that it is not now engaged,

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 17465; SR-BSE-79-4]

**Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change**

January 19, 1981.

On February 13, 1980, the Boston Stock Exchange, Inc. ("BSE") 53 State Street, Boston, MA 02109 filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend Chapter XI, Section 1 of the BSE Rules by establishing and defining some of the obligations of two classes of alternate specialists. Class A alternate specialist would be assigned to particular

[Release No. 11560; 811-1878]

**Centennial Capital Special Fund, Inc.; Filing of an Application Pursuant to Section 8(f) of the Act for an Order Declaring that Applicant has Ceased To Be an Investment Company**

January 15, 1981.

Notice is hereby given that Centennial Capital Special Fund, Inc. ("Applicant"), One New York Plaza, New York, New York, 10004, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 10, 1980, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the

nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 9, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 81-2794 Filed 1-26-81; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 11572; 811-1878]

**Centennial Capital Special Fund, Inc.;  
Filing of Application for an Order  
Pursuant to Section 8(f) of the Act  
Declaring That Applicant Has Ceased  
To Be an Investment Company**

January 19, 1981.

Notice is hereby given that Centennial Capital Special Fund, Inc. ("Applicant"), One New York Plaza, New York, New York 10004, a Maryland corporation

registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, investment company, filed an application on December 10, 1980, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant represents that its board of directors voted to recommend shareholder approval of transactions contemplated by an Agreement and Plan of Reorganization ("Plan"), which provided for (i) the acquisition by Oppenheimer Directors Fund, Inc. ("Directors Fund") of substantially all the assets of Applicant in exchange for shares of beneficial interest in Directors Fund; (ii) the pro rata distribution of such shares of Directors Fund to shareholders of the Applicant according to their respective interests; and (iii) the dissolution of Applicant as an investment company. Applicant further states that Applicant and Directors Fund filed an application with the Commission on October 1, 1979, and amendments thereto on November 13, 1979 and November 19, 1979, pursuant to Sections 6(c) and 17(b), for an order exempting the proposed transactions from Sections 17(a), 17(d) and Rule 17d-1 thereunder, and from Section 22(c) of the Act. Such order was granted on December 26, 1979 (Investment Company Act Release No. 10997). Applicant states that on December 31, 1979, the Plan was approved by its shareholders and the proposed transactions completed on the same date.

Applicant represents that it currently has no assets and no outstanding debts or other liabilities and is not a party to any litigation. Applicant also represents that it is not now engaged and does not propose to engage in any business activity other than that necessary to wind up its affairs. Finally, Applicant represents that it has no existing shareholders and within the last 18 months has not transferred any of its assets to a separate trust, the beneficiaries of which were or are shareholders of Applicant.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 13, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 81-2795 Filed 1-26-81; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 1156; 812-4767]

**Lexington Tax Free Daily Income  
Fund, Inc., Filing of an Application  
Pursuant to Section 6(c) of the Act for  
an Order of Exemption From the  
Provisions of Section 2(a)(41) of the  
Act and Rules 2a-4 and 22c-1  
Thereunder**

January 15, 1981.

Notice is hereby given that Lexington Tax Free Daily Income Fund, Inc. ("Applicant"), 580 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on November 17, 1980, and an amendment thereto on January 5, 1981, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1

thereunder to the extent necessary to permit Applicant to calculate its net asset value per share using the amortized cost method for valuing its portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that its investment objective is to achieve current income exempt from federal income taxes, consistent with stability of principal, liquidity and preservation of capital. Applicant further states that it invests in short-term municipal securities issued by states, territories and possessions of the United States, the District of Columbia and their political subdivisions, and duly constituted authorities and corporations. Applicant further represents that, for purposes of the exemptive relief requested, it will limit its purchase of portfolio securities exclusively to (i) municipal securities rated not lower than AA by Standard & Poor's Corporation ("S&P") and Aa by Moody's Investors Services, Inc. or municipal notes rated not lower than MIG-2 by Moody's; (ii) unrated municipal securities which either have been issued by an issuer having outstanding debt securities rated not lower than AA by S&P or Aa by Moody's or municipal notes rated not lower than MIG-2 by Moody's, or are specifically determined and represented by Applicant's board of directors to be of high quality and represent minimal credit risks; and (iii) repurchase agreements for any of the foregoing securities in which the Applicant is authorized to invest.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of

distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 therefore to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

In support of the exemptive relief requested Applicant states that a stabilized \$1.00 per share price will provide Applicant's shareholders with the convenience of being able to readily determine the aggregate value of their holdings by reference to the number of shares they own and will eliminate the necessity of shareholder record keeping and bookkeeping to record insignificant capital gains and losses upon acquisition or redemption of shares. Applicant's board of directors has further determined that stable share price and simplified record keeping are of benefit to existing shareholders and would be helpful in attracting new shareholders to Applicant.

Applicant has agreed that each of the following may be made a condition to the granting of the exemptive relief requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment advisor, Applicant's board of directors undertake—as a particular responsibility within its overall duty of care owed to the shareholders of Applicant—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of

distribution, redemption and repurchase, at \$1.00 per share.

2. Included among the procedures to be adopted by the board of directors shall be the following duties and responsibilities:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's \$1.00 amortized cost price per share from the net asset value per share as determined by using available market quotations and the maintenance of records of such review.<sup>1</sup>

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds one-half of one percent, a requirement that the directors shall promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes that the extent of any deviation from Applicant's \$1.00 amortized cost price per share may result in material dilution or any other unfair result to investors or existing stockholders, the board shall take such action as it deems appropriate to eliminate or reduce, to the extent reasonably practicable, such dilution or unfair result, which may include: redemption of shares in kind; selling portfolio securities prior to maturity to realize capital gains or losses, or to shorten the average maturity of Applicant's portfolio; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any portfolio security with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.<sup>2</sup>

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications

<sup>1</sup> Applicant states that to fulfill this condition it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the directors in the exercise of their discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of municipal securities provided by independent sources.

<sup>2</sup> In fulfilling this latter condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner so as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the directors' considerations and actions taken in connection with the discharge of its responsibilities as set forth above, to be included in the minutes of the directors' meetings. The Applicant agrees that such documents shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio instruments, including repurchase agreements, to those U.S. dollar-denominated instruments which the directors determine present minimal credit risks and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, are of comparable quality as determined by the directors.

6. The Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and a description of the nature and circumstances of any such action taken.

Notice is further given that any interested person may, not later than February 9, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above.

Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including

the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 81-2796 Filed 1-26-81; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 17473; File Nos. SR-NYSE-77-13, SR-NYSE-77-14]

**New York Stock Exchange, Inc.; Order Approving Certain Proposed Rule Changes by the New York Stock Exchange, Inc.**

January 21, 1981.

On April 18, 1977, the New York Stock Exchange, Inc. (the "NYSE") 11 Wall Street, New York, New York 10005, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, proposed rule changes to amend its Constitution, rules and policies relating to membership and association with members. Generally, the proposed rule changes concerning standards for becoming an associated person of a member were filed in SR-NYSE-77-13, and the proposed rule changes concerning formation and approval of member organizations were filed in SR-NYSE-77-14.

Notice of the proposed rule changes, together with the terms of substance, was given in Securities Exchange Act Release Nos. 13468 (April 25, 1977) and 13469 (April 25, 1977) and was published in the *Federal Register* (42 FR 22442, 22446). Interested persons were invited to submit written data, views and arguments by May 24, 1977. On January 15, 1979, the NYSE filed amendments to both SR-NYSE-77-13 and 77-14. On April 2, 1979, the Commission, in Securities Exchange Act Release No. 15689 (44 FR 21106) approved certain of the proposed rule changes contained in those filings and deferred action on other proposed rule changes in those filings pending further review of those changes. On November 2, 1979, the NYSE filed additional amendments to SR-NYSE-77-14. Those amendments were technical in nature and were not published for public comment. On November 21, 1979, the Commission in Securities Exchange Act Release No. 16360 (44 FR 68049) approved a number of the remaining changes contained in SR-NYSE-77-14.

On January 25, 1980, the NYSE filed with the Commission a second set of amendments to SR-NYSE-77-13 dealing

with the regulation of associated persons of members of the NYSE. Notice of the proposed rule changes was given in Securities Exchange Act Release No. 16566 (February 21, 1980) and was published in the *Federal Register* (45 FR 11635) for public comment.

Subsequently, the NYSE filed third and fourth amendments to SR-NYSE-77-14. On February 20, 1980, the NYSE filed the third amendment to SR-NYSE-77-14 containing technical changes in the filing that were not published for comment. On July 28, 1980, the NYSE filed with the Commission a proposed rule change removing Canada as a qualifying domicile for NYSE membership organizations. Notice of the proposed rule change was given in Securities Exchange Act Release No. 17047 (August 5, 1980) and was published in the *Federal Register* (45 FR 53303).

The Commission has determined at this time to approve the remaining proposed rule changes contained in SR-NYSE-77-13, as amended, and SR-NYSE-77-14, as amended. In addition, the Commission has approved the proposed deletion of various existing NYSE rules that are superseded by the rules approved in this order, and the NYSE has withdrawn a number of such proposed changes from the filings. The changes being approved contribute to the fair administration of the NYSE, conform certain of the NYSE's rules to the requirements of the Act, as amended, and the rules thereunder, and generally eliminate restrictions upon membership that are not required by the Act.

The changes in SR-NYSE-77-13, relating primarily to associated persons of NYSE members, that the Commission is today approving are: (1) the definition of the term "engaged in a securities or kindred business";<sup>1</sup> (2) the conditions for approval as an "approved person"<sup>2</sup> including a special provision concerning the examination of books and records of approved persons that are domiciled outside of the United States;<sup>3</sup> deletion of a requirement that a majority of the members of the board of directors of an NYSE member organization be "members" or "allied members";<sup>4</sup> (4) a revision concerning approval of members and allied members by the NYSE.<sup>5</sup>

The change in SR-NYSE-77-14 that the Commission is today approving eliminates, subject to a grandfather

<sup>1</sup> Rule 2.

<sup>2</sup> Rules 304 (a) and (h).

<sup>3</sup> Rule 304.12.

<sup>4</sup> Rule 311(b)(1).

<sup>5</sup> Rule 312(e).

provision, the Canadian exception to the NYSE's existing requirement that every NYSE member be a partnership or corporation created or organized under the laws of, and maintain its principal place of business in, the United States.<sup>6</sup>

With respect to the proposed rule changes referenced above that the Commission is today approving, the Commission finds that such proposed rule changes as set forth in File Nos. SR-NYSE-77-13 and 77-14, as amended, are consistent with the requirements of the Act and rules and regulations thereunder applicable to national securities exchanges.<sup>7</sup>

The Commission has found that the examination procedures proposed by the NYSE in its Rule 304.12 for approved persons domiciled outside the United States are consistent with the provisions of the Act applicable to the NYSE. That finding should not be construed to mean that the NYSE would not have authority to adopt different examination requirements nor should it be construed to suggest that the Commission's authority under the federal securities laws to conduct investigations or examinations is limited in the manner reflected by the NYSE's proposed rule. The Commission's finding is predicated on the conclusion that the approach reflected in the NYSE's rules reflects an effort made in good faith by the NYSE to balance the need for effective surveillance against what today seems to be appropriate deference to the laws and customs of foreign nations.

The problems addressed by NYSE Rule 304.12 in the area of foreign surveillance and enforcement are complex and they do not appear to admit of completely satisfying solutions under current circumstances. The Congress in 1975 expressed the conclusion that this Nation's securities markets should be open to foreign participation by securities professionals. In that regard, the Securities Acts Amendments of 1975 (the "1975 Amendments") amended Section 6 of the Act to provide for "open" membership on national securities exchanges. At the same time, the Congress provided authority for national securities exchanges, subject to Commission approval, to impose a regime of regulation and surveillance

that would protect the integrity of their markets.<sup>8</sup> The Act specifically contemplates that a national securities exchange may bar any person from becoming associated with a member if that person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.<sup>9</sup> That provision, quite deliberately, does not contemplate that exchanges would necessarily be permitted to insist that all such examinations be conducted by the exchanges themselves, but instead it allows the Commission to approve exchange rules such as those of the NYSE approved today, which allow the examinations to be conducted by independent third parties in cases where the laws or customs of foreign nations would make direct NYSE examination illegal or improper. In that regard, the legislative history of the 1975 Amendments makes it clear that the Commission should use its own judgment in determining what regulatory approaches may be necessary to deal with problems that arise from foreign secrecy laws and other aspects of foreign participation in United States securities markets.<sup>10</sup>

The third party examination procedure specified in the NYSE's rule for certain foreign-domiciled persons does not provide the same degree of regulatory control as the NYSE has in the case of other persons who are members or associated persons. Allowing that relaxation may entail some risk to the integrity of the examination and surveillance process, but the Commission believes it is not inappropriate to allow the NYSE flexibility in this area in order to advance the congressional goal of facilitating greater foreign participation in our markets. The Commission expects that exchange members, and their associated persons, who avail themselves of the third party examination procedure will take appropriate steps to ensure that the accommodation being afforded them will not be abused. If, however, it appears that the flexibility thereby provided is impeding appropriate efforts by the NYSE to assure the integrity of its

market or is otherwise not serving the public interest, the Commission will revisit the matter and may consider alternative measures.

Ultimately, the best solution to the problems of surveillance and enforcement that arise from the increasing international participation in securities markets, both here and abroad, may be an organized system of international cooperation and consultation among the governments of the affected nations. Under such a system, the activities of financial intermediaries domiciled in a particular country could be inspected by the government in that country or, possibly, by other auditing bodies recognized as having an equivalent function, and the governments of other nations could repose trust and confidence in those inspections as a means of insuring the integrity of dealings by such firms in the markets located elsewhere. The Commission would welcome an opportunity to participate in developing any further approaches toward that end. Although it would not alone be sufficient to achieving such an organized system, the NYSE's Rule 304.12 points in that direction and may be a first step toward reaching an accommodation that would foster greater international participation in the securities markets here and abroad.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78(s)(b)(2), that the proposed amendments to the rules enumerated above be and hereby are, Approved.

By the Commission.  
George A. Fitzsimmons,  
Secretary.

[FR Doc. 81-2797 Filed 1-26-81; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 21892; 70-6541]

### Southwestern Electric Power Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

January 16, 1981.

Notice is hereby given that Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, a public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the

<sup>6</sup>Rule 311(f).

<sup>7</sup>This finding constitutes approval only of the specific additions and deletions made in the cited rules in File Nos. SR-NYSE-77-13 and 77-14 and thus should not be construed as a statement by the Commission that any such rule, as amended, has necessarily been brought into full compliance with the Act. See Section 31(b) of the Securities Acts Amendments of 1975 (Pub. L. 94-229 [June 4, 1975]) and Securities Exchange Act Release Nos. 13027 (Dec. 1, 1976) and 12157 (Mar. 2, 1976).

<sup>8</sup>See Sections 6(b)(2) and 6(c) of the Act, added by Section 4 of the 1975 Amendments, 89 Stat. 97, 104-106 (1975).

<sup>9</sup>Section 6(c)(3)(C) of the Act.

<sup>10</sup>See, e.g., Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 69 (1975).

proposed transaction. All interested parties are referred to said application-declaration, as amended, which is summarized below, for a complete statement of the proposed transaction.

SWEPCO proposes to issue and sell, at competitive bidding, up to \$75,000,000 principal amount of its First Mortgage Bonds, Series Q, to be dated April 1, 1981. The bonds will have a maturity of not less than ten years nor more than thirty years. The annual interest rate and redemption prices of the bonds and the price to be paid to SWEPCO, which will not be less than 99%, will be determined by competitive bidding. The bonds will be issued under and secured by SWEPCO's Indenture, dated February 1, 1940, with Continental Illinois National Bank and Trust Company of Chicago and M. J. Kruger, Trustees, as amended and as to be further amended by a proposed supplemental indenture to be dated April 1, 1981. The supplemental indenture will set forth the terms, provisions and characteristics of the bonds. The bonds will be authenticated under the indenture against up to \$124,500,000 of available unused net expenditures for bondable property. The company estimates that unused net expenditures will aggregate approximately \$250,000,000 at the time of issuance of the bonds.

The net proceeds from the sale of the bonds will be used by SWEPCO to repay in full short-term borrowings incurred for construction and other purposes. Approximately \$65,000,000 of short-term borrowings are expected to be outstanding as of April 1981. SWEPCO estimates that its construction, fuel exploration and development expenditures (including allowance for funds used during construction) will be approximately \$172,000,000 in 1981 and \$252,000,000 in 1982. The company intends to issue additional securities during 1981 and 1982 to finance the remainder of such costs.

No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of the company if it were not part of the Central and South West System. No expenditures will be made by the company for the construction or acquisition of any facility not so needed prior to the time all funds covered by this application-declaration have been expended. For the purposes of the

foregoing representation, it is assumed that none of the facilities the construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951) would be needed to provide service to customers of SWEPCO if it was not part of the Central and South West System.

A statement of the fees and expenses incurred or to be incurred in connection with the proposed transactions will be supplied by amendment. The approval of the Arkansas Public Service Commission and the Corporation Commission of Oklahoma is required for the issuance of the bonds. It is represented that no other state commission, and no federal commission other than this Commission, has jurisdiction over the proposed transaction.

SWEPCO seeks authorization pursuant to Rule 24(c)(1) to complete the issuance and sale of the bonds within 90 days after the order is issued.

Notice is further given that any interested person may, not later than February 9, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 81-2798 Filed 1-26-81; 8:45 am]  
BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #1879; Amdt. #1]

### Arkansas; Declaration of Disaster Loan Area

The above numbered Declaration (see 45 FR 49425) is amended by extending the filing date for physical damage until the close of business on February 18, 1981, and for economic injury until the close of business on May 18, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 16, 1981.

A. Vernon Weaver,  
Administrator.

[FR Doc. 81-2474 Filed 1-26-81; 8:45 am]  
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1970] New Jersey; Declaration of Disaster Loan Area

The area of 235 Main Street, in the Town of Hackettstown, Warren County, New Jersey, constitutes a disaster area because of damage resulting from a fire which occurred on November 9, 1980. Eligible persons, firms and organizations may file application for loans for physical damage until the close of business on March 19, 1981, and for economic injury until the close of business on October 16, 1981, at: Small Business Administration, District Office 970 Broad Street—Room 1635, Newark, New Jersey 07102, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated January 16, 1981.

William H. Mauk, Jr.,  
Acting Administrator.

[FR Doc. 81-2425 Filed 1-26-81; 8:45 am]  
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1900; Amdt. #5]

### Texas; Declaration of Disaster Loan Area

The above numbered Declaration (See 45 FR 56489), amendment #1 (See 45 FR 62599), amendment #2 (See 45 FR 79216), amendment #3 (See 45 FR

85242), amendment #4 (See 46 FR 3711), are amended by adding the following counties and adjacent counties within the State of Texas as a result of natural disaster as indicated:

County	Natural disaster(s)	Date(s)
Hansford	Drought—extreme high temperatures.	6/10/80-10/21/80
Somervell	Drought—extreme high temperatures.	6/1/80-10/3/80

All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on February 12, 1981, and for economic injury until the close of business on May 12, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 24, 1980.

A. Vernon Weaver,  
Administrator.

[FR Doc. 81-2426 Filed 1-26-81; 8:45 am]  
BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

[Public Notice CM-8/359]

### Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on February 10, 1981, in Room 3201 of the Coast Guard Headquarters Building, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting will be to discuss:

—sections of the Report of the XLIII Session of the IMCO Maritime Safety Committee that address the report of the XXXI Session of the Subcommittee on the Carriage of Dangerous Goods;

—U.S. positions on matters to be considered at the XXXII Session of the Subcommittee on the Carriage of Dangerous Goods;

—progress of IMCO activities of a continuing nature such as implementation of the IMDG Code.

For further information contact Lieutenant Kevin J. Eldridge, U.S. Coast Guard (G-MHM-2), 2100 Second Street, S.W., Washington, D.C. 20593. Telephone (202) 426-1577.

Dated: January 12, 1981.

John Todd Stewart,  
Chairman, Shipping Coordinating Committee.

[FR Doc. 81-2989 Filed 1-26-81; 8:45 am]  
BILLING CODE 4710-07-M

[Public Notice CM-8/360]

### Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on February 10, 1981 from 9:00 a.m. to 3:00 p.m. in the Forum Room, National Telecommunications and Information Administration, 1325 G Street, N.W., Washington, D.C.

Study Group 5 deals with propagation of radio waves (including radio noise) at the surface of the earth, through the non-ionized regions of the earth's atmosphere, and in space where the effect of ionization is negligible. The purpose of the meeting is to review documents being prepared for the international meeting of Study Group 5 in August-September 1981.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone (202) 632-2592.

Dated: January 12, 1981.

Gordon L. Huffcutt,  
Chairman, U.S. CCIR National Committee.

[FR Doc. 81-2990 Filed 1-26-81; 8:45 am]  
BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Cancellation of Public Meeting on Safety, Bumper and Consumer Information Programs

On December 8, 1980, the National Highway Traffic Safety Administration issued a notice (45 FR 80948) that it would hold a public meeting on January 28, 1981, to answer questions received in writing from the public and industry regarding the Agency's safety, bumper and consumer information programs.

The public meeting has been canceled. The agency will provide written answers to the questions submitted by the public and industry. Copies of those answers will be available, in the near future, for inspection in the agency's docket section, room 5109, 400 Seventh Street SW., Washington, D.C. 20590. After they have been placed on file in the agency's docket section, copies of

the answers also will be available from the agency's Office of Public Affairs and Consumer Participation, room 5232, 400 Seventh Street SW., Washington, D.C. 20590.

Issued on January 26, 1981.

Carl E. Nash,  
Acting Associate Administrator for  
Rulemaking.

[FR Doc. 81-3280 Filed 1-26-81; 12:11 pm]  
BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 81-17]

#### Customs Approved Public Gauger; Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Core Laboratories (Cargo Surveys), Inc., 7701 Stemmons Freeway, Dallas, Texas 47547, to gauge imported petroleum and petroleum products in all Customs districts in accordance with the provisions of § 151.43 of the Customs Regulations is approved.

Dated: January 15, 1981.

A. Piazza,  
Director, Entry Procedures and Penalties  
Division.

[FR Doc. 81-2977 Filed 1-26-81; 8:45 am]  
BILLING CODE 4810-22-M

### Fiscal Service

#### Regulations Governing Agencies for Issue of United States Savings Bonds; Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes (Freedom Shares)

**AGENCY:** Fiscal Service, Bureau of the Public Debt, Department of the Treasury.

**ACTION:** Notice of increase in issuing and paying agent fees.

**SUMMARY:** This notice is being published to set out revised schedules of fees, payable to eligible issuing and paying agents of United States Savings Bonds and Savings Notes (Freedom Shares), and to indicate the bases upon which the fees are computed. The revised fee schedules are applicable to issues and redemptions transferred to the Bureau of the Public Debt on and after the effective date of this notice.

**EFFECTIVE DATE:** October 1, 1980.



**FOR FURTHER INFORMATION CONTACT:**  
Mr. Calvin Ninomiya, Chief Counsel,  
Bureau of the Public Debt, 202-376-0244.

**SUPPLEMENTARY INFORMATION:**  
Department of the Treasury Circular,  
Public Debt Series, No. 4-67, First  
Revision (31 CFR, Part 317) at § 317.6(b),  
provides that issuing agents, other than  
federal agencies, will be paid a fee for  
each savings bond issued, and that a  
schedule of the fees, and the bases upon  
which the fees are computed and paid,  
will be separately published in the  
**Federal Register**. Department of the  
Treasury Circular No. 750, Third  
Revision (31 CFR, Part 321), at  
§ 321.23(a), provides that paying agents  
will receive a fee for each eligible  
savings bond and note redeemed, and  
that a schedule of fees, and the bases on  
which the fees are computed and paid,  
will be separately published in the  
**Federal Register**.

Pursuant to the above provisions, the  
following schedules of fees for the issue  
and redemption of savings bonds and  
savings notes are published:

#### Issuing Agent Fees

Eligible organizations qualified as  
issuing agents by Federal Reserve Banks  
and Branches, acting as fiscal agents,  
under the provisions of Department of  
the Treasury Circular, Public Debt  
Series, No. 4-67, will be paid for each  
savings bond issued.

#### Fee schedule—Financial institutions

Fees payable to financial institutions,  
which are deemed to include  
commercial, savings, and thrift banks;  
savings and loan associations; and  
credit unions, will be calculated as  
follows:

- (a) For each Series EE bond issued on  
the basis of (i) a purchase  
application received over-the-  
counter or by mail, or (ii) a Bond-a-  
Month Plan..... 85¢
- (b) For each Series EE bond issued on the  
basis of deductions under a payroll savings  
plan operated by a financial institution or a  
customer thereof:
- (i) if the bond is inscribed by  
computer..... 13¢
- (ii) if the bond is inscribed by any  
other means, such as  
addressograph, punch cards,  
typewriter, word processor, etc..... 32¢
- (c) For each Series E and EE savings  
bond and savings note issued on  
reissue to effect distribution to  
participants in thrift, savings,  
vacation, or similar plans..... 5¢

#### Fee schedule—Agents other than financial institutions

Fees payable to nonfinancial  
institutions, which are deemed to  
include companies, State and local

governments and other eligible  
organizations which issue bonds only  
for their employees, will be calculated  
as follows:

- (a) For each Series EE savings bond  
issued on the basis of deductions  
under a payroll savings plan  
operated by the agent..... 10¢
- (b) For each Series E and EE savings  
bond and savings note issued to  
effect distribution to participants in  
thrift, savings, vacation, or similar  
plans..... 5¢

#### Basis for determining fees

Fee payments will be determined by  
the number of individual issues included  
in transmittals of registration stubs or  
magnetic tape to the Bureau of the  
Public Debt for the account of an eligible  
agent during each calendar quarter,  
based on the transfer dates assigned to  
the transmittals by a Federal Reserve  
Bank.

#### Charges to customers

Financial institutions accepting fees  
from the Treasury for issuing savings  
bonds shall not make any charge to  
customers for the same service.

#### Paying Agent Fees

Financial institutions qualified as  
paying agents by Federal Reserve Banks  
and Branches, acting as fiscal agent,  
under the provisions of Department of  
the Treasury Circular No. 750, will be  
paid for each Series A-E and EE savings  
bond and United States savings note  
(Freedom Share) redeemed for cash, and  
for each such security redeemed in  
exchange for Series HH savings bonds  
under the provisions of Department of  
the Treasury Circular, Public Debt  
Series No. 2-80 (31 CFR, Part 352).

#### Fee schedule

Fees to paying agents will be  
calculated as follows:

- (a) For each savings bond and savings  
note redeemed for cash..... 34¢
- (b) For each savings bond and savings  
note redeemed in exchange for  
Series HH bonds..... 50¢

#### Basis for determining fees

Fee payments will be determined by  
the number of eligible paid bonds  
transmitted to the Bureau of the Public  
Debt for the account of an agent during  
the calendar quarter, based on the  
transfer dates assigned to the  
transmittals by a Federal Reserve Bank.

#### Charges to customers

Paying agents are not authorized to  
make any charge for redeeming savings  
bonds and savings notes presented by  
customers.

Dated: January 19, 1981.

H. J. Hintgen,

Commissioner of the Public Debt.

(FR Doc. 81-2343 Filed 1-26-81; 8:45 am)

BILLING CODE 4810-40-M

#### Office of the Secretary

[Supplement to Department Circular Public  
Debt Series—No. 1-81]

#### Notes of Series M-1983; Interest Rate

January 22, 1981.

The Secretary announced on January  
21, 1981, that the interest rate on the  
notes designated Series M-1983  
described in Department Circular—  
Public Debt Series—No. 1-81 dated  
January 15, 1981, will be 13% percent.  
Interest on the notes will be payable at  
the rate of 13% percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

#### Supplementary Statement

The announcement set forth above does  
not meet the Department's criteria for  
significant regulations and, accordingly, may  
be published without compliance with the  
Departmental procedures applicable to such  
regulations.

(FR Doc. 81-2859 Filed 1-26-81; 8:45 am)

BILLING CODE 4810-40-M

#### Debt Management Advisory Committees; Renewal Notice

Pursuant to the Federal Advisory  
Committee Act of October 6, 1972 (Pub.  
L. 92-463, 5 USC, App. I, Supp III), the  
Secretary of the Treasury has approved  
continuation of the following industry  
committees as advisory committees:

#### Titles

- (1) Government and Federal Agencies  
Securities Committee of the Public  
Securities Association
- (2) Government Borrowing Committee of the  
American Bankers Association

*Purpose:* The committees are utilized  
by the Secretary of the Treasury for  
advice in carrying out Federal financing  
and public debt management. They  
consider commercial operations; advise  
the Secretary of the Treasury and his  
staff and make reports and  
recommendations.

*Statement of Public Interest:* The  
membership of these committees  
represents a cross section of the  
financial community. The members are  
intimately acquainted with commercial  
and financial information and day-to-  
day market factors relevant to Treasury  
debt management operations. It is in the  
public interest to insure that the  
Secretary of the Treasury and his staff

have his supplemental information in order to manage the public debt.

Authority for these committees will expire on May 23, 1981 or until such time that the Secretary formally determines that continuance is in the public interest and new charters are signed and filed with the appropriate committee of the Senate and the House of Representatives.

**Martha A. Thompson,**

*Deputy Assistant Secretary (Administration).*

January 21, 1981.

[FR Doc. 81-2864 filed 1-26-81; 8:45 am]

BILLING CODE 4810-25-M

---

## VETERANS ADMINISTRATION

### Schedule for Awarding Senior Executive Service Bonuses

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the schedule for awarding Senior Executive Service bonuses.

**FOR FURTHER INFORMATION CONTACT:**

K. Joyce Edwards, Office of Personnel (05A), Veterans Administration, 810 Vermont Ave., NW., Washington, D.C. 20420 (202 389-3423).

### Schedule for Awarding Senior Executive Service Bonuses

Office of Personnel Management guidelines require that each agency publish a notice in the **Federal Register** of the agency's schedule for awarding Senior Executive Service bonuses at least 14 days prior to the date on which the awards will be paid. The Veterans Administration intends to award Senior Executive Service bonuses for the performance rating cycle of April 1, 1980 through September 30, 1980, with payouts scheduled by March 1, 1981.

Dated: January 19, 1981.

**Max Cleland,**

*Administrator.*

[FR Doc. 81-2356 Filed 1-26-81; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 46, No. 17

Tuesday, January 27, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONTENTS

	<i>Items</i>
Civil Aeronautics Board.....	1,2
Equal employment Opportunity Commission.....	3,4
Federal Reserve System.....	5,6
Federal Trade Commission.....	7
National Mediation Board.....	8
National Transportation Safety Board..	9
Nuclear Regulatory Commission.....	10,11
Securities and Exchange Commission..	12

1

[M-304 Amdt. 2, Jan. 19, 1981]

### CIVIL AERONAUTICS BOARD.

**TIME AND DATE:** 9:30 a.m., January 21, 1981.

**PLACE:** Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

**SUBJECT:** la. Docket 37498, New Bedford Carrier Selection Case (Instructions to staff) (BDA).

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-127-81 Filed 1-22-81; 4:46 pm]

BILLING CODE 6320-01-M

2 [M-305, Jan. 21, 1981]

### CIVIL AERONAUTICS BOARD.

**TIME AND DATE:** 10:30 a.m., January 28, 1981.

**PLACE:** Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

#### SUBJECT:

1. Ratification of items adopted by notation.

2. Dockets EAS-555, 556, 557, 558, 559, 560 and 655; Appeals of Essential Air Service Determinations for Astoria/Seaside, Bend/Redmond, Klamath Falls, North Bend/Coos Bay, Pendleton, Salem and Medford, Oregon. (BDA, OGC, OCCR)

3. Docket 38964, Republic's 90-day notice of intent to suspend service at Bristol, Va./Tn.-Kingsport-Johnson City, Tn. (Memo No. 234, BDA, OCCR)

4. Docket 34681, Interim essential air transportation at Plattsburgh, Massena, Watertown, Saranac Lake/Lake Placid, and Ogdensburg, New York, and Rutland, Vermont. (BDA, OCCR, OC)

5. Docket 35351, Petition of Wien Air Alaska, Inc. for Establishment of Subsidy Mail Rates. (BDA, OCCR, OC)

6. Docket 37294, Priority and nonpriority Domestic Service Mail Rates Investigation. (Memo No. 235, BDA)

7. Docket 5031, et al., Trans-pacific Certificate Renewal Case, Dockets 5065, 5168, 5710, applications of Trans World Airlines, Inc., Northwest Airlines, Inc., and Pan American World Airways, for renewal of U.S.-China authority. Order finalizing order to show cause denying renewal. (BIA, OGC, BALJ)

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-129-81 Filed 1-22-81; 4:47 pm]

BILLING CODE 6320-01-M

3

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

**TIME AND DATE:** 9:30 a.m. (eastern time), Tuesday, January 27, 1981.

**PLACE:** Commission Conference Room No. 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

**STATUS:** Part will be open to the public and part will be closed to the public.

**MATTERS TO BE DISCUSSED:** Open to the public.

1. Freedom of Information Act Appeal No. 80-10-FOIA-10-CH, concerning a request for material contained in age charge files.

2. Section 501 Transition Year Accomplishment Reports.

3. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued January 19, 1981.

[S-131-81 Filed 1-23-81; 10:29 am]

BILLING CODE 6570-06-M

4

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

January 21, 1981.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9:30 a.m. (eastern time), Tuesday, January 27, 1981.

**CHANGE IN THE MEETING:** The following matter was added to the agenda for the open portion of the meeting:

Notice of Delay in Publication of EEOC's Agenda of Significant Regulatory Activity

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:

Eleanor Holmes Norton, Chair  
Daniel E. Leach, Vice Chair  
Armando M. Rodriguez, Commissioner  
J. Clay Smith, Jr., Commissioner  
Opposed: None

#### CONTACT PERSON FOR MORE

**INFORMATION:** Treva I. McCall, Acting Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued January 22, 1981.

BILLING CODE 6570-06-M

5

### FEDERAL RESERVE SYSTEM.

Board of Governors.

**TIME AND DATE:** 10 a.m., Friday, January 30, 1981.

**PLACE:** 20th Street and Constitution Avenue NW., D.C. 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: January 22, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-130-81 Filed 1-22-81; 4:55 pm]

BILLING CODE 6210-01-M

6

### FEDERAL RESERVE SYSTEM.

Board of Governors.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice

forwarded to Federal Register on January 19, 1981.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., Wednesday, January 28, 1981.

**CHANGES IN THE MEETING:** Addition of the following open item(s) to the meeting:

Proposed actions in connection with the Executive Branch hiring freeze.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 23, 1981.

James McAfee,  
Assistant Secretary of the Board.

[S-134-81 Filed 1-23-81; 1:32 pm]

BILLING CODE 6210-01-M

7

**FEDERAL TRADE COMMISSION.**

**TIME AND DATE:** 10 a.m., Wednesday, January 28, 1981.

**PLACE:** Room 432, Federal Trade Commission building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Oral Presentation by Interested Parties Concerning Proposed TRR on OTC Drugs.

**CONTACT PERSON FOR MORE INFORMATION:** Susan B. Ticknor, Office of Public Information (202) 523-3830; Recorded Message: (202) 523-3806.

[S-135-81 filed 1-23-81; 3:55 pm]

BILLING CODE 6750-01-M

8

**NATIONAL MEDIATION BOARD.**

**TIME AND DATE:** 2 p.m., Tuesday, February 3, 1981.

**PLACE:** Board hearing room, eighth floor, 1425 K Street NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

(1) Ratification of Board actions taken by notation voting during the month of January, 1981.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rowland K. Quinn, Jr., Executive Secretary; telephone (202) 523-5920.

Dated: January 22, 1981.

[S-133-81 Filed 1-23-81; 11:28 am]

BILLING CODE 7550-01-M

9

[NM-81-3]

**NATIONAL TRANSPORTATION SAFETY BOARD.**

**TIME AND DATE:** 9 a.m., Tuesday, February 3, 1981.

**PLACE:** NTSB board room, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. *Railroad Accident Report*—Illinois Central Gulf Railroad Company Freight Train Derailment, Hazardous Material Release and Evacuation, Mauldraugh, Kentucky, July 26, 1980.

2. *Recommendation* to the Federal Aviation Administration concerning brake adjustment of large tractor trailers.

3. *Proposed Special Study Topic:* Run-off-the Road Accidents on Interstate and other Limited Access Highways.

4. *Proposed Special Study Topic:* Fatalities and injuries Associated with Riding in Open-Cargo Areas of Vehicles.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, 202-472-6022.

January 23, 1981.

[S-141-81 Filed 1-23-81; 8:45 am]

BILLING CODE 4910-58-M

10

**NUCLEAR REGULATORY COMMISSION.**

**DATE:** Wednesday, January 28 and Thursday, January 29, 1981.

**PLACE:** Commissioners conference room, 1717 H Street NW., Washington, D.C.

**STATUS:** Open/closed.

**MATTERS TO BE CONSIDERED:** Wednesday, January 28:

10 a.m.

Discussion of GPU—Federal Tort Claim (approximately 1½ hours, open portions may be closed)

2 p.m.

Discussion of Policy, Planning and Program Guidance for fiscal years 1983-87 (approximately 1½ hours public meeting)

Thursday, January 29:

10 a.m.

Briefing on NFS-Erwin (rescheduled from January 23, 1981) (approximately 1½ hours, closed)

2 p.m.

1. Discussion of Systematic Safety Evaluation of All Currently Operating

Nuclear Power Reactors (approximately 1½ hours, public meeting).

2. Affirmation Session (approximately 30 minutes, public meeting).

a. Affirmation Items.

1. Fire Protection Rule for Future Plants (rescheduled FR 1/22).

2. Draft Bailly Show Cause Order (rescheduled FR 1/22)

b. Discussion and Vote of Above Affirmation Items, if required.

**AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE:** (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

January 21, 1981.

[S-136-81 Filed 1-23-81; 3:55 P.M.]

BILLING CODE 7590-01-M

11

**NUCLEAR REGULATOR COMMISSION.**

**DATE:** Week of January 26, 1981 (revised).

**PLACE:** Commissioners conference room, 1717 H Street NW., Washington, D.C.

**STATUS:** Open/closed.

**MATTERS TO BE CONSIDERED:** Monday, January 26:

2 p.m.

1. Affirmation of Order in McGuire (approx 10 minutes, public meeting) (additional item).

2. Discussion and Vote on Final Rule to 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories—Licensing Procedures" (public meeting, rescheduled from 1/27).

Tuesday, January 27:

10 a.m.

Discussion of Management-Organization and Internal Personnel Matters (closed, rescheduled from 1/22)

2 p.m.

Briefing on Adequacy of Sequoyah Ignition Systems (public meeting, rescheduled from 1/26)

Wednesday, January 28 (as announced):

10 a.m.

Discussion of GPU—Federal Tort Claim (open, portions may be closed)

2 p.m.

Discussion of Policy, Planning and Program Guidance for fiscal year 1983-87 (public meeting)

Thursday, January 29 (revised):

10 a.m.

Briefing on NFS-Erwin (closed)

2 p.m.

1. Affirmation Session (public meeting).
  - a. Fire Protection Rule for Future Plants.
  - b. Draft Bailly Show Cause Order.

**AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE:**

(202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

**CONTACT PERSON FOR MORE INFORMATION:**

Walter Magee (202) 634-1410.

**ADDITIONAL INFORMATION:** The 1/22 meeting "Briefing on Information Flow Concerning the TMI Accident" was continued on 1/23 at 1 p.m.)

Walter Magee,

Office of the Secretary.

[5-137-81 Filed 1-23-81; 3:55 pm]

BILLING CODE 7590-01-M

12

**SECURITIES EXCHANGE COMMISSION.**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 26, 1981, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, January 27, 1981, at 10:00 a.m. and on Thursday, January 29, 1981, following the 10:00 a.m. open meeting.

An open meeting will be held on Thursday, January 29, 1981 at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Friedman, and Thomas determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 27, 1981, at 10:00 a.m., will be:

- Formal orders of investigation.
- Litigation matters.
- Subpoena enforcement actions.
- Consideration of *amicus* participation.
- Freedom of Information Act appeals.
- Chapter X proceeding.
- Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceeding of an enforcement nature.

Institution of injunctive action.

Freedom of Information Act and Privacy Act appeals.

Regulatory matter regarding financial institutions.

The subject matter of the closed meeting scheduled for Thursday, January 29, 1981, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.

Regulatory matter bearing enforcement implications.

Settlement of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, January 29, 1981, at 10:00 a.m., will be:

1. Consideration of whether to issue a release requesting comments on proposed amendments to Regulation S-K to provide revised and standardized requirements for presentation of the ratio of earnings to combined fixed charges and preferred dividends and, if required, the ratio of earnings to fixed charges. For further information, please contact Rita Gunter at (202) 272-2133.

2. Consideration of whether to amend the general organization rule relating to delegation of authority to the Director of the Division of Corporation Finance concerning acceleration requests pursuant to Rule 12g3-2(a)(2) under the Securities Exchange Act of 1934. For further information, please contact Ronald Adee at (202) 272-3250.

3. Consideration of whether to grant the FOIA appeal of Stephen M. Shaw to waive search and copying fees in connection with Mr. Shaw's request for access to information concerning Applied Solar Energy Corporation. For further information, please contact Harlan W. Penn at (202) 272-2454.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Mendelsohn at (202) 272-2091.

January 22, 1981.

[5-128-81 Filed 1-22-81; 4:46 pm]

BILLING CODE 8010-01-M

*[The page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document. The text is arranged in several columns and is too light to transcribe accurately.]*

# Reader Aids

Federal Register

Vol. 46, No. 17

Tuesday, January 27, 1981

## INFORMATION AND ASSISTANCE

### PUBLICATIONS

#### Code of Federal Regulations

CFR Unit	202-523-3419
	523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

#### Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Public Inspection Desk	633-6930
Scheduling of documents	523-3187

#### Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Slip law orders (GPO)	275-3030

#### Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

#### Privacy Act Compilation

	523-3517
--	----------

#### United States Government Manual

	523-5230
--	----------

#### SERVICES

Agency services	523-3408
Automation	523-3408
Dial-a-Reg	
Chicago, Ill.	312-663-0884
Los Angeles, Calif.	213-688-6694
Washington, D.C.	202-523-5022
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public briefings: "The Federal Register—What It Is and How To Use It"	523-5235
Public Inspection Desk	633-6930
Regulations Writing Seminar	523-5240
Special Projects	523-4534
Subscription orders and problems (GPO)	783-3238
TTY for the deaf	523-5239

## FEDERAL REGISTER PAGES AND DATES, JANUARY

1-858	2
859-1248	5
1249-1658	6
1659-2022	7
2023-2312	8
2313-2588	9
2589-2968	12
2969-3202	13
3203-3488	14
3489-3800	15
3801-4658	16
4659-5850	19
5851-6862	21
6863-7256	22
7257-7932	23
7933-8432	26
8433-9018	27

## CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<b>1 CFR</b>	EO 12258).....	1251
3.....	12064 (See EO 12258).....	1251
18.....	12078 (Revoked by EO 12258).....	1251
	12084 (See EO 12258).....	1251
<b>3 CFR</b>	12093 (Revoked by EO 12258).....	1251
<b>Administrative Orders:</b>	12103 (Revoked by EO 12258).....	1251
<b>Presidential Determinations:</b>	12110 (Superseded by EO 12258).....	1251
No. 73-10 of January 2, 1973 (Amended by Presidential Determination 81-1 of December 31, 1980).....	12130 (Revoked by EO 12258).....	1251
No. 81-1 of December 31, 1980.....	12131 (See EO 12258).....	1251
<b>Executive Orders:</b>	12135 (See EO 12271).....	4667
April 30, 1919 (Revoked by PLO 5812).....	12137 (See EO 12258).....	1251
1398 (Revoked in part by PLO 5808).....	12157 (Revoked by EO 12258).....	1251
1713 (Revoked by PLO 5815).....	12160 (Amended by EO 12265).....	4665
4096 (Revoked by PLO 5846).....	12170 (See EO 12276, 12277, 12278, 12279, 12280, 12281, 12282, 12283, 12284).....	7913, 7915, 7917, 7919, 7921, 7923, 7925, 7927, 7929
5118 (Revoked by PLO 5824).....	12190 (See EO 12258).....	1251
5864 (Revoked by PLO 5817).....	12195 (Revoked by EO 12258).....	1251
11063 (Amended by EO 12259).....	12196 (See EO 12258).....	1251
11145 (See EO 12258).....	12205 (Revoked in part by EO 12282).....	7925
11157 (Amended by 12274).....	12211 (Revoked in part by EO 12282; see EO 12276, 12277, 12278, 12279, 12280, 12281, 12283, 12284).....	7913, 7915, 7917, 7919, 7921, 7923, 7925, 7927, 7929
11183 (See EO 12258).....	12216 (See EO 12258).....	1251
11287 (See EO 12258).....	12258.....	1251
11562 (See EO 12258).....	12258 (Amended by EO 12271).....	4677
11776 (See EO 12258).....	12259.....	1253
11888 (Amended EO 12267).....	12260.....	1653
11922 (See EO 12258).....	12261.....	2023
11970 (See EO 12258).....	12262.....	2313
12022 (Revoked by EO 12258).....	12263.....	2315
12050 (See EO 12258).....	12264.....	4659
12054 (Revoked by EO 12258).....	12265.....	4665
12059 (See EO 12258).....	12266.....	4667
12061 (Revoked by EO 12258).....	12267.....	4669
12063 (Revoked by	12268.....	4671

12269.....	4673	354.....	1661	78.....	7934	<b>14 CFR</b>	
12270.....	4675	371.....	3816, 7266, 7933	82.....	859, 6883	1.....	2280
12271.....	4677	722.....	2970	307.....	1258	21.....	3494
12272.....	5853	725.....	2971	319.....	1257	39.....	14-17, 861-867, 2030, 7934 2031, 2594, 3495-3498, 4862-4866
12273.....	5854	905.....	5859	331.....	2338	71.....	18, 402, 868, 2032, 2595, 2596, 2967, 4866, 7935
12274.....	5855	907.....	5, 2025, 3493, 5859, 6863, 8435	350.....	1258	73.....	18, 402, 868, 2967, 3499
12275.....	5857	910.....	5, 6, 2336, 4681, 7266	351.....	1258	75.....	402, 868, 2596, 2967
12276.....	7913	916.....	1662	354.....	1258	91.....	19, 2280
12277.....	7915	917.....	1662	355.....	1258	93.....	3499
12278.....	7917	982.....	2337	362.....	1258	97.....	2033
12279.....	7919	1484.....	5960	381.....	1258	107.....	3782
12280.....	7921	1486.....	5860	<b>Proposed Rules:</b>		108.....	3782
12281.....	7923	1701.....	6, 2971	317.....	7387	121.....	2280, 3782, 5500
12282.....	7925	1900.....	3817	318.....	1286	129.....	3782, 7936
12283.....	7927	1942.....	8435	381.....	1286, 7387	135.....	3782, 5500
12284.....	7929	1945.....	2589	<b>10 CFR</b>		150.....	8316
12285.....	7931	2851.....	1257	25.....	8436	159.....	3499
<b>Proclamations:</b>		2852.....	3624	73.....	2025, 4858	203.....	1664, 7268
4600 (Revoked by		2855.....	7	205.....	2956	298.....	8444
Proc. 4812).....	1249	2856.....	7	210.....	4860	389.....	8444
4667 (See		2858.....	1257	211.....	3368, 5722	<b>Proposed Rules:</b>	
Proc. 4813).....	3499	2859.....	7	212.....	1246, 3827, 5864, 7776	Ch. I.....	4944
4702 (Revoked in part		2870.....	7	456.....	1616	21.....	931, 3775, 8347
by EO 12282).....	7925	<b>Proposed Rules:</b>		490.....	8398	36.....	931
4707 (Amended by		210.....	3903-3905	712.....	2971	39.....	3543
Proc. 4817).....	5851	220.....	3905	903.....	6864	45.....	3775
4750 (See		246.....	7878	1020.....	2971	67.....	75
Proc. 4813).....	3489	271.....	4642	<b>Proposed Rules:</b>		71.....	932, 2085, 2088, 2630, 3544, 4945-4948, 6974
4811.....	1	272.....	4642, 7748	Ch. I.....	1742, 7368	91.....	76
4812.....	1249	273.....	4642, 7748	30.....	3908	93.....	932, 933, 8028
4813.....	3489	274.....	4642, 7748	31.....	3908	121.....	76, 5484, 5506
4814.....	3801	278.....	4642, 7748	32.....	3908	125.....	76
4815.....	3803	280.....	8923	50.....	3541	135.....	76, 5484, 5506
4816.....	4679	411.....	3536	205.....	71	139.....	6975
4817.....	5851	420.....	3536	211.....	6014	145.....	5484
<b>5 CFR</b>		421.....	3221	212.....	1287	147.....	5484
351.....	3805	422.....	3538	456.....	2522, 8996-9005	221.....	934
352.....	8433	423.....	3539	458.....	4482	250.....	8561
531.....	2317	425.....	3222	459.....	8016	296.....	934
550.....	2323	426.....	3223	477.....	8252	297.....	934
738.....	2582	427.....	3224	800.....	5514	298.....	8566
1203.....	2326	428.....	3540	<b>12 CFR</b>		<b>15 CFR</b>	
<b>Proposed Rules:</b>		431.....	3226	9.....	6864	Subtitle A.....	2339
293.....	8529	432.....	3229	11.....	6865	19.....	1574
359.....	3903	433.....	3232	205.....	2972	368.....	868
715.....	1278	434.....	3233	208.....	2026	370.....	868
<b>7 CFR</b>		435.....	3234	211.....	2027, 8437	371.....	20, 1665, 5864
Ch. XVIII.....	4681	436.....	3235	225.....	2026	372.....	868
Ch. XXXI.....	2971	437.....	3236	226.....	1662	373.....	868, 1665
Subtitle A.....	2328	438.....	3540	262.....	5861	374.....	20, 5864
2.....	2969, 3203	907.....	4936	265.....	1663, 2027, 5861-5863	376.....	1665
6.....	1659	908.....	4936	341.....	2974	377.....	5865
27.....	3203	979.....	2084	400.....	1132	378.....	1665
180.....	2328	982.....	2622	523.....	2029	379.....	868
210.....	3, 2329, 3812	987.....	1742	541.....	8438	385.....	868, 1258, 1665
215.....	3, 2329	991.....	3541	545.....	8438	399.....	1258, 1665
220.....	2329, 3812	1040.....	1279, 6973	701.....	7934	936.....	7936, 7942
225.....	6266	1065.....	8533	<b>Proposed Rules:</b>		937.....	7946
226.....	4, 3814	1421.....	2630	8.....	3237	<b>Proposed Rules:</b>	
230.....	2329	1430.....	6973	545.....	3909	Subtitle A.....	8566
235.....	2329, 3812	1701.....	3027, 3906-3908, 7387	701.....	920, 922	Ch. IX.....	8566
245.....	3814	1804.....	7387	741.....	922	7a.....	8910
246.....	7846	1901.....	2900	<b>13 CFR</b>		7b.....	8910
247.....	6338	1940.....	2900	101.....	10, 8441	7c.....	8910
250.....	2331	<b>8 CFR</b>		121.....	2591	806.....	7214, 7244
271.....	1421, 7257	211.....	2590, 4856	305.....	859	<b>16 CFR</b>	
272.....	1421, 2332, 4622, 6310, 7257	214.....	4856, 7267	309.....	859	13.....	2034, 2035, 8445
273.....	1421, 3194, 4622	245.....	3493	<b>Proposed Rules:</b>		305.....	2974, 3829
274.....	1421, 2332, 6310, 7257	248.....	3493	113.....	931		
275.....	7257	292.....	2025	122.....	4937		
277.....	2336, 7257	335.....	5861				
280.....	8922	<b>9 CFR</b>					
		51.....	5861				



1512.....	3203	404.....	2093, 3547, 4584, 8569	<b>Proposed Rules:</b>	20.....	7298	
<b>Proposed Rules:</b>		416.....	2093, 3547, 4584, 4949,	16.....	3029, 3030	25.....	6926, 7298
13.....	2355-2361, 3544, 6014,		7893	20.....	2364, 3029, 3030	31.....	3504
	7390, 8567	609.....	7786	101.....	2364	48.....	2998
423.....	935	614.....	7796	161.....	7397	54.....	6931
450.....	3547	653.....	6017	207.....	2456	150.....	4873
453.....	6976	656.....	3910	210.....	2456	154.....	2042
1307.....	3034	675.....	7395, 9008	225.....	2456	301.....	6926
1307.....	3034	676.....	7395, 9008	226.....	2456	<b>Proposed Rules:</b>	
1307.....	3034	702.....	8590	310.....	2365, 3030	1.....	112, 114, 116, 1744, 1753,
1406.....	6016	725.....	8569	436.....	1298		6018, 6019, 7397, 7401
		730.....	8854	501.....	2456	26.....	120
<b>17 CFR</b>				510.....	2456	48.....	129
1.....	21	<b>21 CFR</b>		514.....	2456	51.....	1754, 3560, 4950
200.....	7951	Ch. 1.....	8454	558.....	2456	<b>27 CFR</b>	
231.....	3500, 8446	5.....	8454	601.....	4634	4.....	1725
240.....	1665	7.....	8454	803.....	2364	19.....	2999
241.....	3204	10.....	8454	876.....	7562-7639	70.....	2999
249.....	2339	12.....	8454	899.....	3029, 3030	211.....	8469
249b.....	1665	14.....	8454	1020.....	111	212.....	8469
250.....	2035, 5867	16.....	8958	1308.....	943	240.....	2999
261.....	3500	19.....	8454	<b>22 CFR</b>		245.....	2999
270.....	6879, 6882, 6884	20.....	8454	1.....	6358	250.....	2999
<b>Proposed Rules:</b>		21.....	8454	2.....	6358	270.....	2999
7.....	3027	25.....	8454	3.....	6358	275.....	2999
210.....	1288	50.....	8942, 8979	4.....	6358	<b>Proposed Rules:</b>	
229.....	78	56.....	8958	18.....	2608	6.....	7402
230.....	78, 2631, 2637	71.....	8942	51.....	2343, 8468	<b>28 CFR</b>	
231.....	78	74.....	8461	306.....	1611	0.....	3843
239.....	78, 2637	109.....	8454	1300.....	7952	16.....	3509
240.....	78, 1288, 8568	110.....	8454	<b>Proposed Rules:</b>		19.....	7953
241.....	78	146.....	8462	17.....	3547	40.....	3843
249.....	78	145.....	2339	41.....	2365	51.....	870
		171.....	8942	<b>23 CFR</b>		61.....	7953
<b>18 CFR</b>		172.....	8465	Ch. I.....	32	<b>Proposed Rules:</b>	
260.....	6885	176.....	8466	140.....	3501	59.....	1302
271.....	2975, 6901	178.....	27, 2341, 3830, 7271	450.....	5702	524.....	2962
274.....	6901, 8454	180.....	8942	630.....	5702	544.....	2962
282.....	1666, 2036, 3830, 4867	201.....	2977, 7271	655.....	2038	545.....	2962
290.....	2596	203.....	28, 1259	656.....	2298	547.....	2962
<b>Proposed Rules:</b>		310.....	8942	770.....	8426	<b>29 CFR</b>	
4.....	1291	312.....	8942	1217.....	32, 7953	1.....	4306
35.....	3909	314.....	8942	<b>Proposed Rules:</b>		2.....	34
141.....	1743	320.....	8942	625.....	1228, 2020, 2093	4.....	4320, 4886, 5876
260.....	1744	330.....	8454, 8942	630.....	943	5.....	4380
271.....	941, 8568	361.....	8942	655.....	2020, 2093	6.....	4398
375.....	1291	430.....	2979, 2987, 3831, 3835,	770.....	2097	541.....	3010
430.....	23		8942	<b>24 CFR</b>		778.....	7308
<b>19 CFR</b>		431.....	28, 8942	200.....	2343	1620.....	4888
4.....	4868	436.....	2979, 2987, 2989, 3831,	201.....	4872	1903.....	3852
152.....	2597		3835, 3838, 7273	241.....	3842	1910.....	4034, 4078, 6134
353.....	1667	442.....	2991, 2992, 3831	300.....	1261	1952.....	3861-3863
355.....	3500	444.....	2979, 2987, 2994, 7273	510.....	3503	1990.....	4889, 5878
<b>20 CFR</b>		446.....	3835, 7273	885.....	3843	2520.....	1261, 1265, 5882
404.....	4869	449.....	7274	<b>Proposed Rules:</b>		2530.....	8894
416.....	4869, 5870, 6903, 7269	452.....	2995	114.....	3030	2550.....	1266, 7320
601.....	7764	453.....	2996, 3838	<b>25 CFR</b>		2560.....	5892
802.....	7764	509.....	8454	52.....	1668	2603.....	7958
603.....	7764	510.....	1260, 3834, 7273, 8454	53.....	1674	2604.....	4893
604.....	7764	520.....	1259, 1260	256.....	4873	2607.....	7958
614.....	7270	522.....	30, 2998, 7273,	<b>Proposed Rules:</b>		2609.....	7323
615.....	2976		8467	115.....	2366	2610.....	3509
653.....	7764	524.....	1261, 8467	251.....	1298	2652.....	4894
655.....	4568	540.....	8467	256.....	33	<b>Proposed Rules:</b>	
656.....	3830	558.....	31, 3834, 3841, 3842	260.....	944	2.....	7392
658.....	7764	601.....	2998, 8942	<b>26 CFR</b>		8.....	4951, 6019
676.....	7822, 7832	630.....	8942	1.....	1676-1719, 3504, 3912,	225.....	7756
677.....	7822	808.....	8454		6909, 6911, 6918, 6923,	530.....	3916
678.....	7822	812.....	8942		6924, 7275, 7287	1603.....	3916
679.....	7822	813.....	8942			1906.....	7392
<b>Proposed Rules:</b>		1003.....	8942			1910.....	3916, 4182, 4412,
10.....	7392	1010.....	8454, 8942				7692
		1030.....	8454				
		1240.....	8454				
		1250.....	8454				

1918a.....	4182	231.....	4536	642.....	8032	262.....	8395
1952.....	3919	300.....	3865, 4912, 5460	643.....	8032	264.....	2802, 7666, 8395
1955.....	3919	305.....	5372	644.....	8032	265.....	2802, 7666, 8395
1990.....	7402	307.....	5372	645.....	8032	401.....	2264
2510.....	8571	309.....	5372	646.....	8032	429.....	8260
2520.....	1304	315.....	5372	649.....	3239	762.....	5981
2530.....	8906	318.....	5372	668.....	8032	<b>Proposed Rules:</b>	
<b>30 CFR</b>		322.....	4913	674.....	5295, 8032	Ch. I.....	3032, 3408
Ch. VII.....	2043	324.....	5372	675.....	5295, 8032	Ch. V.....	2369
90.....	5885	332.....	3206	676.....	5295, 8032	7.....	2306
700.....	7902	338.....	5372	682.....	3922, 8032	12.....	2306
716.....	7208, 7894	361.....	5522	683.....	4956, 8032	51.....	7193
732.....	7906	362.....	5416	690.....	8032	52.....	133, 953, 1314-1316, 1760, 1761, 3569, 3923, 3924, 6021, 7004, 7005, 7007, 7008, 8575-8586
785.....	7894	365.....	5522	692.....	8032	58.....	2655
915.....	5885	366.....	5410	791.....	4991	60.....	1102, 1136, 1317, 8033, 8352, 8587
916.....	5892	369.....	5416	792.....	4991	61.....	1165, 1318, 3033
936.....	4902	370.....	5416, 5522	793.....	4991	81.....	7009, 8588
944.....	5899	371.....	5416	794.....	4991	85.....	8982
948.....	5915, 7324	372.....	5416	<b>36 CFR</b>		86.....	1910, 5001, 5838
<b>Proposed Rules:</b>		373.....	5416	219.....	7327	123.....	954, 2120, 3924, 8589
715.....	6982	374.....	5416	223.....	2611	136.....	3033
731.....	6997	375.....	5416	1190.....	4270	180.....	5003
732.....	6997	378.....	5416	<b>Proposed Rules:</b>		192.....	2556
816.....	6982	379.....	5416	7.....	1312, 1313	264.....	2893, 7884
817.....	6982	395.....	5416	13.....	5642	265.....	2893
901.....	1306	408.....	3207, 5372	261.....	1758	408.....	2544
913.....	3238, 4951	525.....	5372	262.....	1758	410.....	8590
914.....	1309	526.....	5372	801.....	5578	420.....	1858
915.....	2368	527.....	5372	1215.....	5586	430.....	1430, 2369
917.....	3030	538.....	3378	<b>37 CFR</b>		431.....	1430, 2369
918.....	3238	539.....	3387	1.....	2611	434.....	3136
936.....	2369	624.....	5372	2.....	6934	465.....	2934
942.....	1309	643.....	5372	306.....	884	466.....	8860
944.....	946	644.....	5372	307.....	891	720.....	8986
948.....	1311, 3560	645.....	5372	308.....	892	721.....	6021
<b>31 CFR</b>		646.....	5372	<b>Proposed Rules:</b>		762.....	6019
51.....	1120	649.....	3394	1.....	2653, 3162, 5001	763.....	3033, 7011, 8200
<b>32 CFR</b>		674.....	5238, 6322	<b>38 CFR</b>		772.....	8992
Ch. I.....	2344	675.....	5238, 6322	<b>Proposed Rules:</b>		<b>41 CFR</b>	
286f.....	880	676.....	5238, 6322	3.....	8574	Ch. 1.....	3519
298a.....	881	682.....	3866, 3871, 6322	21.....	2654	Ch. 101.....	1731, 3021, 7982
372a.....	5956	683.....	6322	<b>39 CFR</b>		1-1.....	7966
706.....	5962	690.....	5320, 6322	111.....	35, 6940	1-3.....	7968
<b>Proposed Rules:</b>		726.....	5372	232.....	897	1-4.....	1196
Ch. XVI.....	6998	735.....	3873	<b>Proposed Rules:</b>		1-15.....	7968
556.....	3561	740.....	5372	111.....	3568	5-6.....	908
<b>33 CFR</b>		753.....	4606	3001.....	952	5-14.....	911
40.....	4912	757.....	3877	<b>40 CFR</b>		5-60.....	900
117.....	2043	<b>Proposed Rules:</b>		3.....	5962	5A-1.....	5982
157.....	3510	Subtitle A.....	3920	6.....	3364	5A-2.....	5982
162.....	7959	64.....	7002	30.....	3017	5A-6.....	908
181.....	3514	104.....	4954	35.....	7327	5A-7.....	7981
183.....	3514	200.....	5236	51.....	1267, 7182	5A-14.....	911
<b>Proposed Rules:</b>		201.....	5236	52.....	35, 36, 898, 2043, 3516, 3883, 4916, 4918, 5965, 5980, 6941, 8471-8481	5A-16.....	7981
1.....	946	223.....	7206	55.....	7961, 8491, 8492	5A-60.....	900
87.....	8030	322.....	4955	81.....	899, 3883, 8495	5B-60.....	900
92.....	946	366.....	4955	86.....	1590, 1599, 1603	14-1.....	7327, 7984
117.....	2120, 2652, 4953	369.....	5436	87.....	2044	14-2.....	1730, 7984
161.....	946	370.....	5436	122.....	2045, 2344, 2802, 7666	14-3.....	7984
<b>34 CFR</b>		371.....	5436	<b>Proposed Rules:</b>		14-4.....	7984
75.....	3205	372.....	5436	123.....	1727, 3207, 3517, 5616, 7964, 8298, 8312	14-7.....	7984
78.....	881	373.....	5436	160.....	2344	14-16.....	7984
104.....	4912	374.....	5436	162.....	2008, 5696	14-19.....	7984
200.....	5136	375.....	5436	180.....	3018, 5980, 5981	14-26.....	7984
201.....	5136	378.....	5436	205.....	4918, 8497	14-30.....	7984
211.....	5372	379.....	5436	257.....	3021	29-70.....	3891
215.....	5372	540.....	4560	261.....	4614	60-1.....	3892, 7332
223.....	7196	541.....	4560	<b>41 CFR</b>		60-2.....	7332
230.....	4536	605.....	8032	<b>Proposed Rules:</b>		60-4.....	7332
		606.....	8032	<b>Ch. 1.....</b>			
		617.....	4956	<b>Ch. 101.....</b>			
		618.....	4956	<b>1-1.....</b>			
		619.....	4956	<b>1-3.....</b>			
		620.....	4956	<b>1-4.....</b>			
		621.....	4956	<b>1-15.....</b>			
				<b>5-6.....</b>			
				<b>5-14.....</b>			
				<b>5-60.....</b>			
				<b>5A-1.....</b>			
				<b>5A-2.....</b>			
				<b>5A-6.....</b>			
				<b>5A-7.....</b>			
				<b>5A-14.....</b>			
				<b>5A-16.....</b>			
				<b>5A-60.....</b>			
				<b>5B-60.....</b>			
				<b>14-1.....</b>			
				<b>14-2.....</b>			
				<b>14-3.....</b>			
				<b>14-4.....</b>			
				<b>14-7.....</b>			
				<b>14-16.....</b>			
				<b>14-19.....</b>			
				<b>14-26.....</b>			
				<b>14-30.....</b>			
				<b>29-70.....</b>			
				<b>60-1.....</b>			
				<b>60-2.....</b>			
				<b>60-4.....</b>			

60-20.....	7332	1169 (Revoked by PLO 5821).....	6947	5839.....	7344	502.....	1276
60-30.....	7332	1175 (Revoked in part and amended by PLO 5832).....	7341	5840.....	7344	<b>Proposed Rules:</b>	
60-50.....	7332	1258 (Revoked by PLO 5848).....	7347	5841.....	7345	108.....	3573
60-741.....	7332	1362 (Revoked by PLO 5799).....	2047	5842.....	7345	381.....	2370
101-20.....	3523	1438 (Revoked by PLO 5841).....	7345	5843.....	7345	401.....	2656
101-26.....	3024	1867 (Revoked in part by PLO 5839).....	7344	5844.....	7346	503.....	3250
101-35.....	1213	2013 (Amended by by PLO 5825).....	7338	5845.....	7346	524.....	5008
101-36.....	1213, 8513	2112 (Amended by PLO 5816).....	6945	5846.....	7346	537.....	8599
101-37.....	7983	2307 (Revoked by PLO 5798).....	2046	5847.....	7347		
101-38.....	3023	2964 (Revoked by PLO 5829).....	7340	5848.....	7347	<b>47 CFR</b>	
105-60.....	8513	3040 (Amended by PLO 5837).....	7343	5849.....	7347	Ch. I.....	6951
<b>Proposed Rules:</b>		3837 (Revoked by PLO 5819).....	6946	5850.....	7348	0.....	2352
Ch. 16.....	6022	3869 (Revoked by PLO 5818).....	6946	5851.....	7348	1.....	3896
9-15.....	955	3917 (Partially revoked by PLO 5802).....	2047	5852.....	7349	2.....	3896
9-50.....	959	4849 (Partially revoked by PLO 5799).....	2047	5853.....	7349	15.....	4923, 4925
60-20.....	3916	4863 (Revoked by PLO 5806).....	2348	5854.....	8520	64.....	5984
101-11.....	3239, 3240	5791.....	2613	5855.....	8520	73.....	3530, 3531, 3897, 6970
<b>42 CFR</b>		5797.....	2046, 6942			90.....	3896
52.....	4918	5798.....	2046	<b>44 CFR</b>		<b>Proposed Rules:</b>	
60.....	8518	5799.....	2047	Ch. I.....	1270	Ch. I.....	3925-3939, 5008
110.....	6354	5800.....	1734	10.....	2049	2.....	5009, 5011
435.....	6903	5801.....	1734	59.....	1273	22.....	5011
442.....	1268	5802.....	2047	60.....	1273	25.....	3250
<b>Proposed Rules:</b>		5803.....	1734	64.....	1273, 3212, 3214, 7350, 7352, 7353	63.....	6025
36.....	1318	5804.....	2047	65.....	1274, 1736, 7356, 7365, 7366	73.....	3573-3575, 3939, 5011, 7014, 8048, 8600
50.....	5003	5805.....	2048	67.....	1275, 7366-7368, 7987, 7996	76.....	6025
54c.....	7176	5806.....	2348	332.....	2349	81.....	3939
122.....	7166	5808.....	6942	<b>Proposed Rules:</b>		90.....	5011
403.....	6296	5809.....	6943	67.....	1319, 7408-7411, 8034 8047, 8048	<b>48 CFR</b>	
405.....	959, 3794, 5006, 7408	5810.....	6943			<b>Proposed Rules:</b>	
442.....	7408	5811.....	6944	<b>45 CFR</b>		42.....	8055
432.....	7011	5812.....	6944	46.....	8366	<b>49 CFR</b>	
433.....	7011	5813.....	6944	73.....	7368	Subtitle A.....	2352
435.....	5006	5814.....	6945	95.....	3527	1.....	6012
441.....	5003	5815.....	6945	126.....	8518	171.....	5298
481.....	959	5816.....	6945	233.....	4919	172.....	5298
482.....	959	5817.....	6946	304.....	1275, 6949	173.....	5298, 8005
483.....	7408	5818.....	6946	1012.....	5620	177.....	5298
<b>43 CFR</b>		5819.....	6946	1060.....	6950	179.....	8005
Subtitle A.....	2348	5820.....	6947	1067.....	1234	201.....	2613
4.....	6942, 7334	5821.....	6947	1069.....	4919	397.....	5318
9.....	5772	5822.....	6947	1213.....	6951	512.....	2049
2090.....	5794	5823.....	6948	1225.....	1608	525.....	2063
2091.....	1634	5824.....	6948	1226.....	8520	537.....	2063
2200.....	1634	5825.....	7338	1232.....	6951	555.....	2063
2210.....	1634	5827.....	7339	1300.....	4921	571.....	2064, 2618
2220.....	1634	5828.....	7340	1396.....	6903	577.....	6971
2230.....	1634	5829.....	7340	<b>Proposed Rules:</b>		623.....	8426
2240.....	1634	5830.....	7341	Ch. XII.....	960	635.....	5476
2250.....	1634	5831.....	7341	16.....	1644	639.....	5480
2260.....	1634	5832.....	7341	74.....	1644	642.....	5820
2270.....	1634	5833.....	7342	95.....	7011	660.....	5808
2300.....	5794	5834.....	7342	205.....	7011	845.....	3532
2310.....	5794	5835.....	7342	232.....	7011	1002.....	2294, 2295, 8524
2320.....	5794	5836.....	7343	301.....	1319	1003.....	2294, 4926, 8524
2340.....	5794	5837.....	7343	302.....	1321, 7011	1011.....	2294, 3532, 8524
2350.....	5794	5838.....	7343	303.....	1321	1014.....	8525
2920.....	5772			304.....	7011	1033.....	1738, 3216, 3533, 3534 4934
4100.....	5784, 7350			1012.....	5632	1100.....	2294, 4926, 8524
<b>Proposed Rules:</b>				1062.....	961	1136.....	2295
4.....	3242			1392.....	7246	1137.....	2294
426.....	3250			1393.....	7246	1331.....	2295, 6971, 7385
<b>Public Land Orders:</b>				1395.....	7011	<b>Proposed Rules:</b>	
656 (Revoked by PLO 5827).....	7339			1396.....	7246	Ch. V.....	5012
1009 (Revoked by PLO 5838).....	7343			1397.....	7246	21.....	5588
1109 (Revoked by PLO 5849).....	7347					23.....	969
1165 (Revoked by PLO 5831).....	7341			<b>46 CFR</b>		100-199.....	8055
				225.....	913	172.....	2121, 2126
				284.....	913	173.....	2121, 2126
				286.....	913	175.....	2126
				291.....	913	178.....	2126

179.....	2126
192.....	39
195.....	39, 2130
387.....	8186
531.....	5022, 8056
533.....	8056
571.....	40, 55, 2132, 2136, 7015, 8062, 8066, 8067, 8070
575.....	8063
583.....	7025
604.....	5394
638.....	6334, 7031
641.....	5832
660.....	5815
1039.....	134
1056.....	3941
1100.....	8601
1109.....	3942
1201.....	1323, 2146
1206.....	1323
1207.....	1323
1208.....	1323
1209.....	1323
1210.....	1323
1241.....	2146
1300.....	1324
1301.....	1324
1303.....	1324
1305.....	1324
1310.....	8604

**50 CFR**

17.....	3178, 3184, 3361, 5730
26.....	913, 916, 2076, 8525
32.....	6013
33.....	917, 918, 2078, 2352, 3218
250.....	66
285.....	3025, 8012
296.....	2302, 3534
611.....	1738, 2079, 2081, 7385, 7386
652.....	1740, 3534

**Proposed Rules:**

17.....	3188
36.....	5668
216.....	1761, 2153
230.....	3942
611.....	2153, 2154, 7034
643.....	2153
658.....	7034
672.....	2154

## AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

**NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.**

## REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

## Rules Going Into Effect Today

## INTERIOR DEPARTMENT

Land Management Bureau—

86495 12-31-80 / New Mexico; revocation of Public Land Order 3796, lands in the Hueco-Bolson Area

## List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 1981.

## THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2½ hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between Federal Register and the Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.
- WHEN:** February 13 and 27; March 13 and 27; at 9 a.m. (identical sessions).
- WHERE:** Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.
- RESERVATIONS:** Call King Banks, Workshop Coordinator, 202-523-5235.

CHAPTER I. THE EARLY PERIOD.

The first part of the history of the United States is the history of the early period. This period is divided into three main sections: the discovery of the continent, the settlement of the coast, and the establishment of the first colonies.

The discovery of the continent is attributed to Christopher Columbus in 1492. He sailed from Spain in search of a westward route to the Indies, and instead discovered a new world. His discovery opened the way for European exploration and settlement.

The settlement of the coast followed Columbus's discovery. Spanish explorers and missionaries established settlements along the Gulf and Atlantic coasts. The English, French, and Dutch also established colonies along the coast.

The establishment of the first colonies is a key event in the early period. The first English colony was established at Jamestown in 1607. Other colonies followed, including Plymouth in 1620 and the Massachusetts Bay Colony in 1630.

THE EARLY PERIOD

The early period of the history of the United States is characterized by exploration, settlement, and the establishment of the first colonies. This period laid the foundation for the nation that would follow.

The discovery of the continent by Christopher Columbus in 1492 was a pivotal moment in world history. It opened up a new world of opportunity and led to the eventual settlement of the continent.

The settlement of the coast by Spanish, English, French, and Dutch explorers and missionaries was a key step in the process of European colonization. These settlements established a foothold for European power in the Americas.

The establishment of the first colonies, particularly the English colonies, was a crucial development. These colonies were the first step toward the creation of a new nation.

The early period of the history of the United States is a time of great discovery and exploration. It is a time when the continent was first seen by Europeans and when the first colonies were established.

The discovery of the continent by Christopher Columbus in 1492 was a landmark event. It led to a series of explorations and settlements that shaped the future of the United States.

The settlement of the coast by Spanish, English, French, and Dutch explorers and missionaries was a key step in the process of European colonization. These settlements established a foothold for European power in the Americas.

The establishment of the first colonies, particularly the English colonies, was a crucial development. These colonies were the first step toward the creation of a new nation.

The  
Weekly  
Compilation of  
PRESIDENTIAL  
DOCUMENTS

Administrative  
Records

1. The President's messages to Congress, his annual State of the Union messages, and his messages of condolence and congratulation.

2. The President's public speeches, including his addresses to Congress, his addresses to the people, and his addresses to foreign dignitaries.

3. The President's correspondence, including his letters to and from members of Congress, his letters to and from the public, and his letters to and from foreign dignitaries.

4. The President's executive orders, proclamations, and appointments.

5. The President's memoranda, including his memoranda to and from members of his staff, his memoranda to and from the public, and his memoranda to and from foreign dignitaries.

6. The President's press releases, including his press releases to the press, his press releases to the public, and his press releases to foreign dignitaries.

7. The President's public appearances, including his appearances at public events, his appearances at foreign events, and his appearances at domestic events.

8. The President's private papers, including his diaries, his letters to and from family members, and his letters to and from friends.

9. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

10. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

11. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

12. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

13. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

14. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

15. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

16. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

17. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

18. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

19. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

20. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

21. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

22. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

23. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

24. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

25. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

26. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

27. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

28. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

29. The President's official records, including his records of his appointments, his records of his public appearances, and his records of his correspondence.

30. The President's personal papers, including his diaries, his letters to and from family members, and his letters to and from friends.

The authentic text behind the news . . .

# The Weekly Compilation of PRESIDENTIAL DOCUMENTS Administration of Jimmy Carter

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published quarterly, semiannually, and annually. Other features include lists of acts approved by the President and of nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by Office of the Federal Register, National Archives and Records Service, General Services Administration



#### SUBSCRIPTION ORDER FORM

ENTER MY SUBSCRIPTION FOR 1 YEAR TO: WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)

@ \$15.00 Domestic; @ \$23.50 Foreign.

@ \$15.00 additional if Domestic first-class mailing is desired.

NAME—FIRST, LAST		
COMPANY NAME OR ADDITIONAL ADDRESS LINE		
STREET ADDRESS		
CITY	STATE	ZIP CODE
PLEASE PRINT OR TYPE (or) COUNTRY		

Remittance Enclosed (Make checks payable to Superintendent of Documents)

Charge to my Deposit Account No. ....

MAIL ORDER FORM TO:  
Superintendent of Documents  
Government Printing Office  
Washington, D.C. 20402



Gonville Power Administration  
LIBRARY  
Portland, Oregon

# Federal Register

---

## Book 2 of 2 Books Tuesday, January 27, 1981

---

- 
- 8854 Part II—Labor/ETA:  
Procedures for the handling of Discrimination  
Complaints Under the Black Lung Benefits Act
- 
- 8860 Part III—EPA:  
Porcelain Enameling Point Source Category; Effluent  
Limitations Guidelines, Pretreatment Standards, and  
New Source Performance Standards
- 
- 8890 Part IV—Labor/ESA:  
Procedure for Determination of Applicability of  
Section 8(f) of the Longshoremen's and Harbor  
Workers' Compensation Act and Special Fund  
Assessments
- 
- 8894 Part V—Labor/PWBPO:  
Minimum Standards for Employee Benefits Plans;  
Suspension of Benefit Rules; Final Rules and  
Proposed Rulemaking
- 
- 8908 Part VI—[Deleted]
- 
- 8910 Part VII—Commerce/Secretary:  
Proposed Amendments to the National Voluntary  
Laboratory Accreditation Program Procedures to  
Include Criteria for Accrediting Testing Laboratories  
and to Eliminate the Need for Criteria Committees
- 
- 8922 Part VIII—USDA/FNS:  
Food Stamp Program—Emergency Food Assistance  
for Victims of Disasters; Emergency Rulemaking and  
Proposed Rule and Proposed Rule Establishing  
Procedures for Replacement of Lost or Stolen Food  
Stamp Authorizations, and Replacement of  
Nondelivered, Stolen or Destroyed Coupons
- 
- 8942 Part IX—HHS/FDA:  
Protection of Human Subjects; Informed Consent;  
Standards for Institutional Review Boards for Clinical  
Investigations; and Clinical Investigations Which May  
Be Reviewed Through Expedited Review Procedure
- 
- 8982 Part X—EPA:  
Tampering Enforcement Regulations
- 
- 8986 Part XI—EPA:  
Agency Policy to Premanufacture Testing of New  
Chemical Substances and Announcement of  
Rescheduled Meeting and Extension of Comment on  
Certain Environmental Test Standards
- 
- 8996 Part XII—DOE/SOLAR:  
Residential Conservation Service Program
- 
- 9008 Part XIII—Labor/ETA:  
Comprehensive Employment and Training Act;  
Complaints, Investigations and Sanctions



# **federal register**

---

Tuesday  
January 27, 1981

---

**Part II**

**Department of Labor**

---

**Employment Standards Administration**

---

**Procedures for the Handling of  
Discrimination Complaints Under the  
Black Lung Benefits Act**

## DEPARTMENT OF LABOR

## Employment Standards Administration

## 20 CFR Part 730

Procedures for the Handling of  
Discrimination Complaints Under the  
Black Lung Benefits Act

**AGENCY:** Employment Standards Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** These proposed rules will establish procedures to be followed by the Department of Labor in investigating and ruling on complaints of discrimination filed by coal miners under section 428 of the Federal Mine Safety and Health Act of 1977, as amended.

**DATES:** Written comments on these proposed rules may be submitted until March 30, 1981. Such written comments will be available for inspection by the public between the hours of 8:15 a.m. and 4:45 p.m. on workdays at the Office indicated below.

**ADDRESS:** Comments should be sent to Robert B. Dorsey, Employment Standards Administration, U.S. Department of Labor, Room C3316, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, D.C. 20210 (see for further information contact).

**FOR FURTHER INFORMATION CONTACT:** Robert B. Dorsey, Acting Chief, Operational Policies, Regulations and Procedures Staff, Division of Coal Mine Workers' Compensation. (202) 523-9486.

**SUPPLEMENTARY INFORMATION:** Section 428 of the Federal Mine Safety and Health Act of 1977 prohibits coal mine operators from discharging or otherwise discriminating against miners employed by them because the miner is suffering from pneumoconiosis. Any miner who believes that he or she has been the victim of such discrimination may file a complaint with the Secretary of Labor within 90 days of the alleged violation. Following an investigation of the complaint and the opportunity for a hearing, the Secretary is directed to issue a decision either granting the complainant relief or dismissing the complaint.

The Secretary has determined that uniform procedures are required for the orderly resolution of complaints filed under the employee protection provisions of the Federal Mine Safety and Health Act of 1977. To ensure such uniformity, particularly in the development of evidence, investigations of complaints filed under section 428 and this part will be conducted by the

Mine Safety and Health Administration, (MSHA), U.S. Department of Labor, pursuant to the Memorandum of Understanding between MSHA and the Employment Standards Administration (ESA) dated December 11, 1979 (44 FR 75952). The purpose of the Memorandum of Understanding is to coordinate the handling of complaints which may potentially involve a violation of both section 105(c), which prohibits discrimination against a miner for using any of the rights given by the Act and is administered by MSHA, and section 428 which is administered by ESA. Such an understanding serves to improve services to the complainant and make more efficient use of government resources.

In brief the Memorandum of Understanding provides:

Any complaint by a coal miner, representative of such miner, or applicant for employment in a coal mine which alleges discrimination prohibited by the Act may be filed at any MSHA office or ESA Black Lung office. Such complaints shall be considered filed for the purposes of both section 105(c) and section 428. Reports of such complaints will be transmitted to MSHA's Coal Mine Safety and Health Special Investigations Branch and will be assigned a number. All complaints are then referred immediately to a MSHA district or subdistrict office for investigations. Since MSHA has a coal mine safety and health staff which regularly investigates discrimination complaints, MSHA will investigate all complaints and prepare an investigative report which will be sent to the MSHA Special Investigations Branch. The Special Investigations Branch will analyze the report and take action on the complaint in one of the following ways:

(a) If a complaint involves a violation of section 105(c) only, MSHA will initiate proceedings before the Federal Mine Safety and Health Review Commission. If MSHA finds no violation of section 105(c), the complainant may file an action on his or her behalf before the Commission within 30 days of notice of the Secretary's determination that no violation has occurred.

(b) If a complaint involves a violation of section 428 only, ESA will initiate proceedings pursuant to that section after receipt of the investigative report from MSHA. If, in ESA's judgment, further investigation is needed before a decision can be made, the complaint will be returned to MSHA with a request for additional information on specific issues of concern. If ESA finds no violation of section 428 or the dispute cannot be resolved amicably, any party must request a formal hearing conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 551 et seq.

(c) If it appears to the Special Investigations Branch from the facts found in the investigative report that this complaint involves violations of both sections 105(c) and 428, MSHA will consult with ESA during the review of the report. If it is determined

that a complaint gives rise to claims under both section 105(c) and section 428, the complainant will be so advised and will be informed of his or her rights under both sections. If a complainant wishes to proceed with both claims, MSHA will proceed first with the section 105(c) claim. The reason for proceeding first with the section 105(c) complaint is that such cases must be processed within specific time frames, and in some instances, section 105(c) affords greater protection to miners. Ordinarily, ESA will hold the section 428 claim in abeyance until the proceedings under section 105(c) are concluded.

This part outlines the procedures to be followed in filing complaints under section 428, notifying the parties of the preliminary findings made by the Secretary, conducting hearings and issuing final decisions of the Secretary of Labor. As section 428 does not provide a remedy for other acts of discrimination, such as discrimination based upon age, race, or sex, complainants should consult other statutes and implementing regulations for procedures to be followed in seeking a remedy for any other discriminatory practices.

The Department of Labor has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and Department of Labor Guidelines (44 FR 5570).<sup>1</sup> This document was prepared under the supervision of Ralph M. Hartman, Director, Office of Workers' Compensation Programs.

It is proposed to add Part 730 to read as follows:

**PART 730—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 428 OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977, AS AMENDED**

**Subpart A—Introduction and Definitions**

- Sec.  
730.1 Statutory provisions.  
730.2 Purpose and scope of this part.  
730.3 Definitions of terms used in this part.  
730.4 Applicability of other regulations.

**Subpart B—Parties and Representatives in Proceedings Under this Part**

- 730.101 Who may file a complaint.  
730.102 Where to file a complaint.  
730.103 Form of complaint.  
730.104 When must a complaint be filed.  
730.105 Against whom may a complaint be filed.  
730.106 Withdrawal of complaint.  
730.107 Legal representation of parties.  
730.108 Fees for representation services.

<sup>1</sup>A copy of a letter, dated January 19, 1981, from Ray Marshall to the Small Business Administration was filed with the original document. This letter certified that this rule would not have a significant economic impact upon a substantial number of small business entities.

**Subpart C—Investigation of Complaint and Determination by the Director**

- 730.201 Investigation of complaint.  
 730.202 Further investigation.  
 730.203 Stipulation and settlement attempts.  
 730.204 Determination by the Director.

**Subpart D—Formal Hearings and Decisions**

- 730.301 Forwarding the case file to the Chief Administrative Law Judge.  
 730.302 Assignment of the case for hearing.  
 730.303 Parties.  
 730.304 Time and place of hearing.  
 730.305 Conduct of hearing.  
 730.306 Introduction of documentary evidence.  
 730.307 Evidence at hearing.  
 730.308 Waiver of evidentiary presentation.  
 730.309 Record of hearing.  
 730.310 Termination of formal hearing.  
 730.311 Decisions and orders.  
 730.312 Appeal from order.

Authority: 5 U.S.C. 301; 30 U.S.C. §§ 936(a) and 938.

**Subpart A—Introduction and Definitions****§ 730.1 Statutory provisions.**

(a) Under Title IV of the Federal Mine Safety and Health Act of 1977, as amended, benefits are provided to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally disabled by pneumoconiosis.

(b) Paragraph (a) of section 428 of the Act provides that no coal mine operator shall discharge or in any other way discriminate against any miner employed by the operator by reason of the fact that such miner is suffering from pneumoconiosis. It further provides that no person shall cause or attempt to cause any action or omission prohibited by section 428, Paragraphs (b) and (c) of section 428 outline the procedures to be followed by the Secretary of Labor for the purpose of reviewing any act or omission alleged in violation of section 428. The review procedures described in section 428 include investigation, hearing, and enforcement procedures.

**§ 730.2 Purpose and scope of this part.**

(a) This part sets forth rules which govern how a complaint under section 428 of the Act is to be processed and adjudicated.

(b) This Subpart A describes the statutory provisions which authorize the regulations in this part, the meaning of terms used in this part, and the applicability of other regulations outside this part.

(c) Subpart B states who may be parties, who may represent parties in proceedings under this part, how complaints are filed and how fees, costs and expenses are to be reimbursed to successful complainants.

(d) Subpart C sets forth the steps for investigating a complaint under this part and the procedures under which the Director makes a determination of the merits of a complaint.<sup>1</sup>

(e) Subpart D established the procedure to be followed when a party, who is dissatisfied with the determination of the Director, requests a hearing. Subpart D also contains the rules for orders issued by Administrative Law Judges hearing cases under section 428 of the Act and how a party may appeal such orders.

**§ 730.3 Definitions of terms used in this part.**

As used in this part: (a) "Act" means the Federal Mine Safety and Health Act of 1977, as amended;

(b) "Administrative Law Judge" means an administrative law judge of the United States Department of Labor who has been designated to hold hearings under this part;

(c) "Chief Administrative Law Judge" means the Chief Administrative Law Judge of the United States Department of Labor, Washington, D.C. 20210;

(d) "Complainant" means the person or persons who allege violations of the Act by notifying the Secretary;

(e) "Complaint" means "application" for review as used in section 428(b) of the Act;

(f) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities (see section 3(h)(2) of the Act).

(g) "DCMWC" means the Division of Coal Mine Workers' Compensation in the Office of Workers' Compensation Programs (OWCP), Employment Standards Administration, United States Department of Labor;

(h) "Director" means the Director of the Office of Workers' Compensation Programs, or the Director's designee

(i) "Miner" means any individual who is or was employed in a coal mine (underground or surface) who has not

been found totally disabled by pneumoconiosis in a prior adjudication under Title IV of the Act. The term "miner" includes:

(1) Any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal;

(2) Any individual who works or has worked in coal mine construction, maintenance, or transportation in or around a coal mine or coal preparation facility, to the extent the individual was exposed to coal dust as a result of such employment.

(j) "MSHA Office" means any district or subdistrict office of the Mine Safety and Health Administration, United States Department of Labor;

(k) "Office of Administrative Law Judges" means the Office of the Administrative Law Judges of the United States Department of Labor, Washington, D.C. 20210.

(l) "Operator" means any owner, lessee, or other person who operates, controls, or supervises a coal mine or coal preparation facility and includes any other person who would be considered an operator pursuant to §§ 725.101 and 725.491;

(m) "Person" means any individual, partnership, association, corporation, firm, subsidiary or parent of a corporation, or other organization or business entity;

(n) "Pneumoconiosis" means a chronic dust disease of the lungs and related disease conditions, including respiratory and pulmonary impairments, arising out of employment in a coal mine and includes the diseases and conditions listed in § 718.201.

(o) "Respondent" means an operator alleged to have discharged or in any other way discriminated against any miner employed by the operator by reason of the fact that such miner is or is believed to be suffering from pneumoconiosis. "Respondent" also means any person alleged to have caused or attempted to cause an operator to so discriminate;

(p) "Secretary" means the Secretary of Labor or the Secretary's authorized representative.

**§ 730.4 Applicability of other regulations.**

No provision of the regulations issued by the Secretary to administer sections 415, 422 and 435 of the Act shall be applicable to the administration of section 428 of the Act unless so specified in this part.

<sup>1</sup> Complaints of alleged violations of section 428 are investigated by MSHA under a Memorandum of Understanding (MOU) currently in effect between MSHA and ESA (44 FR 75952, December 21, 1979). This procedure will be followed as long as the MOU remains in effect. The MOU will continue in effect unless modified or terminated by mutual consent of both parties or terminated by either party upon 30 days written notice to the other party.

## Subpart B—Parties and Representatives in Proceedings Under This Part

### § 730.101 Who may file a complaint.

(a) Any miner who believes that he or she was discharged or in any other way discriminated against by an operator with whom he or she was employed at the time of the alleged violation because that miner had pneumoconiosis or because the operator believed the miner to have pneumoconiosis may file a complaint with the Department of Labor. A complaint filed by a miner's authorized representative, shall be deemed to have been filed by the miner.

(b) Whether an individual was in an employer-employee relationship with an operator rather than some other type of economic relationship shall not be limited to common law concepts or doctrines but determined by economic realities.

(c) A miner is employed at the time of the alleged violation for the purpose of this part, if he or she was then on the payroll, on sick leave, on leave of absence, or laid off but subject to recall, under an applicable employment agreement.

(d) No miner shall be required to file a claim for black lung benefits with the Department of Labor under Title IV of the Act as a condition of review of his or her complaint. No proceeding under this part shall be suspended pending the result of an adjudication of any claim for black lung benefits.

(e) The death of a miner shall not preclude review unless it is apparent that even if a violation is proven no meaningful relief can be granted.

### § 730.102 Where to file a complaint.

A complaint alleging a violation of section 428 of the Act may be made at any MSHA office or ESA Black Lung Office of the United States Department of Labor. The location of these offices may be determined by consulting any telephone directory or any office of the United States Department of Labor. Such complaints shall be considered filed for the purposes of both sections 105(c) and 428 of the Act.

### § 730.103 Form of complaint.

(a) Complaints may be made in person, in writing, or by telephone.

(b) A complaint, whether written or oral, shall describe the acts believed to constitute the violation or violations, the identity of those believed to be responsible for the violation, and the identity of the miner who was the victim of the alleged discrimination.

### § 730.104 When must a complaint be filed.

(a) Except in the case of continuing violations, a complaint alleging violation of section 428 of the Act may be made within 90 days after an alleged violation occurs. If, however, an operator has concealed the reason for the discharge or discrimination, the complaint may be filed within 90 days after the miner knows or should have known that the violation has occurred. In the absence of contrary evidence a complaint shall be presumed to be timely.

(b) A complaint made in person or by phone shall be considered filed as of the date the miner or the miner's authorized representative first contacts a MSHA office or ESA Black Lung office.

(c) Complaints submitted to a MSHA office or an ESA Black Lung office by mail shall be considered filed the date the complaint is mailed. Written complaints mistakenly mailed to another agency or subdivision of the United States Government shall be considered filed when the complaint is mailed. For purposes of this section, the date of mailing shall be the date it was postmarked. In the absence of a legible postmark, other evidence may be used to establish the mailing date.

### § 730.105 Against whom may a complaint be filed.

A complaint may be filed against:

(a) A operator who discharges or in any other way discriminates against a miner because the miner is suffering from pneumoconiosis or because the operator believes the miner to be suffering from pneumoconiosis.

(b) Any other person who causes or attempts to cause an operator to engage in conduct prohibited by section 428 of the Act.

### § 730.106 Withdrawal of complaint.

(a) Any miner or a miner's authorized representative may request that a complaint filed under this part be withdrawn. The request shall be in writing, detail the reasons justifying its approval and be filed with the Director or the Administrative Law Judge designated to conduct a hearing under § 730.302 of this part. The Director or the designated Administrative Law Judge shall approve a request for withdrawal unless the request is not voluntary or results from coercion or misunderstanding.

(b) When a complaint has been withdrawn under paragraph (a) of this section, the complaint will be considered not to have been filed for purposes of satisfying the time requirements set forth in the statute.

### § 730.107 Legal representation of parties.

(a) Any miner or any other party to a case arising under section 428 of the Act shall have the right to be represented. The authorized representative shall be served with all notices, documents or decisions.

(b) Any party may waive his or her right to be represented. If an Administrative Law Judge determines that a miner does not wish to obtain the services of a representative, such Administrative Law Judge shall proceed to consider the alleged violations in accordance with this part, unless the miner is unable to continue without the help of a representative.

### § 730.108 Fees for representation services.

No fee charged a complainant for representation services rendered under this part shall be valid unless approved by the Secretary under § 730.311(c) of this part. If, however, a case is settled prior to the time it is forwarded to the Chief Administrative Law Judge, no fee shall be valid unless approved by the Director. To the extent appropriate, § 725.306 of this title shall be applicable to the approval of fees for representation services charged to a complainant under this part. In all cases in which the complainant is successful, the complainant's attorney's fee and expenses, if any, shall be paid by the person or persons adjudged to have committed the prohibited act.

## Subpart C—Investigation of Complaint and Determination by the Director

### § 730.201 Investigation of complaint.

(a) Upon receipt of a complaint by the Department of Labor, a copy of the complaint shall be sent to the person(s) alleged to have violated section 428 of the Act and an investigation will be conducted by MSHA to secure evidence concerning the alleged violation.

(b) The confidentiality of any person other than the complainant who provides information on a confidential basis shall be protected, in accordance with 29 CFR Part 70.

### § 730.202 Further investigation.

The Director may direct that further investigation of the complaint be conducted.

### § 730.203 Stipulation and settlement attempts.

Before making a determination, the Director may confer with the parties to obtain stipulations of fact or law, or to settle the case.

**§ 730.204 Determination by the Director.**

(a) Within 60 days of completion of the investigation, the Director shall determine whether the alleged violation has occurred, and shall send notice of the determination to the complainant, the respondent, and to their representatives stating the reasons for the determination.

(b)(1) If the Director determines that the complaint is without merit, the notice of determination shall include a statement that the determination shall become the final order of the Secretary denying the complaint unless within 30 calendar days of receipt the complainant files a request for a hearing on the complaint with the Director.

(2) Copies of any request for a hearing shall be sent by the complainant to the respondent (employer).

(c)(1) If the Director determines that the alleged violation has occurred, the notice of determination shall include an order directing the respondent to take appropriate corrective action including, but not limited to, rehiring or reinstating the complainant to the miner's former position with back pay, and notice to the respondent that the order shall become the final order of the Secretary unless within thirty calendar days of its receipt the respondent files a request for a hearing with the Director.

(2) Copies of any request for a hearing shall be sent by the respondent (employer) to the complainant.

**Subpart D—Formal Hearings and Decisions****§ 730.301 Forwarding the case file to the Chief Administrative Law Judge.**

Upon receipt of a timely request for a formal hearing, the Director shall immediately forward the entire case file, and a statement of contested issues to the Chief Administrative Law Judge and to all parties.

**§ 730.302 Assignment of the case for hearing.**

The Chief Administrative Law Judge shall assign the case to an Administrative Law Judge. All motions, applications and other papers thereafter filed in the proceedings shall be filed with the Administrative Law Judge.

**§ 730.303 Parties.**

(a) The parties to proceedings under this part shall be the miner against whom the violation of section 428 of the Act is alleged to have been committed and the operator or other person alleged to have committed the violation. Any other person may be made a party if that person's rights may be prejudiced by a decision to be made. Requests to be a party shall be made in writing to the

Director or, if a case is set for formal hearing, to the Chief Administrative Law Judge or the Administrative Law Judge assigned to the case.

(b) The Solicitor of Labor, or his or her designee, may appear and participate in any formal hearing conducted pursuant to this part on behalf of the Director as an interested party.

**§ 730.304 Time and place of hearing.**

(a) The Chief Administrative Law Judge or the Administrative Law Judge assigned to the case shall assign a definite time, date and place for the formal hearing. The date of the hearing must be more than 30 days later than the date of the notice of hearing. Such notice shall be sent to each party and/or representative by certified mail. Hearings shall normally be held within 75 miles of the complainant's place of residence.

(b) The Chief Administrative Law Judge or the Administrative Law Judge assigned to the case, may change the date, time and place for the hearing, either on his or her own, or for good cause shown by a party. The Chief Administrative Law Judge or Administrative Law Judge may adjourn or postpone the hearing, or may reopen the hearing for the receipt of additional evidence, at any time prior to the mailing of the decision. Unless otherwise agreed to by the parties, at least ten days' notice shall be given to the parties of any change in the time, date, or place of hearing or of an adjournment or a reopening of the hearing.

(c) When two or more hearings are to be held, and the same or substantially similar evidence is relevant to the matters at issue at each hearing, the Chief Administrative Law Judge may, upon motion by any party or on his or her own motion, order that a consolidated hearing be conducted. If a consolidated hearing is held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered in the others.

(d) At any time after a notice of hearing has been issued, the Chief Administrative Law Judge may for good cause, transfer such case from one Administrative Law Judge to another.

**§ 730.305 Conduct of hearing.**

(a) Hearing shall be conducted by an Administrative Law Judge appointed under Section 3105 of Title 5 of the United States Code who shall receive compensation at a rate not less than that prescribed for GS-16 under Section 5332 of Title 5, United States Code. Hearings shall be conducted in accordance with the Administrative Procedure Act,

Section 556 of Title 5, United States Code. To the extent appropriate, the provisions of Subpart E of Part 725 of this chapter shall be applicable to hearings conducted pursuant to this part.

(b) All hearings shall be attended by the parties or their representatives unless their attendance is excused by the Administrative Law Judge. The unexcused failure of any party to attend a hearing shall be considered a waiver of the right to present evidence at the hearing.

(c) The Administrative Law Judge who conducts the hearing shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. Procedures at the hearing shall be within the discretion of the Administrative Law Judge and shall be designed to afford the parties an opportunity for a fair hearing.

**§ 730.306 Introduction of documentary evidence.**

(a) All documents transmitted to the Office of Administrative Law Judges under § 730.301 shall be placed into evidence by the Administrative Law Judge, subject to objection by any party.

(b)(1) Any other documents not submitted to the Director, may be received in evidence at the hearing subject to the objection of any party, if such evidence is sent to all other parties not later than 20 days before a hearing is held.

(2) Documents which were not exchanged with the parties in accordance with this paragraph, may be admitted at the hearing with the consent of the parties or upon a showing of good cause why such evidence was not exchanged in accordance with this paragraph.

(c) If, during the course of a hearing, the Administrative Law Judge determines that the evidence is incomplete as to any issue which must be decided, the Administrative Law Judge may, in his or her discretion, remand the claim to the Director with instructions to develop the required additional evidence, or allow the parties a reasonable time to obtain and submit such evidence before the termination of the hearing.

**§ 730.307 Evidence at hearing.**

In conducting a hearing the Administrative Law Judge shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart, but may conduct the hearing in such a

manner as to best ascertain the rights of the parties.

**§ 730.308 Waiver of evidentiary presentation.**

Any party who desires to submit written pleadings and information in lieu of an evidentiary presentation may submit such documents to the Administrative Law Judge. Copies shall also be sent to the other parties.

**§ 730.309 Record of hearing.**

All hearings shall be open to the public and shall be recorded. All evidence shall be made a part of the record.

**§ 730.310 Termination of formal hearing.**

Formal hearings are officially terminated when all evidence has been received, witnesses heard, pleadings and briefs submitted to the Administrative Law Judge, and the transcript of the proceedings has been printed and delivered to the Administrative Law Judge.

**§ 730.311 Decisions and orders.**

(a) *Recommended Decision.* The Administrative Law Judge shall issue a recommended decision with 30 days after the termination of the hearing. The recommended decision shall contain appropriate findings, conclusions and a recommended order and be forwarded, together with the record, to the Secretary of Labor for a final order. The recommended decision shall be served upon all parties to the proceeding.

(b) *Exceptions.* All parties and the Director may, within fifteen days of the issuance of the recommended decision, file written exceptions to such decision with the Secretary of Labor, United States Department of Labor, Washington, D.C. 20210. Copies of the exceptions shall be served upon all parties, including the Director.

(c) *Final Order.* (1) The Secretary of Labor shall issue a final order, based on the record and the recommended decision of the Administrative Law Judge, which shall be served upon all of the parties.

(2) If the Secretary concludes that the party charged has violated the law, the final order shall direct the party charged to take appropriate corrective action to abate the violation, including reinstatement of the miner to his or her former or substantially equivalent position together with the compensation (including back pay), terms, and conditions of that employment.

(3) *Costs.* If a final order is issued finding that a violation did occur the Secretary, at the request of the complainant, shall assess against the respondent a sum equal to the aggregate

amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant, as determined by the Secretary, for, or in connection with, the bringing of the complaint upon which the final order was issued.

(4) *Dismissals.* If the Secretary determines that the party charged has not violated the law, an order shall be issued and served on all the parties denying the complaint.

**§ 730.312 Appeal from order.**

Any party adversely affected or aggrieved by the final order entered under the provisions of this part, may petition for judicial review pursuant to Chapter 7 of Title 5, United States Code.

Signed this 19th day of January, 1981, at Washington, D.C.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81-2459 Filed 1-19-81; 4:54 pm]

BILLING CODE 4510-27-M



# **federal register**

---

Tuesday  
January 27, 1981

---

## **Part III**

### **Environmental Protection Agency**

---

**Porcelain Enameling Point Source  
Category; Effluent Limitations Guidelines,  
Pretreatment Standards, and New Source  
Performance Standards**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 466

[WH FRL 1719-7]

#### Porcelain Enameling; Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed regulation.

**SUMMARY:** EPA proposes regulations to limit effluent discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from facilities engaged in porcelain enameling. The purpose of this proposal is to provide effluent limitation guidelines for "best practicable technology," "best available technology," and "best conventional technology," and to establish new source performance standards and pretreatment standards under the Clean Water Act. After considering comments received in response to this proposal, EPA will promulgate a final rule.

**DATES:** Comments on this proposal must be submitted on or before April 27, 1981.

**ADDRESS:** Send comments to: Mr. Ernst P. Hall, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, Attention: EGD Docket Clerk, Proposed Porcelain Enameling Rules (WH-552). The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (EPA Library Rear) PM-213. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Technical information may be obtained from Mr. Ernst P. Hall, at the address listed above, or call (202) 426-2726. Copies of technical documents may be obtained from Distribution Officer at the above address or call (202) 426-2724. The economic analysis may be obtained from Ms. Debra Maness, Economic Analysis Staff (WH-586), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, or call (202) 426-2617.

#### SUPPLEMENTARY INFORMATION:

##### Overview

This preamble described the legal authority and background, the technical and economic bases, and other aspects

of the proposed regulations. That section also summarizes comments on a draft technical document circulated in September, 1979, and solicits comments on specific areas of interest. The abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

The proposed regulation is supported by three major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*. EPA's technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Porcelain Enameling Point Source Category*. The Agency's economic analysis is found in *Economic Impact Analysis of Proposed Effluent Standards and Limitations for the Porcelain Enameling Industry*.

#### Organization of this Notice

- I. Legal Authority
- II. Background
  - A. The Clean Water Act
  - B. Prior EPA Regulations
  - C. Overview of the Industry
- III. Scope of this Rulemaking and Summary of Methodology
- IV. Data Gathering Efforts
- V. Sampling and Analytical Program
- VI. Industry Subcategorization
- VII. Available Wastewater Control and Treatment Technology
  - A. Status of In-Place Technology
  - B. Control Technologies Considered
- VIII. Best Practicable Technology (BPT) Effluent Limitations
- IX. Best Available Technology (BAT) Effluent Limitations
- X. New Source Performance Standards (NSPS)
- XI. Pretreatment Standards for Existing Sources (PSES)
- XII. Pretreatment Standards for New Sources (PSNS)
- XIII. Best Conventional Technology (BCT) Effluent Limitations
- XIV. Regulated Pollutants
- XV. Pollutants and Subcategories Not Regulated
- XVI. Monitoring Requirements
- XVII. Costs, Effluent Reduction Benefits, and Economic Impacts
- XVIII. Non-Water Quality Aspects of Pollution Control
- XIX. Best Management Practices (BMPs)
- XX. Upset and Bypass Provisions
- XXI. Variances and Modifications
- XXII. Relationship to NPDES Permits
- XXIII. Summary of Public Participation
- XXIV. Solicitation of Comments
- XXV. Appendices:
  - A—Abbreviations, Acronyms and Other Terms Used in this Notice
  - B—Toxic Pollutants Considered for Specific Limitations

- C—Toxic Pollutants Detected
- D—Toxic Pollutants Detected Below the Nominal Quantification Limit
- E—Toxic Pollutants Detected in Environmentally Insignificant Amounts

#### I. Legal Authority

The regulations described in this notice are proposed under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, P.L. 95-217) (the "Act"). These regulations are also proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), as modified March 9, 1979, 12 ERC 1833.

#### II. Background

##### A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT"), Section 301(b)(1)(A). By July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable \* \* \* which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT"), Section 301(b)(2)(A). New industrial direct dischargers were required to comply with Section 306 new source performance standards ("NSPS"), based on best available demonstrated technology; and new and existing dischargers to publicly owned treatment works ("POTWs") were subject to pretreatment standards under Section 307 (b) and (c) of the Act. The requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act. Pretreatment standards were made enforceable directly against dischargers to POTWs (indirect dischargers).

Although Section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to

promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The EPA was unable to promulgate many of these regulations by the dates contained in the Act. In 1976, EPA was sued by several environmental groups, and in settlement of this lawsuit EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating for 21 major industries BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most significant feature is its incorporation into the Act of several of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984 of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMPs") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or

ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revises the control program for non-toxic pollutants. Instead of BAT for "conventional" pollutants identified under Section 304(a)(4) (including biochemical oxygen demand, suspended solids, fecal coliform, oil and grease, and pH), the new Section 301(b)(2)(E) requires achievement by July 1, 1984, of "effluent limitations requiring the application of the best conventional pollutant control technology" ("BCT"). The factors considered in assessing BCT for an industry include the costs of attaining a reduction in effluents and the effluent reduction benefits derived compared to the costs and effluent reduction benefits from the discharge of publicly owned treatment works (Section 304(b)(4)(B)). For non-toxic, nonconventional pollutants, Sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations guidelines for BPT, BAT and BCT, and to establish NSPS, pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under Sections 301, 304, 306, 307, and 501 of the Clean Water Act.

#### B. Prior EPA Regulations

EPA has not previously promulgated regulations for the porcelain enameling point source category.

#### C. Overview of the Industry

The porcelain enameling industry is generally included within SIC 3479, 3431, 3469, 3631, 3632, 3633, and 3639 of the U.S. Department of Commerce Census Standard Industrial Classifications.

Porcelain enameling is the application of glass-like coatings to metals such as steel, cast iron, aluminum or copper. The purpose of the coating is to improve resistance to chemicals, abrasion and water and to improve thermal stability, electrical resistance and appearance. The coating applied to the workpiece is a water based slurry called a "slip" and is composed of one of many combinations of frit (glassy like material), clays, coloring oxides, water and special additives such as suspending agents. These vitreous inorganic coatings are applied to the metal by a variety of methods such as spraying, dipping, and flow coating, and are bonded to the base metal at temperatures in excess of 500 degrees C

(over 1000F). At these temperatures, finely ground enamel frit particles fuse and flow together to form the permanently bonded, hard porcelain coating.

There are two major groups of standard process steps used in manufacturing porcelain enameled materials. These are: (1) surface preparation and (2) coating which includes both ball milling and enamel application. Surface preparation is for removal of soil, oil, corrosion and similar dirt from the basis material. The clean surface allows the porcelain enamel to bond well with the basis material. Ball milling is performed to mix and grind frit and other raw materials, forming an enamel slip of appropriate consistency for a particular application.

Water is used through the various porcelain enameling process steps. The cleaning processes for removing oil and dirt employ water based alkaline cleaners. Acid pickling solutions are used to remove oxides and corrosion and to etch the surface of the workpiece. Water is also used to rinse the basis material after it has been cleaned by the above listed processes.

A water solution of nickel salts is used in nickel flash operations in the steel subcategory. Here the steel is dipped in a nickel solution, and nickel is allowed to replace iron in the surface of the steel. The nickel layer in the steel surface enables the porcelain enamel to bond well to the basis material.

The ball milling operation uses water for washing out the ball mills between mixing batches and for cooling the ball mills. During application of the porcelain enamel slip, water may be used as a curtain device for entrapping waste slip from overspray.

The characteristics of the wastewater generated by a porcelain enameling facility may vary depending on basis material cleaning and coating.

The most important pollutants or pollutant parameters are: (1) toxic metal pollutants—antimony, arsenic, cadmium, chromium, copper, lead, nickel, selenium and zinc; (2) conventional pollutants—suspended solids, pH, and oil and grease, and (3) unconventional pollutants—aluminum, cobalt, fluoride, iron, manganese, phosphorus and titanium. Toxic organic pollutants, however, were not found in large quantities and are most notable by their absence. Because of the amount of toxic metals present, the sludges generated during wastewater treatment generally contain substantial amounts of toxic metals.

EPA estimates that there are approximately 130 porcelain enameling

plants in the United States; the majority are located east of the Mississippi River. The basic porcelain enameling process has been in existence for thousands of years. Porcelain enameling began in the United States in the late 1800's. Following the Depression, the manufacture of porcelain enamel refrigerators, stoves, and other household items expanded many times. After World War II, application techniques changed greatly, and porcelain enamel use increased as the demand for housing grew. The demand for porcelain enamel products and finishes remained at a peak until the early 1960's, when substitute finishes began to replace many uses of the more costly enamel surfaces.

### III. Scope of this Rulemaking and Summary of Methodology

This proposed regulation is a part of a new chapter in water pollution control requirements. The 1973-1976 round of rulemaking, emphasized the achievement of best practicable technology (BPT) by July 1, 1977. In general, this technology level represented the average of the best existing performances of well known technologies for control of familiar (or "classical") pollutants.

In this round of rulemakings, in contrast, EPA's emphasis is directed toward insuring the achievement by July 1, 1984, of the best available technology economically achievable (BAT), which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. In general, this technology level represents the very best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

In its 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainty when it declared the 65 "priority" pollutants and classes of pollutants "toxic" under Section 307(a) of the Act. The "priority" pollutants have been relatively unknown outside of the scientific community. Those engaged in wastewater sampling and control have had little experience dealing with these pollutants. Additionally, these pollutants often appear at and have toxic effects at concentrations which severely tax current analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" control and detection, it directed EPA to act quickly

and decisively to detect, measure and regulate these substances.

In developing this regulation, EPA studied the porcelain enameling category to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water use, wastewater constituents, or other factors required the development of separate effluent limitations and standards for different segments of the industry. This study included the identification of raw waste and treated effluent characteristics, including: (1) the sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters in the plant, and (2) the constituents of wastewaters. Such analysis enabled EPA to determine the presence and concentration of priority pollutants in wastewater discharges.

EPA also identified both actual and potential control and treatment technologies, including both in-plant and end-of-process technologies. The Agency analyzed both historical and newly generated data on the performance of these technologies including performance, operational limitations, and reliability. In addition, EPA considered the non-water quality environmental impacts of these technologies on air quality, solid waste generation, water scarcity, and energy requirements.

The Agency then estimated the costs of each control and treatment technology using a computer program developed by standard engineering analysis. EPA derived unit process costs for each of 98 plants using data and characteristics (production and flow) applied to each treatment process (i.e., hexavalent chromium reduction, metals precipitation, sedimentation, granular bed—multi-media filtration, etc.). These unit process costs were added to yield total cost at each treatment level. After confirming the reasonableness of this methodology by comparing EPA cost estimates to treatment system costs supplied by the industry, the Agency evaluated the economic impacts of these costs.

On the basis of these factors, EPA identified various control and treatment technologies as BPT, BAT, BCT, NSPS, PSES and PSNS. The proposed regulation, however, does not require the installation of any particular technology. Rather, it requires achievement of effluent limitations equivalent to those achieved by the proper operation of these or equivalent technologies.

The effluent limitations for BPT, BAT, BCT and NSPS are expressed as mass

limitations ( $\text{mg}/\text{m}^3$ ) and are calculated by combining three figures: (1) effluent concentrations determined from analysis of control technology performance data; (2) wastewater flow for each subcategory; and (3) any relevant process or treatment variability factor (e.g., maximum month vs. maximum day). This basic calculation was performed for each regulated pollutant or pollutant parameter for each subcategory of the industry. Effluent limitations for PSES and PSNS are also expressed as mass limitations rather than concentration limits to assure achieving the benefits of quantification of pollutant reduction.

### IV. Data Gathering Efforts

The data gathering program is described in brief summary in Section III and in substantial detail in Section V of the Development Document. At the start of the study, the Porcelain Enameling Institute was contacted and meetings were held with their technical committee and others to review the data collection program and gain from the experience and insight of the industry. A data collection portfolio (dcp) was developed to collect information about the industry and was mailed, under the authority of section 308, to each company known or believed to perform porcelain enameling in the United States. The list of companies was developed from Dunn & Bradstreet listings, from a previous study done for the Agency, and from discussions with the industry association. Data were received from 116 porcelain enameling plants. In addition to previous studies and the data collection effort for this study, supplemental data were obtained from NPDES permit files and engineering studies on treatment technologies used in porcelain enameling and other categories with similar wastewater characteristics. The data gathering effort solicited all known sources of data. All available pertinent data were used in developing these limitations.

### V. Sampling and Analytical Program

As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to monitor and detect toxic pollutants is limited. Most of the toxic pollutants were relatively unknown until a few years ago. Only on rare occasions had these unusual pollutants been regulated. Nor had industry monitored or developed methods to monitor most of these pollutants. As a result, analytical methods for many of the toxic pollutants under section 304(h) of the Act are not commonly available and the toxic

organics can often be monitored only by using state-of-the-art analytical procedures.

Faced with these problems, EPA developed a sampling and analytical protocol. This protocol is set forth in "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants", revised April, 1977. Validated section 304(h) (40 CFR Part 136) methods were available for most toxic metals, pesticides, cyanides, and phenols. The new and relatively untried methods were applied largely to toxic organics while the more tested methods were used for toxic metals. It was presumed at the outset of the study that the pollutants of greatest concern in porcelain enameling would be toxic metals rather than organics. This has been borne out by the findings of the study.

The sampling and analysis program was carried out in two stages. First, screen sampling was performed at one plant in each subcategory, and this sample was analyzed (screened) for the presence and magnitude of each of the 129 specific toxic pollutants (which are included within the 65 categories of pollutants referred to by the Congress and NRDC) plus conventional and selected non-conventional pollutants. Second, additional samples at the same and other plants were analyzed to determine more precisely the magnitude, presence and process source of pollutants determined to be present or believed to be present on the basis of screening analysis and engineering evaluations. Five plants were selected for screening and a total of 16 plants were sampled and analyzed during verification. Full details of the sampling and analysis program and the water and wastewater data derived from that program are presented in Section V of the Development Document.

Analysis for the toxic pollutants is both expensive and time consuming, costing between \$650 and \$1,000 per sample for a complete analysis. The cost in dollars and time tended to limit the amount of sampling and chemical analysis performed. Although EPA fully believes that the available data support the limitations proposed, the Agency would, off course, have preferred a larger data base and will continue to seek additional data. EPA will periodically review these limitations as required by the act and make any revisions supported by new data.

#### VI. Industry Subcategorization

In developing this regulation, it was necessary to determine whether different effluent limitations and standards were appropriate for different

segments (subcategories) of the industry. The major factors considered in identifying subcategories included: waste characteristics, basis material used, manufacturing processes, products manufacturing, water use, water pollution control technology, treatment costs, solid waste generation, size of plant, age of plant, number of employees, total energy requirements, non-water quality characteristics, and unique plant characteristics. Section IV of the Development Document contains a detailed discussion of these factors and the rationale for subcategorization.

EPA has subcategorized the porcelain enameling industry based on the basis material coated. The subcategories are defined as porcelain enameling on: steel, cast iron, aluminum, and copper.

#### VII. Available Wastewater Control and Treatment Technology

##### A. Status of In-Place Technology

Current wastewater treatment practices in the porcelain enameling category range from no treatment by about 26 percent of the plants to a high level of physical chemical treatment combined with water conservation practices. Of the 116 plants for which data are available, 48 percent have sedimentation or clarification devices, 16 percent have alkaline pH adjust systems, and 10 percent have acid pH adjust systems. There is no apparent difference between direct or indirect dischargers in the nature or degree of treatment employed.

##### B. Control Technologies Considered

The control and treatment technologies available for this category include both in-process and end-of-pipe treatments. In-process treatment includes a variety of water flow reduction steps and major process changes such as cascade rinsing to reduce the amount of water used to remove unwanted materials from the workpiece surface, the use of flow control equipment and the recycle of treated coating wastewaters. End-of-pipe treatment includes: hexavalent chromium reduction (where applicable), chemical precipitation of metals using hydroxides or carbonates and removal of precipitated metals and other materials using settling, sedimentation, filtration, and combinations of these technologies.

The effectiveness of these treatment technologies has been evaluated and established by examining the performance of these technologies on porcelain enameling and other similar wastewaters. The data base for hydroxide precipitation—sedimentation

technology is a composite of data drawn from EPA sampling and analysis of copper and aluminum forming, battery manufacturing, porcelain enameling, electroplating, metal finishing and coil coating. These wastewaters are judged to be similar in all material respects for treatment because they contain similar ranges of dissolved metals which can be removed by precipitation and solids removal. Similarly, precipitation—sedimentation and filtration technology performance is based on the performance of full scale commercial systems treating multicategory wastewaters which also are essentially similar to porcelain enameling wastewaters. This is discussed fully in Section VII of the development document.

#### VIII. Best Practicable Technology (EPT) Effluent Limitations

The factors considered in defining best practicable control technology currently available (EPT) include the total cost of applying technology in relation to the effluent reduction benefits derived, the age of equipment and facilities involved, the process employed, non-water quality environmental impacts (including energy requirements) and other factors the Administrator considers appropriate. In general, the BPT level represents the average of the best existing performances of plants of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category. Limitations based on transfer technology must be supported by a conclusion that the technology is, indeed, transferable and a reasonable prediction that it will be capable of achieving the prescribed effluent limits. See *Tanners' Council of America v. Train*, (540 F.2d 1188, 4th Cir. 1976). BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where such are common industry practice.

The cost-benefit inquiry for BPT is a limited balancing, committed to EPA's discretion, which does not require the Agency to quantify benefits in monetary terms. See, e.g. *American Iron and Steel Institute v. EPA*, 526 F.2d 1027 (3rd Cir. 1975). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and cost and economic impacts of the required pollution control level. The Act does not require or permit consideration

of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies. Therefore, EPA has not considered these factors. See *Weyerhaeuser Company v. Costle*, 11 ERC 2149 (D.C. Cir. 1978).

In developing the proposed BPT limitations, the Agency considered the amount of water used per unit area of material enameled at each visited plant. The mean water use was determined for surface preparation based on surface area prepared and for coating based on the total area coated. Production normalized water use is reported as liters per square meter of metal area prepared or of porcelain enameled area, respectively. The metal area prepared is the actual area of metal exposed to cleaning or other preparation solutions while the area coated is the area(s) actually covered by each coat of porcelain enamel. The mean water use for each stream was adjusted by eliminating those facilities with unacceptably high water use from statistical calculations. Unacceptably high water use was determined by observation of substantial water waste such as badly leaking tanks and hoses left running when not in use. Next, treatment technology appropriate for BPT level treatment and which was practiced in some plants throughout the industry was selected. This treatment consists of hexavalent chromium reduction (for facilities which perform porcelain enameling on aluminum), oil skimming, pH adjustment, and sedimentation to remove the resultant precipitate and other suspended solids. The effluent which would be expected to result from the application of these technologies was evaluated against the known performance of some of the best plants in the subcategory.

The BPT technology outlined above applies to all four of the porcelain enameling subcategories and the effluent concentrations resulting from the application of the technology are identical. However, the mass limitations vary due to different water uses among the subcategories and the absence of some pollutants in some subcategories.

Twenty-eight plants (including the two plants discharging both directly and indirectly) are direct dischargers. The Agency estimates that investment costs for these plants would be \$5.1 million. Total annual costs were projected to be \$2.0 million, including depreciation and interest. If all costs were passed on to consumers, price increases would range from 0.1 to 2.8 percent. EPA expects that these costs may result in three potential plant closures and 270 job losses.

#### IX. Best Available Technology (BAT) Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, non-water quality environmental impacts (including energy requirements) and the costs of applying such technology (Section 304(b)(2)(B)). At a minimum, the BAT technology level represents, the best economically achievable performance of plants of various ages, sizes, processes or other shared characteristics. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include feasible process changes or internal controls, even when not common industry practice.

The required assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser v. Costle, supra*). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this expanded consideration of costs, the primary determinant of BAT is still effluent reduction capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution. The porcelain enameling process discharges approximately fifteen different toxic pollutants and EPA has selected BAT technology options which will reduce this toxic pollution by a significant amount.

The Agency has considered three major sets of technology options which might be applied at the BAT level. Each of these options would substantially reduce the discharge of toxic pollutants. These options, which were set forth in a draft development document and presented to the technically interested public for preliminary comment, are described in detail in Section X of the Development Document and are outlined below.

**Option 1**—BAT Option 1 requires the same level of in-process wastewater flow control and end-of-pipe treatment technology required for BPT. In addition, a polishing filter such as a granular bed—mixed media filter is added to

remove additional metals and incidentally remove more suspended solids from the clarifier overflow.

Twenty-eight plants (including the two plants discharging both directly and indirectly) are direct dischargers. These plants are expected to move to BAT treatment without first installing BPT treatment. The compliance costs and resulting impacts are based on that determination. Compliance with BAT Option 1 would require investment costs of \$6.0 million and annual costs of \$2.3 million. EPA projects three potential plant closures as a result of the compliance costs associated with this option. In terms of unemployment, 270 job losses are expected as a result of these closures.

**Option 2**—BAT Option 2 requires separate treatment of metal preparation and coating wastewaters. The same level of in-process wastewater flow control and end-of-pipe treatment system of BAT Option 1 are required for the metal preparation wastewaters. For the coating stream, in-process controls would substantially reduce the discharge of pollutants. These in-process technology changes would include the recirculation and reuse of the treated coating waste stream (with the exception of the wastewater generated from washing the ball milling apparatus).

Twenty-eight plants (including the two plants discharging both directly and indirectly) are direct dischargers. These plants are expected to move to BAT treatment without first installing BPT treatment. The compliance costs and resulting impacts are based on that determination. Compliance with BAT Option 2 would require investment costs of \$10.7 million and annual costs of \$3.6 million. EPA projects six potential plant closures as a result of the compliance costs associated with this option. In terms of unemployment, 380 job losses are expected as a result of these closures.

**Option 3**—BAT Option 3 builds on BAT Option 2, and incorporates countercurrent rinsing in the metal preparation operations to reduce wastewater volume and pollutant discharge. The installation of countercurrent rinsing would require rebuilding of the surface preparation process line and would require the line to be shut down for a substantial period with resultant production loss and costs. The costs associated with extended process shutdown cannot be precisely estimated but are believed to be quite high.

The effectiveness and costs of BPT and the BAT options were evaluated and considered in making a selection of

BAT. BPT applies only minimal treatment—lime and settle—to the combined waste streams but removes 23,000 kkg (25,000 tons) of pollutants, including 346 kkg (318 tons) per year of toxic metals from an estimated 7,646 million 1/yr (2,020 million gal) of raw waste. BAT-1 does not reduce the wastewater flow but removes an additional 7.22 kkg (7.96 tons) per year of toxic metals by adding filtration to the BPT treatment. BAT-2 reduces the wastewater flow to 4,100 million 1/yr (1,100 million gal) by recycling the coatings wastewater and separate treatment of each wastewater stream and thus reduces the discharge of toxic metals by 10.7 kkg/yr (11.8 tons) (beyond BPT). BAT-3 reduces the discharge of toxic metals by 12.7 kkg/yr (14 tons) (beyond BPT).

The development of these costs is detailed in Section VIII of the development document and treatment effectiveness is displayed in Section X. The high cost of BAT Option 3 plus the low additional removal of toxic metals contributed to the EPA decision that BAT Option 3 was inappropriate.

(E) *Bat Selection and decision criteria*—Initially, EPA made a determination to select Option 2 as the technical basis for proposed BAT effluent limitations. This option still appears to be technically operational and it removes significant amounts of the toxic pollutants of concern in this category (primarily toxic metals) by in-process control, pretreatment, and end-of-pipe treatment of separate streams. Although the Act does not require a balancing of costs against effluent reduction benefits, the costs of the technology options were weighed in this decision. As discussed above EPA estimates that imposition of option 2 would result in 6 plant closures and 380 job losses. Due to these projected economic impacts, BAT option 1 was selected as the basis for the proposed BAT effluent limitations (see Section X of the Development Document for detailed discussion).

The Agency rejected Option 3 because the installation of countercurrent rinsing would require rebuilding of the surface preparation process line and would require the line to be shut down for a substantial period with resultant production loss and costs. The costs associated with extended process shutdown cannot be precisely estimated but are believed to be quite high.

The Agency also rejected option 2 after careful consideration of the economic impacts projected at the BAT 2 level. The separation of streams and reuse of ball mill wash water will provide the most effective pollutant

removal. Since the majority of the pollutant load comes from the coating waste stream, while metal preparation provides the larger flow, there is an environmental disbenefit as a result of combined treatment. (See Section X Environmental Benefit tables in the development document).

While the Agency has selected BAT option 1 for proposal, EPA is also considering an additional option which is intermediate between BAT options 1 and 2. Option 2 varies from option 1 in two ways; separate treatment systems are required for both wastewater streams, and the coating operation wastewater stream is reduced by reuse. The additional option adds the flow reduction of option 2 to option 1. Flow reduction has some offsetting cost savings to apply against the added cost of water recirculation. The Agency has not fully evaluated the costs of this option but preliminary indications are that recirculation costs are at least equaled by savings in the smaller size of the final filter. The recycled water can be used to cool ball mills, wash rejected ware, clean up mill room floors and for other water uses which do not require the high quality that ball mill wash out demands. Comments are being requested on this intermediate option.

#### X. New Source Performance Standard (NSPS)

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design and use the best and most efficient porcelain enameling processes and wastewater treatment technologies, without facing the added costs and restrictions encountered in retrofitting an existing plant. Therefore, Congress directed EPA to consider the best demonstrated process changes, inplant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible. EPA considered three options for selection of NSPS technology.

Originally, NSPS options were identical to the three options set forth for BAT. The Agency has selected a modified Option 3 as NSPS. This option relies upon the achievement of no discharge of process wastewater pollutants from coating operations through the use of electrostatic dry powder application. By eliminating the use of water in the coating operation, wastewater discharges are also eliminated.

The Agency projects little need for additional porcelain enamel capacity, and expects that regardless of the NSPS

selected, few new sources will be built. The cost savings resulting from improved operating efficiencies are expected to more than offset the costs associated with installing NSPS. Thus, no significant impact is foreseen from these new source standards.

#### XI. Pretreatment Standards For Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTWs. The Clean Water Act of 1977 adds a new dimension by requiring pretreatment for pollutants, such as toxic metals, that pass through the POTW in amounts that would violate direct discharger effluent limitations or that limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based and analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations served as the framework for these proposed pretreatment standards for porcelain enameling. They can be found at 43 FR 27736 (June 26, 1978) (40 CFR Part 403).

The four pretreatment options considered parallel BPT and the BAT 1, 2, and 3 options previously described. Most of the pollutants regulated are toxic metals which are not degraded in POTW. These metals either pass through a POTW or are concentrated in the sludge, thereby limiting sludge management alternatives. The rationales for the selection of BAT Option 1 as pretreatment, and the rejection of BAT Options 2 and 3 as pretreatment are identical to the rationale set forth in the BAT Options discussion.

The equipment required for the selected pretreatment option is of reasonable size and appropriate for installation within an urban plant which discharges to POTW. The mass limitations set forth for BAT Option 1 have been presented here as the only method of designating pretreatment standards. To regulate on the basis of concentration would not be adequate because it would not adequately control the release of toxic pollutants. Dischargers could merely dilute the waste stream (or avoid recycle) and meet the limitations. Yet this greater mass of pollutants would pass through

the POTW and possibly interfere with sludge disposal options. The Agency has considered the possible complications which mass based limitations might cause when applied as pretreatment standards. Since porcelain enameling production records are routinely maintained the complications of applying a mass based standard appear to be minimal. Therefore, the policy that concentration be used to express pretreatment standards (40 CFR Part 403.6(c) Appendix A, E.2.e) as it applies to PSES in this part is set aside. The Agency will be proposing minimum requirements for pretreatment self monitoring to insure compliance with the standards.

Eighty-eight plants (76 percent of all plants in the industry) are indirect dischargers. The impacts associated with pretreatment standards are discussed below for each option.

PSES Option 1 corresponds to BPT level of treatment. Investment costs for this option are \$21.1 million with annual costs of \$8.2 million. EPA projects seven plant closures and 430 job losses as a result of PSES Option 1. This option would remove 17,608 kkg of pollutants per year, including 263 kkg of toxic pollutants.

PSES Option 2 corresponds to BAT Option 1. Investment costs for this option are \$24.0 million with annual costs of \$9.6 million. EPA projects eight plant closures and 450 job losses as a result of PSES Option 2. This option would remove 17,674 kkg of pollutants per year, including 268 kkg of toxic pollutants.

PSES Option 3 corresponds to BAT Option 2. Investment costs for this option are \$34.5 million with annual costs of \$11.3 million. EPA projects twenty plant closures and over 2,000 job losses as a result of PSES Option 3. This option would remove 17,685 kkg of pollutants per year, including 271 kkg of toxic pollutants.

## XII. Pretreatment Standards For New Sources (PSNS)

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect discharges will produce wastes having the same pass through problems that existing dischargers have. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation.

The PSNS treatment options considered are identical to the NSPS options. As in the case of existing sources, the majority of pollutants regulated are toxic metals which are not degraded in a POTW. NSPS Option 3 (as modified by requiring dry porcelain enamel application) is selected as the most appropriate pretreatment technology option for PSNS. This option encourages new plants to treat their own wastewaters, thereby reducing the hydraulic loading on POTW and limiting the amount of toxic metals which would be introduced to a POTW.

The mass limitations set forth as NSPS Option 3 are presented here as the only method of designating pretreatment standards. The water flow reductions specified at NSPS are the major features of the treatment and control system. Thus, to regulate on the basis of concentration only is not adequate because it will not adequately control the release of toxic pollutants. Therefore, policy that concentration be used to express pretreatment standards (40 CFR Part 403.6(c); and Appendix A, B.2.e) is waived as it applies to PSNS in this part. The Agency is considering establishing minimum requirements for monitoring to insure compliance with the standards, but no requirements are proposed at this time.

The Agency projects little need for additional porcelain enamel capacity, and expects that regardless of the PSNS selected, few new sources will emerge. For the new plants that are built, the costs savings resulting from improved operating efficiencies are expected to more than offset the costs associated with PSNS. Thus, no significant impact is foreseen from new source standards.

## XIII. Best Conventional Technology (BCT) Effluent Limitations

The 1977 amendments added Section 301(b)(4)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from industrial point sources. Conventional pollutants are those defined in Section 304(b)(4)—BOD, TSS, fecal coliform and pH—and any additional pollutants defined by the Administrator as "conventional." On July 30, 1979, EPA added oil and grease, to the conventional pollutant list (44 FR 44501).

BCT is not an additional limitation, but replaces BAT for the control of conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of a new "cost-reasonableness" test, which involves a comparison of the cost and level of reduction of conventional pollutants from the discharge of publicly

owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources. In its review of BAT for "secondary" industries, the Agency will propose BCT levels based on a methodology described at 44 FR 50732 (Aug. 29, 1979). A BCT option will be considered "cost reasonable" under this methodology if its incremental cost (dollars per pound of pollutant, measuring from BPT to BCT) is less than or equal to the costs for an average POTW. In 1978 dollars the POTW comparison figure is \$1.27 per pound.

Only three conventional pollutant parameters—pH, oil and grease and TSS are considered under the BCT limitation. The pH limitation is the same as required at BPT and need not be further considered. The quantity of oil and grease plus TSS removed by BAT (Option 1 as selected) above BPT was calculated and compared with the total cost of technology above BPT to achieve BAT. This comparison showed that the BCT costs for the steel subcategory would be \$20.17 per pound of conventional pollutant removed, \$1,020.73 for the cast iron subcategory, \$40.35 for the aluminum subcategory and \$347.46 for the copper subcategory. All of these costs substantially exceed \$1.27 per pound which has been established as the level of cost reasonableness for BCT. Therefore the BCT limitations for oil and grease, and TSS are set at the same level as at BPT.

## XIV. Regulated Pollutants

The basis upon which the controlled pollutants were selected, as well as the general nature and environmental effects of these pollutants, is set out in Sections V, VI, IX and X of the Development Document. Some of these pollutants are designated toxic under Section 307(a) of the Act, and no evidence has been found to warrant removal of any pollutant from the toxics list.

A. BPT—The pollutants controlled by the BPT limitations are antimony, arsenic, cadmium, chromium, copper, lead, nickel, selenium, zinc, aluminum, cobalt, fluoride, iron, manganese, titanium, oil and grease, TSS, and pH. The discharge is controlled by maximum daily and monthly average mass effluent limitations stated in milligrams per square meter of metal processed or area coated.

B. BAT and NSPS—The list of toxic and unconventional pollutants specifically limited by BAT and NSPS is the same as those limited by BPT. Oil and grease, pH and TSS are limited by BCT rather than BAT.



C. PSES and NSPS—The list of toxic and unconventional pollutants expressly controlled for indirect dischargers is the same as those limited by BPT except that aluminum, iron, oil and grease, TSS and pH are not limited.

Appendix B to this notice contains a tabulation for each subcategory of the toxic pollutants which were considered for specific limitation.

#### XV. Pollutants and Subcategories Not Regulated

The Settlement Agreement contains provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been re-written in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979, 12 ERC 1833.

##### A. Exclusion of Pollutants

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and therefore, excluded from regulation are listed in each subcategory in Appendix C to this notice.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detected in the effluent in only trace quantities and neither causing nor likely to cause toxic effects. Appendix D to this notice lists the toxic pollutants in each subcategory which were detected in the effluent in trace amounts, at or below the nominal limit of analytical quantification, which are not likely to cause toxic effects and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detectable in the effluent from only a small number of sources within the subcategory which are uniquely related to those sources. Appendix E to this notice lists for each subcategory the toxic pollutants which were detected in the effluents of only one plant are uniquely related to that plant, and are not related to the manufacturing process under study.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation, toxic pollutants present in amounts too small to be effectively reduced by technologies considered applicable to the industry. Appendix E lists those toxic pollutants which are not treatable using technologies considered.

##### B. Exclusion of Subcategories

Paragraph 8(a)(i) of the Settlement Agreement authorizes the Administrator to exclude from regulation industry categories or subcategories for which equal or more stringent limitations are already provided by existing effluent guidelines and standards. Additionally, paragraph 8(a)(iv) of the Settlement Agreement authorizes the exclusion of subcategories in which the amount and toxicity of each pollutant in the discharge does not justify developing national regulations.

No subcategories or subsets of the porcelain enameling industry meet these criteria. Thus none are excluded from this regulation.

#### XVI. Monitoring Requirements for Indirect Dischargers

##### Background

The Agency is not now proposing specific self-monitoring requirements for pretreaters in this category. Such requirements may be promulgated when this regulation is promulgated or may be promulgated separately.

##### Reporting Requirements

The reporting requirements for indirect dischargers are governed by the General Pretreatment Regulations found at 40 CFR, Part 403. Amendments to these regulations will be promulgated in the near future. Specifically, 40 CFR, Part 403.12 establishes a six (6) month reporting requirement and outlines general responsibilities of the POTW and industrial users of POTW's with respect to reporting requirements.

#### XVII. Costs, Effluent Reduction Benefits, and Economic Impacts

Executive Order 12044 requires EPA and other agencies to perform regulatory analyses of certain regulations. 43 FR 12661 (March 23, 1978). EPA's plan for implementing Executive Order 12044 requires a regulatory analysis for major significant regulations involving annualized compliance costs greater than \$100 million or meeting other specified criteria. 44 FR 30988 (May 29, 1979). Where these criteria are met, EPA's implementation plan requires a formal regulatory analysis, including an economic impact analysis and an evaluation of regulatory alternatives. The proposed regulations for the porcelain enameling industry do not require a formal regulatory analysis. Nonetheless, this proposed rulemaking satisfies the formal regulatory analysis requirements.

EPA's economic impact assessment is set forth in *Economic Impact Analysis of Proposed Effluent Standards and*

*Limitations for the Porcelain Enameling Industry*, EPA 440/2-80-062. This report details the investment and annual costs for the industry as a whole and for typical plants covered by the proposed porcelain enameling regulation. The report also assesses the impact of compliance costs in terms of plant closures, production changes, price changes, employment changes, local community impacts, and balance of trade effects.

EPA has identified 116 plants that perform porcelain enameling operations. Total investment for BPT, BAT and PSES is estimated to be \$30.0 million with annual costs of \$11.9 million, including depreciation and interest. These costs are in 1978 dollars and are based on the determination that plants will move from existing treatment to either BAT or PSES. Eleven potential plant closures (9 percent of the industry) are projected as a result of this regulation. In terms of unemployment, the potential closures will result in approximately 720 job losses—about one percent of total employment for porcelain enameling. Maximum price increases if all costs were passed on to consumers would range from 0.2 to 3.3 percent. Balance of trade effects are insignificant.

The impacts of the regulations were estimated on a plant-by-plant basis for a sample of 80 plants, with results projected to all 116 plants that EPA has identified. For purposes of measuring the potential economic impacts, the industry was subcategorized by the type of product being enameled (e.g. ranges, sanitary ware, architectural panels). A financial profile was developed for each of the 80 sample plants. The financial variables contained in the profiles were used to calculate return on investment and an assets to capital investment ratio. These two ratios indicate profitability or capital availability problems faced by the plants. Plant closure determinations were based on threshold levels that were established for evaluating the financial ratios.

*BPT*: Twenty-eight plants (including the two plants discharging both directly and indirectly) are direct dischargers. The BPT regulation requires \$5.1 million in investment costs and \$2.0 million in annual costs. There are three potential plant closures associated with the BPT treatment option—representing 11 percent of the direct dischargers and 3 percent of all plants in the industry. In terms of unemployment, the potential closures will affect 270 employees. If all costs were passed on to consumers, price increases would range from 0.1 to 2.8 percent.

**BAT:** Porcelain enameling plants that do not have BPT installed and discharge directly are expected to move to BAT technology without first installing BPT technology. The compliance costs and resulting impacts discussed below are based on the total effects of going from existing treatment to installing BAT. Investment costs are \$6.0 million, with annual costs of \$2.3 million, including depreciation and interest. This option does not result in any additional closures beyond those associated with BPT. Thus, there are three potential plant closures representing 11 percent of the direct dischargers and 3 percent of all plants in the industry. If all costs were passed on to consumers, price increases would range from 0.2 to 3.3 percent.

**PSES:** Eighty-eight plants (76 percent of the industry) are identified as indirect dischargers. There were 67 indirect dischargers in the 80-plant sample, accounting for approximately 80 percent of the industry's annual production. The pollution control technology for the proposed pretreatment standards is identical to the BAT treatment technology. Annual costs for indirect dischargers are \$906 million; investment costs are \$24.0 million. There are eight potential plant closures associated with PSES—representing 9 percent of the indirect dischargers and 7 percent of all plants in the industry. In terms of unemployment, the potential closures will affect 450 employees.

**NSPS-PSNS:** The declining trend in the use of porcelain enamel is expected to continue. The slow growth rate for most end-products, and the expected substitution for porcelain enamel suggests little need for additional porcelain enamel capacity. Thus, it is expected that few new sources will emerge. Any new plants are likely to be replacements or modernizations of older ones. A new facility would most likely be associated with cost savings that result from improved operating efficiencies. These factors are expected to more than offset the costs associated with new source performance standards. Thus, no significant economic impact is foreseen from new source standards.

#### Regulatory Flexibility Analysis

Pub. L. 96-354 requires that EPA prepare an Initial Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. This analysis must:

- Describe the reasons, objectives, and legal basis for the proposed rule;
- Describe, and where feasible, estimate the number of small entities, as (in most cases) defined by Small

Business Administration (SEA), affected by the proposed rule;

- Describe the reporting, recordkeeping, and other compliance requirements;
- Identify any Federal rules that may duplicate, overlap, or conflict with the proposed rule;
- Describe any significant alternatives that would accomplish the stated objectives, and minimize any significant economic impacts of the proposed rules on small entities.

This analysis may be done in conjunction with or as a part of any other analysis conducted by the Agency. This proposed rulemaking and the economic impact analysis supporting the proposal satisfy the requirements of the Regulatory Flexibility Act.

Many of the provisions of the Initial Regulatory Flexibility Analysis have been addressed in detail in other sections of this preamble. Sections I, IIA, and III discuss the legal authority and objectives of the proposed rule. Sections XXIII and XXIV discuss the public participation procedures. Section XVI discusses the reporting requirements. The Agency is not aware of any other Federal rules that may overlap or conflict with this proposed rule.

The economic impact analysis outlines the impacts associated with this proposed rule and with the other regulatory options the Agency considered. Over 40 percent of this industry, or 50 plants, have fewer than 250 employees. (The SBA uses 250 employees as the definition for small business when an industry-specific size definition is not available, 13 CFR 121.3. Since the porcelain enameling industry covers a number of Standard Industrial Classification codes used by SBA to define size, EPA feels that the general size definition is most appropriate.) The Agency estimates that at BAT option 2 (pretreatment option 3), 23 plants, or 22 percent of the 50 plants, would close. To reduce this level of impact, the Agency chose a less stringent option, BAT option 1 (pretreatment option 2), as the basis for setting the effluent limitations. The Agency estimates that eleven plants, or 22 percent of the 50 plants, would close at this option.

The analysis also indicates that the economic impact may be concentrated on the smallest plants in this industry. At the selected option, BAT option 1, approximately three-quarters of the closures (eight out of eleven plants) would occur among plants with less than 100 employees. Therefore, EPA will evaluate the possibility of setting less stringent standards for the smallest plants. In this evaluation, EPA will

consider various criteria, such as production volume or flow, as the basis for defining small plants. The Agency solicits comments on this issue in this proposal, and will decide at promulgation whether to set less stringent standards for small plants.

#### XVIII. Non-Water Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. This proposal was circulated to and reviewed by EPA personnel responsible for non-water quality environmental programs. While it is difficult to balance pollution problems against each other and against energy utilization, EPA is proposing regulations which it believes best serve often competing national goals.

The following are the non-water quality environmental impacts (including energy requirements) associated with the proposed regulations:

**A. Air Pollution—**Imposition of BPT, BAT, BCT, NSPS, PSES, and PSNS will not create any substantial air pollution problems.

**B. Solid Waste—**EPA estimates that porcelain enameling facilities generated 30,000 kkg of solid wastes (wet basis) per year in 1976. These wastes were comprised of treatment system sludges containing toxic metals, including chromium, copper, lead, nickel and zinc.

EPA estimates that the proposed BPT limitations will contribute an additional 48,500 kkg per year of solid wastes. Proposed BAT and PSES will increase these wastes by approximately 360 kkg per year beyond BPT levels. These sludges will necessarily contain additional quantities (and concentrations) of toxic metal pollutants.

On the other hand, EPA estimates that implementation of proposed pretreatment standards will result in POTW sludges having commensurately lesser quantities and concentrations of toxic pollutants. POTW sludges will become more amenable to a wider range of disposal alternatives, possibly including beneficial use on agricultural lands. Moreover, disposal of these vastly greater quantities of adulterated POTW sludges would be significantly more difficult and costly than disposal

of smaller quantities of wastes generated at individual plant sites.

These wastewater treatment sludges may furthermore be identified as hazardous under the regulations implementing subtitle C of the Resource Conservation and Recovery Act (RCRA). Under those regulations, generators of these wastes must test the wastes to determine if the wastes meet any of the characteristics of hazardous waste [see 40 CFR § 262.11, 45 FR at 12732-12733 (Feb. 26, 1980)]. The Agency may also list these sludges as hazardous pursuant to 40 CFR § 261.11 [45 FR at 33121 (May 19, 1980)], and is likely to do so based upon high concentrations of cadmium in these wastes and the large quantity of wastes generated.

If these wastes are identified as hazardous, they will come within the scope of RCRA's "cradle to grave" hazardous waste management program, requiring regulation from the point of generation to point of final disposition. EPA's generator standards would require generators of hazardous porcelain enameling wastes to meet containerization, labeling, recordkeeping and reporting requirements; if porcelain enamellers dispose of hazardous wastes off-site, they would have to prepare a manifest which would track the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 45 FR 12722, 12733-12734 (Feb. 26, 1980). The transporter regulations require transporters of hazardous wastes to comply with the manifest system to assure that the wastes are delivered to a permitted facility. See 45 FR 12737, 12743-12744 (Feb. 26, 1980). Finally, RCRA regulations establish standards for hazardous waste treatment, storage and disposal facilities allowed to receive such wastes. Final standards for permitted hazardous waste disposal are expected to be promulgated during the fall of 1980. See 45 FR 33154 (May 19, 1980).

Even if these wastes are not identified as hazardous, they still must be disposed of in compliance with the subtitle D open dumping standards, implementing § 4004 of RCRA. See 44 FR 53438 (Sept. 13, 1979).

The costs of compliance with proposed RCRA regulations were not specifically included in the economic impact analysis for these proposed regulations. However, EPA considered estimated RCRA compliance costs for porcelain enameling when it selected the technology options for these proposed regulations. The Agency plans to incorporate costs of compliance with

RCRA regulations in its final economic impact analysis for this regulation.

**C. Energy Requirements—EPA** estimates that the achievement of proposed BPT effluent limitations will result in a net increase in electrical energy consumption of approximately 18 million kilowatt-hours per year. Proposed BCT and BAT limitations are projected to add another 16.2 million kilowatt-hours to electrical energy consumption. To achieve the proposed BPT, BCT and BAT effluent limitations, a typical direct discharger will increase total energy consumption by less than 1 percent of the energy consumed for production purposes.

The Agency estimates that proposed PSES will result in a net increase in electrical energy consumption of approximately 12.1 million kilowatt-hours per year. To achieve proposed PSES, a typical existing indirect discharger will increase energy consumption less than 1 percent of the total energy consumed for production purposes.

#### XIX. Best Management Practices (EMPs)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMP"), described under AUTHORITY AND BACKGROUND. EPA intends to develop BMPs which: (1) are applicable to all industrial sites; (2) are applicable to a designated industrial category; and (3) offer guidance to permit authorities in establishing BMPs required by unique circumstances at a given plant.

EPA is not now considering promulgating BMPs specific to porcelain enameling.

#### XX. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. Industry argues that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur due to limitations in even properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, they claim that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise

of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle, supra* and *Corn Refiners Association, et al. v. Costle*, No. 78-1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute v. EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp. v. Train*, 539 F.2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits, and has recently promulgated NPDES regulations which include upset and bypass permit provisions (40 CFR 122.60 45 FR 33290 May 19, 1980). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury or severe property damage. Permittees in porcelain enameling will be entitled to upset and bypass provisions in NPDES permits. Thus these proposed regulations do not address these issues.

#### XXI. Variances and Modifications

Upon the promulgation of the final regulation, the numerical effluent limitations for the appropriate subcategory must be applied in all federal and state NPDES permits thereafter issued to porcelain enameling direct dischargers. In addition, on promulgation, the pretreatment standards are directly applicable to indirect dischargers.

For the BPT and BCT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. duPont de Nemours and Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle, supra*. This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. However, the economic ability of the individual operator to meet the compliance cost for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association v. EPA*,—U.S.—(No. 79-770, decided Dec. 2, 1980), and *Consolidation Coal Co. v. Costle*, 604 F.2d 239 (4th Cir. 1979), cert. granted 48 U.S.L.W. 3513 (Feb. 19, 1980). This

variance clause was originally set forth in EPA's 1973-1976 industry regulations. It is now included in the general NPDES regulations and will not be included in the porcelain enameling or other specific industry regulations. See the NPDES regulations at 40 CFR Part 122 Subparts A & D, 45 FR 33290 et. seq. (May 19, 1980) for the text and explanation of the "fundamentally different factors" variance.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for non-toxic and nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 43 FR 40859 (Sept. 13, 1978). Under Section 301(1) of the Act, these statutory modifications are not applicable to "toxic" pollutants.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTWs. See 40 CFR 403.7, 403.13; 43 FR 27736 (June 26, 1978). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR 403.7. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *duPont v. Train, supra*.

## XXII. Relationship To NPDES Permits

The BPT, BAT, BCT, and NSPS limitations in this regulation will be applied to individual porcelain enameling plants through NPDES permits issued by EPA or approved state agencies under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation on NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of these regulations and NPDES permits.

One matter which has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations, guidelines and standards. Under currently applicable EPA regulations, states and EPA Regions issuing NPDES permits prior to promulgation of this regulation must do so on a case-by-case basis. This regulation provides a technical and legal base for new permits.

Another noteworthy topic is the effect of this regulation on the powers of NPDES permit issuing authorities. The promulgation of this regulation does not restrict the power of any permit-issuing authority to act in any manner not inconsistent with law or these or any other EPA regulations, guidelines or policy. For example, the fact that this regulation does not control a particular pollutant does not preclude the permit issuer from limiting such pollutant on a case-by-case basis, when necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of state or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing this regulation. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary (*Sierra Club v. Train*, 557 F. 2d 485, 5th Cir. 1977). EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

## XXIII. Summary of Public Participation

In September 1979, EPA circulated a draft technical development document to a number of interested parties, including the Porcelain Enameling Institute and member firms, the Natural Resources Defense Council (NRDC), and affected state and municipal authorities. This document did not include recommendations for effluent limitations and standards, but rather presented the technical basis for this proposed regulation. A meeting was held in Washington, D.C. on October 26, 1979, for public discussion of comments on this document. A brief summary of these comments follows:

1. Comment: Porcelain enamel on sheet steel constitutes 70% of the Porcelain Enameling category, yet actual sampling percentages and plant visits were so few that it seems impossible to establish an effective and representative cross section of this segment of the industry.

Response: Visited plant selection is based upon data collected in the dcp. Plant selection includes consideration of

large and small facilities and those that have different processes and waste treatment. The Agency does not necessarily include a one-for-one proportion of sampled plants and percentage of category.

2. Comment: Numerous comments were received questioning why a mean value was used for water use (liters per square meter) yet median data were also used for other flows.

Response: The Agency is now relying almost exclusively on mean values for treatment and production purposes. The major exception to this is that median values are used for raw waste concentrations when calculating environmental benefits.

3. Comment: Cost data are incomplete. Costs for separating streams, flow equalization, piping, and installation are very real and could add more costs than those suggested for individual process costs.

Response: The Agency has revised the format of Section VIII of the development document to make it more understandable and easily followed. Because industry has complained vigorously about the EPA engineering costs for treatment facilities, the basic costing factors were reviewed and some adjustments made resulting in somewhat different costs than those shown in the draft development document. Industry has presented EPA with detailed construction costs for 5 porcelain enameling waste treatment plants and has indicated an intention to supply detailed costs on a total of about 10 plants. We expect to make a full examination of these industry supplied costs to resolve or highlight differences in estimated costs for treatment. Our initial review of the industry supplied costs indicates that some items included in industry costs are not directly necessary to the construction of the facility and that the facilities are designed to treat flows substantially larger than necessary from porcelain enameling operations. When these major causes of cost differences are factored out, the Agency and industry are within a range of about 30 percent variance. The Agency is continuing to analyze the cost problem and expects to compare the costs supplied by the industry with cost estimates used by three outside contractors. Any further correction of Agency cost estimates indicated by this further analysis will be taken into consideration at promulgation of this regulation.

The Agency is also evaluating the application of package type wastewater treatment facilities in this industry segment. These treatment facilities are shop fabricated and can be installed for

less than present cost estimates (about 1/2). Preliminary information indicates that the package type facilities can meet the BAT limitations at substantially lower costs. Comment on the use of package type wastewater treatment facilities is specifically requested.

4. Comment: Recycle of acid rinse waters to cleaner tanks is not good practice. Acid, iron and iron salts can react with soils and residues in cleaner rinse tanks.

Response: The Agency has reconsidered the recommended practice of reusing acid rinse waters in cleaner rinse tanks and has deleted the recommendation from the document.

5. Comment: BAT and NSPS in-plant technologies list reverse osmosis and reuse or recirculation of process water. This may not be possible in porcelain enameling due to the inefficiency of reverse osmosis equipment and the detrimental effect of recirculated contaminants on the surface quality of fired ware.

Response: Reverse osmosis treatment, which was outlined in one BAT option has not been selected as a basis for establishing BAT limitations as is discussed in Section X of the development document. As discussed elsewhere in this notice, the reuse of water in most of the coating operations appears to be feasible and reasonable.

6. Comment: A few commenters questioned the regulation of this industry by area processed.

Response: The Agency has considered several alternatives and has concluded that regulation of total discharge of specific pollutants is most equitable by basing it on area processed. The relation of the pollution generation rate to spent solution and slip generation rates is directly dependent on the amount of porcelain enameling performed, i.e., the processed area. This leads naturally to the selection of processed area as a production related pollutant discharge rate parameter. Processed area might be different for surface preparation operations and enamel application. This results from the application of multiple coats of porcelain enamel to a part, or enamel application on only one side of a part that has had both sides prepared by a dip operation. Therefore, area processed must consider both the area prepared (each side) and the area(s) coated.

7. Comment: The porcelain enameling industry uses insoluble salts, not soluble salts as in the paint industry.

Response: The Agency recognizes that the salts used by the porcelain enameling industry are different from salts used in other industries such as the paint industry. However, the toxic metal

salts used have a measurable solubility which is in the toxic range, when the coating wastewaters are combined with acidic metal preparation wastewaters the solubility is increased.

8. Comment: Why were some data not used in determining median water use levels?

Response: During sampling visits to various facilities, practices causing excess water use were noted. The normalized water use ( $1/\pi^2$ ) at these known water wasting plants was used to define excess water use. Plants using excess water were deleted prior to calculating the mean water use for each subcategory. The median water use approach used in the draft development document is not used as a basis of this proposal.

9. Comment: Numerous commenters stated that BAT Alternative II is not achievable.

Response: The Agency has considered this industry comment and determined that BAT III was not achievable as originally displayed. Therefore, BAT option III no longer requires a zero discharge but allows a small but sufficient quantity of water for ball mill clean cut and a substantially reduced water flow for the metal preparation stream. Even so, it was not selected as the regulatory option.

10. Comment: A few commenters doubted the reliability and accuracy of data from the 308 questionnaire.

Response: The Agency is using the 308 data directly as submitted. Contact with individual companies has not substantiated the allegation that the data is unreliable.

11. Comment: Numerous comments were received indicating that many parts of the draft development document were difficult to follow and understand. Many typographical and minor errors were pointed out as well.

Response: The Agency has substantially modified the development document to improve its clarity and to present technical data and information in a logical and understandable fashion. Many changes were made to correct typographical and other minor errors. These changes are not specifically addressed in this summary of comments.

#### XXIV. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record of this proposal be specifically addressed and that suggested revisions or corrections be supported by data.

EPA is particularly interested in receiving additional comments and information on the following issues:

1. EPA considered a variety of control technologies when developing these guidelines. The Agency was not able to identify control technologies less stringent than the option selected as the basis for BPT. Comments are solicited on the availability of other technology options not identified by the Agency.

2. Even though the Agency has selected BAT option 1 for proposal, the Agency is also considering an additional option. The option being considered is intermediate between BAT options 1 and 2. Option 2 varied from option 1 in two ways: separate treatment systems are required for both wastewater streams and the coating operations wastewater stream was reduced by reuse. Flow reduction has some offsetting cost savings to apply against the added cost of water recirculation. The Agency has not fully evaluated this balancing of costs against savings, but preliminary indications are that recirculation costs are at least equaled by savings in the smaller size of the final filter. The recycled water can be used to cool ball mills, wash rejected ware, clean up mill room floors and for other water uses which do not require the high quality that ball mill wash out demands. Comments are specifically requested on the feasibility and cost of this type of system so that a proper evaluation may be made by the Agency.

3. The Agency is also evaluating the application of package type wastewater treatment facilities in this industry segment. These treatment facilities are shop fabricated and can be installed for less than present cost estimates (about 1/2). Preliminary information indicates that the package type facilities can meet the BAT limitations at substantially lower costs than conventionally constructed facilities. Comments on the use of package type wastewater treatment facilities and the reduced cost of wastewater treatment are specifically requested.

4. EPA's economic impact analysis indicates that eleven plant closures may result from the proposed regulation; many of these closures are predicted for small porcelain enamel plants. The Agency is considering either adjusting or eliminating limitations for small porcelain enameling plants in order to minimize closures. Comments on this issue are invited.

5. EPA invites comments on the effect of Resource Conservation and Recovery Act (RCRA) requirements on the porcelain enameling effluent guidelines. RCRA requirements influence the disposal costs for solid wastes generated by these guidelines and the costs of constructing wastewater treatment surface impoundments. The

economic impact analysis of the proposed guidelines does not include some of these RCRA costs, EPA will adjust the economic impact analysis before promulgation to reflect the impact of these RCRA requirements on solid waste disposal costs for this industry. The promulgated porcelain enameling effluent guidelines will take into account any changes in economic impact caused by this adjustment. EPA specifically requests information regarding: volume, characteristics, and current disposal practices for wastewater treatment sludges.

6. Several cost elements associated with compliance with effluent regulations could not be estimated for each plant. While these special site-specific costs may in some cases involve a significant added cost, the plant-by-plant variation in these costs prevented EPA from being able to address these factors in its generic cost estimation procedure. Therefore, because of this problem, sensitivity analyses were conducted on the compliance cost estimates used in the economic impact analysis. EPA solicits comments on alternative methods of assessing these site-specific costs.

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

#### Appendix A—Abbreviations, Acronyms and Other Terms Used in this Notice

Act—The Clean Water Act

Agency—The U.S. Environmental Protection Agency

BAT—The best available technology economically achievable; under Section 304(b)(2)(E) of the Act

BCT—The best conventional pollutant control technology; under Section 304(b)(4) of the Act

BMP—Best management practices; under Section 304(e) of the Act

BPT—The best practicable control technology currently available; under Section 304(b)(1) of the Act

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217)

dcp—Data collection portfolio

Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States

Indirect discharger—A facility which introduces or may introduce pollutants into a publicly owned treatment works

NPDES permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act

NSPS—New source performance standards; under Section 306 of the Act

POTW—Publicly owned treatment works

PSNS—Pretreatment standards for existing sources of indirect discharges; under Section 307(b) of the Act

PSNS—Pretreatment standards for new sources of direct discharges; under Section 307 (b) and (c) of the Act

RCRA—Resource Conservation and Recovery Act (PL 94-580) of 1976, as amended

#### Appendix B—Toxic Pollutants Considered for Specific Limitation

(a) Subpart A—Steel Basis Material

Subcategory

- 114 Antimony
- 115 Arsenic
- 118 Cadmium
- 119 Chromium
- 120 Copper
- 122 Lead
- 124 Nickel
- 125 Selenium
- 128 Zinc

(b) Subpart B—Cast Iron Basis Material

Subcategory

- 114 Antimony
- 115 Arsenic
- 118 Cadmium
- 119 Chromium
- 120 Copper
- 121 Cyanide
- 124 Nickel
- 125 Selenium
- 128 Zinc

(c) Subpart C—Aluminum Basis Material

Subcategory

- 114 Antimony
- 115 Arsenic
- 118 Cadmium
- 119 Chromium
- 120 Copper
- 122 Lead
- 124 Nickel
- 125 Selenium
- 128 Zinc

(d) Subpart D—Copper Basis Material

- 114 Antimony
- 115 Arsenic
- 118 Cadmium
- 119 Chromium
- 120 Copper
- 122 Lead
- 124 Nickel
- 125 Selenium
- 128 Zinc

#### Appendix C—Toxic Pollutants Not Detected

(a) Subpart A—Steel Basis Material

Subcategory

- 001 Acenaphthene
- 002 Acrolein
- 003 Acrylonitrile
- 004 Benzene
- 005 Benzidine
- 006 Carbon tetrachloride (tetrachloromethane)
- 007 Chlorobenzene
- 008 1,2,4-trichlorobenzene
- 009 Hexachlorobenzene
- 010 1,2-dichloroethane
- 011 1,1,1-trichloroethane
- 012 Hexachloroethane
- 013 1,1-dichloroethane
- 014 1,1,2-trichloroethane
- 015 1,1,2,2-trichloroethane
- 016 Chloroethane
- 017 Bis (chloromethyl) ether
- 018 Bis (2-chloroethyl) ether
- 019 2-chloroethyl vinyl ether (mixed)

- 020 2-chloronaphthalene
- 021 2,4,6-trichlorophenol
- 022 Parachlorometa cresol
- 023 Chloroform (trichloromethane)
- 024 2-chlorophenol
- 025 1,2-dichlorobenzene
- 026 1,3-dichlorobenzene
- 027 1,4-dichlorobenzene
- 028 3,3-dichlorobenzidine
- 029 1,1-dichloroethylene
- 030 1,2-trans-dichloroethylene
- 031 2,4-dichlorophenol
- 032 1,2-dichloropropane
- 033 1,2-dichloropropylene (1,3-dichloropropene)
- 034 2,4-dimethylphenol
- 035 2,4-dinitrotoluene
- 036 2,6-dinitrotoluene
- 037 1,2-diphenylhydrazine
- 038 Ethylbenzene
- 039 Fluoranthene
- 040 4-chlorophenyl phenyl ether
- 041 4-bromophenyl phenyl ether
- 042 Bis (2-chloroisopropyl) ether
- 043 Bis (2-chloroethoxy) methane
- 044 Methylene chloride (dichloromethane)
- 045 Methyl chloride (dichloromethane)
- 046 Methyl bromide (bromomethane)
- 047 Bromoform (tribromomethane)
- 048 Dichlorobromomethane
- 049 Trichlorofluoromethane
- 050 Dichlorodifluoromethane
- 051 Chlorodibromomethane
- 052 Hexachlorobutadiene
- 053 Hexachloromyclopentadiene
- 054 Isophorone
- 055 Naphthalene
- 056 Nitrobenzene
- 057 2-nitrophenol
- 058 4-nitrophenol
- 059 2,4-dinitrophenol
- 060 4,6-dinitro-o-cresol
- 061 N-nitrosodimethylamine
- 062 N-nitrosodiphenylamine
- 063 N-nitrosodi-n-propylamine
- 064 Pentachlorophenol
- 065 Phenol
- 066 Bis (2-ethylhexyl) phthalate
- 067 Butyl benzyl phthalate
- 068 Di-N-Butyl Phthalate
- 069 Di-n-cetyl phthalate
- 070 Diethyl Phthalate
- 071 Dimethyl phthalate
- 072 1,2-benzanthracene (benzo (a) anthracene)
- 073 Benzo (a) pyrene (3,4-benzo-pyrene)
- 074 3,4-Benzofluoranthene (benzo (b) fluoranthene)
- 075 11,12-benzofluoranthene (benzo (b) fluoranthene)
- 076 Chrysene
- 077 Acenaphthylene
- 078 Anthracene
- 079 1,12-benzoperylene (benzo (ghi) perylene)
- 080 Fluorene
- 081 Phenanthrene
- 082 1,2,5,6-dibenzanthracene (dibenzo (h) anthracene)
- 083 Indeno(1,2,3-cd) pyrene(2,3-o-phénylene pyrene)
- 084 Pyrene
- 085 Tetrachloroethylene
- 086 Toluene
- 087 Trichloroethylene
- 088 Vinyl chloride (chloroethylene)

089 Aldrin	038 Ethylbenzene	107 PCB-1254 (Arochlor 1254)
090 Dieldrin	039 Fluoranthene	108 PCB-1221 (Arochlor 1221)
091 Chlordane (technical mixture and metabolites)	040 4-chlorophenyl phenyl ether	109 PCB-1232 (Arochlor 1232)
092 4,4-DDT	041 4-bromophenyl phenyl ether	110 PCB-1248 (Arochlor 1248)
093 4,4-DDE (p,p-DDX)	042 Bis (2-chloroisopropyl) ether	111 PCB-1260 (Arochlor 1260)
094 4,4-DDD (p,p-TDE)	043 Bis (2-chloroethoxy) methane	112 PCB-1216 (Arochlor 1016)
095 Alpha-endosulfan	044 Methylene chloride (dichloromethane)	113 Toxaphene
096 Beta-endosulfan	045 Methyl chloride (dichloromethane)	116 Asbestos
097 Endosulfan sulfate	046 Methyl bromide (bromomethane)	117 Beryllium
098 Endrin	047 Bromoform (tribromomethane)	121 Cyanide
099 Endrin aldehyde	048 Dichlorobromomethane	123 Mercury
100 Heptachlor	049 Trichlorofluoromethane	126 Silver
101 Heptachlor epoxide (BHC-hexachlorocyclohexane)	050 Dichlorodifluoromethane	127 Thallium
102 Alpha-BHC	051 Chlorodibromomethane	129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
103 Beta-BHC	052 Hexachlorobutadiene	(c) Subpart C—Aluminum Basis Material
104 Gamma-BHC (lindane)	053 Hexachloromyclopentadiene	Subcategory
105 Delta-BHC (PCB polychlorinated biphenyls)	054 Isophorone	001 Acenaphthene
106 PCB-1242 (Arochlor 1242)	055 Naphthalene	002 Acrolein
107 PCB-1254 (Arochlor 1254)	056 Nitrobenzene	003 Acrylonitrile
108 PCB-1221 (Arochlor 1221)	057 2-nitrophenol	004 Benzene
109 PCB-1232 (Arochlor 1232)	058 4-nitrophenol	005 Benzidine
110 PCB-1248 (Arochlor 1248)	059 2,4-dinitrophenol	006 Carbon tetrachloride (tetrachloromethane)
111 PCB-1260 (Arochlor 1260)	060 4,6-dinitro-o-cresol	007 Chlorobenzene
112 PCB-1016 (Arochlor 1016)	061 N-nitrosodimethylamine	008 1,2,4-trichlorobenzene
113 Toxaphene	062 N-nitrosodimethylamine	009 Hexachlorobenzene
116 Asbestos	063 N-nitrosodi-n-propylamine	010 1,2-dichloroethane
121 Cyanide	064 Pentachlorophenol	011 1,1,1-trichloroethane
123 Mercury	065 Phenol	012 Hexachloroethane
126 Silver	066 Bis(2-ethylhexyl) phthalate	013 1,1-dichloroethane
127 Thallium	067 Butyl benzyl phthalate	014 1,1,2-trichloroethane
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)	068 Di-n-butyl phthalate	015 1,1,2,2-tetrachloroethane
(b) Subpart B—Cast Iron Basis Material	069 Di-n-cetyl phthalate	016 Chloroethane
Subcategory	070 Diethyl Phthalate	017 Bis (chloromethyl) ether
001 Acenaphthene	071 Dimethyl phthalate	018 Bis (2-chloroethyl) ether
002 Acrolein	072 Benzo(a)pyrene (3,4-benzopyrene)	019 2-chloroethyl vinyl ether (mixed)
003 Acrylonitrile	073 3,4-Benzofluoranthene	020 2-chloronaphthalene
004 Benzene	(benzo(b)fluoranthene)	021 2,4,6-trichlorophenol
005 Benzidine	074 3,4-Benzofluoranthene	022 Parachlorometa cresol
006 Carbon tetrachloride (tetrachloromethane)	(benzo(b)fluoranthene)	023 Chloroform (trichloromethane)
007 Chlorobenzene	075 11,12-benzofluoranthene	024 2-chlorophenol
008 1,2,4-trichlorobenzene	(benzo(b)fluoranthene)	025 1,2-dichlorobenzene
009 Hexachlorobenzene	076 Chrysene	026 1,3-dichlorobenzene
010 1,2-dichloroethane	077 Acenaphthylene	027 1,4-dichlorobenzene
011 1,1,1-trichloroethane	078 Anthracene	028 3,3-dichlorobenzidine
012 Hexachloroethane	079 1,1,2-benzoperylene	029 1,1-dichloroethylene
013 1,1-dichloroethane	(benzo(ghi)perylene)	030 1,2-trans-dichloroethylene
014 1,1,2-trichloroethane	080 Fluorene	031 2,4-dichlorophenol
015 1,1,2,2-tetrachloroethane	081 Phenanthrene	032 1,2-dichloropropane
016 Chloroethane	082 1,2,5,6-dibenzanthracene(dibenzo(h)anthracene)	033 1,2-dichloropropylene (1,3-dichloropropene)
017 Bis (chloromethyl) ether	083 Indeno(1,2,3-cd) pyrene (2,3-o-pheynylene pyrene)	034 2,4-dimethylphenol
018 Bis (2-chloroethyl) ether	084 Pyrene	035 2,4-dinitrotoluene
019 2-chloroethyl vinyl ether (mixed)	085 Tetrachloroethylene	036 2,6-dinitrotoluene
020 2-chloronaphthalene	086 Toluene	037 1,2-diphenylhydrazine
021 2,4,6-trichlorophenol	087 Trichloroethylene	038 Ethylbenzene
022 Parachlorometa cresol	088 Vinyl chloride (chloroethylene)	039 Fluoranthene
023 Chloroform (trichloromethane)	089 Aldrin	040 4-chlorophenyl phenyl ether
024 2-chlorophenol	090 Dieldrin	041 4-bromophenyl phenyl ether
025 1,2-dichlorobenzene	091 Chlordane (technical mixture and metabolites)	042 Bis (2-chloroisopropyl) ether
026 1,3-dichlorobenzene	092 4,4-DDT	043 Bis (2-chloroethoxy) methane
027 1,4-dichlorobenzene	093 4,4-DDE (p,p-DDX)	044 Methylene chloride (dichloromethane)
028 3,3-dichlorobenzidine	094 4,4-DDD (p,p-TDE)	045 Methyl chloride (dichloromethane)
029 1,1-dichloroethylene	095 Alpha-endosulfan	046 Methyl bromide (bromomethane)
030 1,2-trans-dichloroethylene	096 Beta-endosulfan	047 Bromoform (tribromomethane)
031 2,4-dichlorophenol	097 Endosulfan sulfate	048 Dichlorobromomethane
032 1,2-dichloropropane	098 Endrin	049 Trichlorofluoromethane
033 1,2-dichloropropylene (1,3-dichloropropene)	099 Endrin aldehyde	050 Dichlorodifluoromethane
034 2,4-dimethylphenol	100 Heptachlor	051 Chlorodibromomethane
035 2,4-dinitrotoluene	101 Heptachlor epoxide (BHC-hexachlorocyclohexane)	052 Hexachlorobutadiene
036 2,6-dinitrotoluene	102 Alpha-BHC	053 Hexachloromyclopentadiene
037 1,2-diphenylhydrazine	103 Beta-BHC	054 Isophorone
	104 Gamma-BHC (lindane)	055 Naphthalene
	105 Delta-BHC (PCB-polychlorinated biphenyls)	056 Nitrobenzene
	106 PCB-1242 (Arochlor 1242)	057 2-nitrophenol

- 058 4-nitrophenol  
 059 2,4-dinitrophenol  
 060 4,6-dinitro-o-cresol  
 061 N-nitrosodimethylamine  
 062 N-nitrosodiphenylamine  
 063 N-nitrosodi-n-propylamine  
 064 Pentachlorophenol  
 065 Phenol  
 067 Butyl benzyl phthalate  
 068 Di-N-Butyl Phthalate  
 070 Diethyl Phthalate  
 071 Dimethyl phthalate  
 072 1,2-benzanthracene (benzo (a) anthracene)  
 073 Benzo (a) pyrene (3,4-benzopyrene)  
 074 3,4-Benzofluoranthene (benzo (b) fluoranthene)  
 075 11,12-benzofluoranthene (benzo (b) fluoranthene)  
 076 Chrysene  
 077 Acenaphthylene  
 078 Anthracene  
 079 1,12-benzoperylene (benzo (ghi) perylene)  
 080 Fluorene  
 081 Phenanthrene  
 082 1,2,5,6-dibenzanthracene (dibenzo (h) anthracene)  
 083 Indeno (1,2,3-cd) pyrene (2,3-o-pheynylene pyrene)  
 084 Pyrene  
 085 Tetrachloroethylene  
 086 Toluene  
 087 Trichloroethylene  
 088 Vinyl chloride (chloroethylene)  
 089 Aldrin  
 090 Dieldrin  
 091 Chlordane (technical mixture and metabolites)  
 092 4,4-DDT  
 093 4,4-DDE (p,p-DDX)  
 094 4,4-DDD (p,p-TDE)  
 095 lpha-endosulfan  
 096 Beta-endosulfan  
 097 Endosulfan sulfate  
 098 Endrin  
 099 Endrin aldehyde  
 100 Heptachlor  
 101 Heptachlor epoxide (BHC-hexachlorocyclo-hexane)  
 102 Alpha-BHC  
 103 Beta-BHC  
 104 Gamma-BHC (lindane)  
 105 Delta-BHC (PCB-poly-chlorinated biphenyls)  
 106 PCB-1242 (Arochlor 1242)  
 107 PCB-1254 (Arochlor 1254)  
 108 PCB-1221 (Arochlor 1221)  
 109 PCB-1232 (Arochlor 1232)  
 110 PCB-1248 (Arochlor 1248)  
 111 PB-1260 (Arochlor 1260)  
 112 PCB-1016 (Arochlor 1016)  
 113 Toxaphene  
 116 Asbestos  
 123 Mercury  
 126 Silver  
 127 Thallium  
 129 2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD)  
 (d) Subpart D—Copper Basis Material  
 Subcategory  
 001 Acenaphthene  
 002 Acrolein  
 003 Acrylonitrile  
 004 Benzene  
 005 Benzidine  
 006 Carbon Tetrachloride (tetrachloromethane)  
 007 Chlorobenzene  
 008 1,2,4-trichlorobenzene  
 009 Hexachlorobenzene  
 010 1,2-dichloroethane  
 011 1,1,1-trichloroethane  
 012 Hexachloroethane  
 013 1,1-dichloroethane  
 015 1,1,2,2-tetrachloroethane  
 016 Chloroethane  
 017 Bis (chloromethyl) ether  
 018 Bis (2-chloroethyl) ether  
 019 2-chloroethyl vinyl ether (mixed)  
 020 2-chloronaphthalene  
 021 2,4,6-trichlorophenol  
 022 Parachlorometacresol  
 023 Chloroform (trichloromethane)  
 024 2-chlorophenol  
 025 1,2-dichlorobenzene  
 026 1,3-dichlorobenzene  
 027 1,4-dichlorobenzene  
 028 3,3-dichlorobenzidine  
 029 1,1-dichloroethylene  
 030 1,2-trans-dichloroethylene  
 031 2,4-dichlorophenol  
 032 1,2-dichloropropane  
 033 1,2-dichloropropylene (1,3-dichloropropene)  
 034 2,4-dimethylphenol  
 035 2,4-dinitrotoluene  
 036 2,6-dinitrotoluene  
 037 1,2-diphenylhydrazine  
 038 Ethylbenzene  
 039 Fluoranthene  
 040 4-chlorophenyl phenyl ether  
 041 4-bromophenyl phenyl ether  
 042 Bis (2-chloroisopropyl) ether  
 043 Bis (2-chloroethoxy) methane  
 044 Methylene Chloride (dichloromethane)  
 045 Methyl chloride (dichloromethane)  
 046 Methyl bromide (bromomethane)  
 047 Bromoform (tribromo-methane)  
 048 Dichlorobromomethane  
 049 Trichlorofluoromethane  
 050 Dichlorodifluoromethane  
 051 Chlorodibromomethane  
 052 Hexachlorobutadiene  
 053 Hexachloromyclopentadiene  
 054 Isophorone  
 055 Naphthalene  
 056 Nitrobenzene  
 057 2-nitrophenol  
 058 4-nitrophenol  
 059 2,4-dinitrophenol  
 060 4,6-dinitro-o-cresol  
 061 N-nitrosodimethylamine  
 062 N-nitrosodiphenylamine  
 063 N-nitrosodi-n-propylamine  
 064 Pentachlorophenol  
 065 Phenol  
 066 Bis(2-ethylhexyl)phthalate  
 067 Butyl benzyl phthalate  
 068 Di-N-Butyl Phthalate  
 069 Di-n-octyl phthalate  
 070 Diethyl Phthalate  
 071 Dimethyl phthalate  
 072 1,2-benzanthracene (benzo(a)anthracene)  
 073 Benzo(a)pyrene (3,4-benzopyrene)  
 074 3,4-Benzofluoranthene (benzo(b)fluoranthene)  
 075 11,12-benzofluoranthene (benzo(b)fluoranthene)  
 076 Chrysene  
 077 Acenaphthylene  
 078 Anthracene  
 079 1,12-benzoperylene (benzo (ghi) perylene)  
 080 Fluorene  
 081 Phenanthrene  
 082 1,2,5,6-dibenzanthracene (dibenzo (h) anthracene)  
 083 Indeno (1,2,3-cd) pyrene (2,3-o-pheynylene pyrene)  
 084 Pyrene  
 085 Tetrachloroethylene  
 086 Toluene  
 087 Trichloroethylene  
 088 Vinyl chloride (chloroethylene)  
 089 Aldrin  
 090 Dieldrin  
 091 Chlordane (technical mixture and metabolites)  
 092 4,4-DDT  
 093 4,4-DDE (p,p-DDX)  
 094 4,4-DDD (p,p-TDE)  
 095 Alpha-endosulfan  
 096 Beta-endosulfan  
 097 Endosulfan sulfate  
 098 Endrin  
 099 Endrin aldehyde  
 100 Heptachlor  
 101 Heptachlor epoxide (BHC-hexachlorocyclohexane)  
 102 Alpha-BHC  
 103 Beta-BHC  
 104 Gamma-BHC (lindane)  
 105 Delta-BHC (PCB-polychlorinated biphenyls)  
 106 PCB-1242 (Arochlor 1242)  
 107 PCB-1254 (Arochlor 1254)  
 108 PCB-1221 (Arochlor 1221)  
 109 PCB-1232 (Arochlor 1232)  
 110 PCB-1248 (Arochlor 1248)  
 111 PCB-1260 (Arochlor 1260)  
 112 PCB-1016 (Arochlor 1016)  
 113 Toxaphene  
 116 Asbestos  
 117 Beryllium  
 121 Cyanide  
 123 Mercury  
 126 Silver  
 127 Thallium  
 129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)  
 Appendix D—Toxic Pollutants Detected Below the Analytical Quantification Limit  
 (a) Subpart A—Steel Basis Material  
 Subcategory  
 None  
 (b) Subpart B—Cast Iron Basis Material  
 Subcategory  
 None  
 Subpart C—Aluminum Basis Material  
 Subcategory Subcategory  
 None  
 (d) Subpart D—Copper Basis Material  
 Subcategory  
 014 1,1,2-trichloroethane  
 086 Toluene  
 087 Trichloroethylene  
 Appendix E—Toxic Pollutants Detected in Amounts too Small to be Effectively Reduced by Technologies Considered in Preparing this Guideline  
 (a) Subpart A—Steel Basis Material  
 Subcategory  
 117 Beryllium  
 (b) Subpart B—Cast Iron Basis Material  
 Subcategory  
 None



(c) Subpart C—Aluminum Basis Material Subcategory  
117 Beryllium  
(d) Subpart D—Copper Basis Material Subcategory  
None

**Appendix F—Toxic Pollutants Present in Only Trace Amounts, Neither Causing nor Likely to Cause Toxic Effects In Humans**

(a) Subpart A—Steel Basis Material Subcategory  
None  
(b) Subpart B—Cast Iron Basis Material Subcategory  
None  
(c) Subpart C—Aluminum Basis Material Subcategory  
066 Bis(2-ethylhexyl) phthalate  
069 Di-n-octyl phthalate  
(d) Subpart D—Copper Basis Material Subcategory  
None

EPA proposes to add a new Part 466 to read as follows:

**PART 466—PORCELAIN ENAMELING POINT SOURCE CATEGORY**

**General Provisions**

Sec.  
466.01 Applicability.  
466.02 General definitions.  
466.03 Monitoring and reporting requirements.

**Subpart A—Steel Basis Material Subcategory**

466.10 Applicability; description of the steel basis material subcategory.  
466.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).  
466.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).  
466.13 New source performance standards (NSPS).  
466.14 Pretreatment standards for existing sources (PSES).  
466.15 Pretreatment standards for new sources (PSNS).  
466.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

**Subpart B—Cast Iron Basis Material Subcategory**

466.20 Applicability; description of the cast iron basis material subcategory.  
466.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).  
466.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).  
466.23 New source performance standards (NSPS).

466.24 Pretreatment standards for existing sources (PSES).  
466.25 Pretreatment standards for new sources (PSNS).  
466.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

**Subpart C—Aluminum Basis Material Subcategory**

466.30 Applicability; description of the aluminum basis material subcategory.  
466.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).  
466.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).  
466.33 New source performance standards (NSPS).  
466.34 Pretreatment standards for existing sources (PSES).  
466.35 Pretreatment standards for new sources (PSNS).  
466.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

**Subpart D—Copper Basis Material Subcategory**

466.40 Applicability; description of the copper basis material subcategory.  
466.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).  
466.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).  
466.43 New source performance standards (NSPS).  
466.44 Pretreatment standards for existing sources (PSES).  
466.45 Pretreatment standards for new sources (PSNS).  
466.46 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 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.

**General Provisions**

**§ 466.01 Applicability.**

This part applies to any porcelain enameling facility which discharges or may discharge pollutants to waters of the United States or which introduces or

may introduce pollutants into a publicly owned treatment works.

**§ 466.02 General definitions.**

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) "Porcelain enameling" means the entire process of applying a fused vitreous enamel coating to a metal basis material. Usually this includes metal preparation and coating operations.

(b) "Basis material" means the metal part or base onto which porcelain enamel is applied.

(c) "Area processed" means the total basis material area exposed to processing solutions.

(d) "Area coated" means the area of basis material covered by each coating of enamel.

(e) "Coating operations" means all of the operations associated with preparation and application of the vitreous coating. Usually this includes ballmilling, slip transport, application of slip to the workpieces, cleaning and recovery of faulty parts, and firing (fusing) of the enamel coat.

(f) "Metal preparation" means any and all of the metal processing steps preparatory to applying the enamel slip. Usually this includes cleaning, pickling and applying a nickel flash or chemical coating.

(g) "BPT" means the best practicable control technology currently available under Section 304(b)(1) of the Act.

(h) "BAT" means the best available technology economically achievable under Section 304(b)(2)(B) of the Act.

(i) "BCT" means the best conventional pollutant control technology, under Section 304(b)(4) of the Act.

(j) "NSPS" means new source performance standards under Section 306 of the Act.

(k) "PSES" means pretreatment standards for existing sources, under Section 306(b) of the Act.

(l) "PSNS" means pretreatment standards for new sources, under Section 306(c) of the Act.

(m) "Grab Sample" is a single sample which is collected at a time and place most representative of total discharge.

(n) "Composite Sample" is a sample composed of no less than 8 grab samples taken over the compositing period.

(o) "Flow Proportional Composite Sample" is composed of grab samples collected continuously or discretely in proportion to the total flow at time of collection or to the total flow since collection of the previous grab sample. The grab volume or frequency of grab collection may be varied in proportion to flow.

(p) The term "Control Authority" is defined as the POTW if it has an approved pretreatment program; in the absence of such a program, the NPDES State if it has an approved pretreatment program or EPA if the State does not have an approved program.

(q) "Continuous operations" means that the industrial user introduces regulated wastewaters to the POTW through the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes or other similar activities.

(r) "Intermittent operations" means the industrial user does not have a continuous operation.

(s) The term "Indirect Discharge" or "Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under 307 (b) (c) or (d) of the Act.

**§ 466.03 Monitoring and Reporting Requirements. [Reserved]**

**Subpart A—Steel Basis Material Subcategory**

**§ 466.10 Applicability; description of the steel basis material subcategory.**

This subpart applies to discharges to waters of the United States, and introduction of pollutants into publicly owned treatment works from porcelain enameling on steel basis material.

**§ 466.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.**

Except as provided in 40 CFR §§ 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations for metal preparation operations and for coating operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

**Subpart A.—EPT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
<b>Metric Units—mg/m<sup>3</sup> of Area Processed or Coated</b>				
Antimony.....	5.48	1.09	2.40	0.48
Arsenic.....	5.48	1.09	2.40	.48
Cadmium.....	2.06	.41	1.03	.20
Chromium.....	82.7	12.5	7.01	1.39
Copper.....	66.8	13.3	27.08	5.38
Lead.....	3.43	.68	1.71	.34
Nickel.....	49.4	9.80	37.35	7.42
Selenium.....	1.03	.21	.34	.07
Zinc.....	51.4	10.21	22.28	4.42
Aluminum.....	21.9	4.36	8.91	1.77
Cobalt.....	7.54	1.50	3.08	.61
Fluoride.....	1,635	324.7	666.4	132.7
Iron.....	74.4	14.77	22.28	4.42
Manganese.....	12.0	2.38	4.80	.95
Titanium.....	1.02	.20	.34	.068
Oil and grease.....	688	136.1	342.8	68.1
TSS.....	1,200	238.2	857.0	170.1
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
<b>English Units—lbs/1 million ft<sup>3</sup> of Area Processed or Coated</b>				
Antimony.....	1.12	0.22	0.49	0.098
Arsenic.....	1.12	.22	.49	.098
Cadmium.....	.42	.084	.21	.042
Chromium.....	12.8	2.55	1.44	.29
Copper.....	13.7	2.72	57.54	1.10
Lead.....	.70	.14	1.35	.07
Nickel.....	10.1	2.01	7.65	1.52
Selenium.....	.21	.042	.07	.014
Zinc.....	10.5	2.09	4.56	.91
Aluminum.....	4.49	.89	1.82	.36
Cobalt.....	1.54	.31	.63	.13
Fluoride.....	334.6	66.4	136.8	27.2
Iron.....	15.2	3.02	4.56	.91
Manganese.....	2.45	.49	.98	.20
Titanium.....	.21	.042	.07	.014
Oil and grease.....	140.3	27.9	7.01	13.9
TSS.....	245.5	48.8	175.3	34.8
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

**§ 466.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.**

Except as provided in 40 CFR §§ 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

**Subpart A.—BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
<b>Metric Units—mg/m<sup>3</sup> of Area Processed or Coated</b>				
Antimony.....	3.77	0.75	1.47	0.29
Arsenic.....	3.77	.75	1.47	.29
Cadmium.....	1.44	.29	.58	.12
Chromium.....	9.26	1.84	3.43	.68
Copper.....	44.9	8.92	18.2	3.61
Lead.....	3.43	.68	1.51	.30
Nickel.....	21.9	4.36	9.94	1.97
Selenium.....	.72	.14	.31	.06
Zinc.....	23.7	4.7	10.3	2.04
Aluminum.....	14.4	2.86	6.17	1.23
Cobalt.....	5.03	1.00	2.09	.415
Fluoride.....	1,079.76	214.4	445.73	88.49
Iron.....	64.1	12.73	21.9	4.36
Manganese.....	7.92	1.57	3.26	.65
Titanium.....	.72	.14	.31	.06

## Subpart A.—BAT Effluent Limitations—Continued

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
English Units—lbs/1 million ft <sup>2</sup> of Area Processed or Coated				
Antimony	0.77	0.153	0.30	0.06
Arsenic	.77	.153	.30	.06
Cadmium	.30	.059	.12	.024
Chromium	1.90	.376	.70	.14
Copper	9.19	1.82	3.72	.74
Lead	.71	.139	.31	.06
Nickel	4.49	.98	2.03	.40
Selenium	.15	.029	.06	.013
Zinc	4.84	.96	2.10	.42
Aluminum	2.95	.59	1.26	.25
Cobalt	1.03	.20	.43	.08
Fluoride	221.0	43.88	91.2	18.11
Iron	13.2	2.80	4.49	.89
Manganese	1.62	.32	.67	.13
Titanium	.15	.029	.63	.01

## § 466.13 New source performance standards.

Any new source subject to this subpart must achieve the following performance standards:

(a) There shall be no discharge of wastewater pollutants from coating operations.

(b) The discharge of wastewater pollutants from all porcelain enameling operations other than coating operations shall not exceed the values set forth below:

## Subpart A.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>3</sup> (lb/1 million ft <sup>3</sup> of Area Processed)			
Cadmium	0.06	(0.012)	0.025	(0.005)
Chromium	.39	(.080)	.144	(.029)
Copper	1.89	(.390)	.76	(.15)
Lead	.14	(.029)	.063	(.013)
Nickel	.92	(.190)	.42	(.085)
Zinc	.99	(.20)	.43	(.088)
Aluminum	.60	(.12)	.26	(.053)
Cobalt	.21	(.043)	.087	(.018)
Iron	2.69	(.55)	.92	(.19)
Manganese	.33	(.068)	.14	(.028)
Oil and grease	14.4	(2.95)	14.4	(2.95)
TSS	21.6	(4.42)	14.4	(2.95)
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

## § 466.14 Pretreatment standards for existing sources.

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The provision of 40 CFR Part 403 Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass of wastewater pollutants in porcelain enameling process wastewater introduced into a POTW shall not exceed the following values:

## Subpart A.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—mg/m <sup>3</sup> of Area Processed or Coated				
Antimony	3.77	0.75	1.47	0.29
Arsenic	3.77	.75	1.47	.29

Subpart A.—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—mg/m <sup>2</sup> of Area Processed or Coated—Continued				
Cadmium	1.44	.29	.58	.12
Chromium	9.26	1.84	3.43	.68
Copper	44.9	8.92	18.2	3.61
Lead	3.43	.68	1.51	.30
Nickel	21.9	4.36	9.94	1.97
Selenium	.72	.14	.31	.06
Zinc	23.7	4.7	10.3	2.04
Aluminum	14.4	2.88	6.17	1.23
Cobalt	5.03	1.00	2.09	.415
Fluoride	1,079.76	214.4	445.73	88.49
Iron	64.1	12.73	21.9	4.36
Manganese	7.92	1.57	3.26	.65
Titanium	.72	.14	.31	.06

English Units—lbs/1 million ft <sup>2</sup> of Area Processed or Coated				
Antimony	0.77	0.153	0.30	0.06
Arsenic	.77	.153	.30	.06
Cadmium	.30	.059	.12	.024
Chromium	1.90	.376	.70	.14
Copper	9.19	1.82	3.72	.74
Lead	.71	.139	.31	.06
Nickel	4.49	.96	2.03	.40
Selenium	.15	.029	.06	.013
Zinc	4.84	.96	2.10	.42
Cobalt	1.03	.20	.43	.08
Fluoride	221.0	43.88	91.2	18.11
Manganese	1.62	.32	.67	.13
Titanium	.15	.029	.63	.01

§ 466.15 Pretreatment standards for new sources.

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The provision of 40 CFR Part 403 Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart:

(a) There shall be no discharge of wastewater pollutants from coating operations.

(b) The mass of wastewater pollutants in all porcelain enameling process wastewater except coating operations introduced into a POTW shall not exceed the following values:

Subpart A.—PSNS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>2</sup> , (lb/1 million ft <sup>2</sup> of Area Processed)			
Cadmium	0.06	(0.012)	0.025	(0.005)
Chromium	.39	(.080)	.144	(.029)
Copper	1.89	(.390)	.76	(.16)
Lead	.14	(.029)	.063	(.013)
Nickel	.92	(.190)	.42	(.085)
Zinc	.99	(.20)	.43	(.088)
Cobalt	.21	(.043)	.087	(.018)
Fluoride	45.4	(9.28)	18.7	(3.83)
Manganese	.33	(.068)	.14	(.028)
Titanium	.03	(.006)	.013	(.003)

§ 466.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

Except as provided in 40 CFR §§ 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology:

## Subpart A.—ECT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—Mg/m <sup>2</sup> of Area Processed or Coated				
Oil and grease	343	0.50	343	0.50
TSS	514	.75	343	.50
pH	Within the range of 7.5 to 10.0 at all times.			
English Units—lbs/1 million ft <sup>2</sup> of Area Processed or Coated				
Oil and grease	70.1	0.102	70.1	0.102
TSS	105.2	.153	70.1	.102
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

## Subpart B—Cast Iron Basis Material Subcategory

## § 466.20 Applicability; description of the cast iron basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from porcelain enameling of cast iron basis material.

## § 466.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR §§ 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

## Subpart B.—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>2</sup> (lb/1 million ft <sup>2</sup> ) of area processed			
Antimony	0.11	(0.023)	0.048	(0.010)
Arsenic	.11	(.023)	.048	(.010)
Cadmium	.041	(.008)	.021	(.004)
Chromium	1.27	(.26)	.14	(.029)
Copper	1.35	(.28)	.55	(.11)
Lead	0.069	(.014)	.035	(.007)
Nickel	1.00	(.20)	.75	(.15)
Selenium	0.21	(.004)	.007	(.002)
Zinc	1.04	(.21)	.45	(.092)
Aluminum	0.44	(.090)	.18	(.037)
Cobalt	.15	(.031)	.062	(.013)
Fluoride	33.0	(6.76)	13.5	(2.76)
Iron	1.50	(0.31)	0.45	(0.092)
Manganese	0.24	(.050)	.097	(.020)
Titanium	.021	(.004)	.007	(.002)
Oil and grease	13.8	(2.83)	6.92	(1.42)
TSS	24.2	(4.96)	17.3	(1.4)
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

## § 466.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR §§ 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available.

(a) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

## Subpart B.—BAT Effluent Limitations

Pollutant or pollutant property	Maximum for 1 one day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>3</sup> (lb/1 million ft <sup>3</sup> ) of area processed			
Antimony.....	0.076	(0.016)	0.03	(0.006)
Arsenic.....	.076	(.016)	.03	(.006)
Cadmium.....	.029	(.006)	.012	(.002)
Chromium.....	.019	(.038)	.069	(.014)
Copper.....	.91	(.19)	.37	(.075)
Lead.....	.07	(.014)	.03	(.006)
Nickel.....	.44	(.09)	.20	(.04)
Selenium.....	.015	(.003)	.006	(.001)
Zinc.....	.48	(.096)	.21	(.04)
Aluminum.....	.29	(.059)	.12	(.025)
Cobalt.....	.102	(.02)	.042	(.009)
Fluoride.....	21.8	(4.45)	8.996	(1.84)
Iron.....	1.29	(0.26)	0.44	(0.09)
Manganese.....	0.16	(.03)	.07	(.01)
Titanium.....	.015	(.003)	.006	(.001)

## § 466.23 New source performance standards.

Any new source subject to this subpart must achieve the following performance standards:

There shall be no discharge of wastewater pollutants.

## § 466.24 Pretreatment standards for existing sources.

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The provision of 40 CFR Part 403 Appendix A, E.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass of wastewater pollutants in porcelain enameling process wastewater introduced into a POTW shall not exceed the following values:

(a) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

## Subpart B.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>3</sup> (lb/1 ft <sup>3</sup> ) of Area Processed			
Antimony.....	0.076	(0.016)	0.03	(0.006)
Arsenic.....	.076	(.016)	.03	(.006)
Cadmium.....	.029	(.006)	.012	(.002)
Chromium.....	.019	(.038)	.069	(.014)
Copper.....	.91	(.19)	.37	(.075)
Lead.....	.07	(.014)	.03	(.006)
Nickel.....	.44	(.09)	.20	(.04)
Selenium.....	.015	(.003)	.006	(.001)
Zinc.....	.48	(.096)	.21	(.04)
Cobalt.....	.102	(.02)	.042	(.009)
Fluoride.....	21.8	(4.45)	8.996	(1.84)
Manganese.....	.16	(.03)	.07	(.01)
Titanium.....	.015	(.003)	.006	(.001)

## § 466.25 Pretreatment standards for new sources.

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources:

There shall be no process wastewater pollutants introduced into a POTW.

## § 466.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

Except as provided in 40 CFR §§ 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology:

## Subpart B.—BCT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>3</sup> (lb/ million ft <sup>3</sup> of Area Processed)			
TSS	0.50	(0.102)	0.50	(0.102)
Oil and grease	.75	(.153)	.50	(.102)

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

## Subpart C—Aluminum Basis Material Subcategory

## § 466.30 Applicability; description of the aluminum basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from porcelain enameling of aluminum basis material.

## § 466.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR §§ 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

## Subpart C.—EPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metric Units—mg/m <sup>3</sup> of Area Processed or Coated			
	Metal preparation	Coating operation	Metal preparation	Coating operation
Antimony	5.61	1.77	2.46	0.77
Arsenic	5.61	1.77	2.46	.77
Cadmium	2.11	.66	1.05	.33
Chromium	64.2	20.1	7.18	2.27
Copper	68.4	21.6	27.7	8.75
Cyanide	7.72	2.44	3.16	1.00
Lead	3.51	1.11	1.75	.55
Nickel	50.5	15.9	38.2	12.1
Selenium	1.05	.33	.35	.11
Zinc	52.6	16.6	22.8	7.2
Aluminum	22.5	7.06	9.12	2.86
Cobalt	7.72	2.44	3.16	1.00
Fluoride	1,674	528	694	215.9
Iron	76.1	24.0	22.8	7.20
Manganese	12.3	3.87	4.91	1.55
Titanium	1.05	.33	.35	.11
Oil & Grease	701.8	221.4	351	110.7
TSS	1,228	368	677	276.8
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

English Units—lbs/1 million ft<sup>3</sup> of Area Processed or Coated

Antimony	1.15	0.36	0.50	0.158
Arsenic	1.15	.36	.50	.158
Cadmium	.43	.14	.22	.068
Chromium	13.1	4.15	1.47	.46
Copper	14.0	4.42	5.67	1.79
Cyanide	1.58	.50	.65	.20
Lead	.72	.23	.36	.11
Nickel	10.3	3.26	7.83	2.47
Selenium	.22	.68	.72	.23
Zinc	10.8	3.40	4.67	1.47
Aluminum	4.60	1.45	1.87	.59
Cobalt	1.58	.50	.65	.20
Fluoride	342.5	108.0	140.0	44.2
Iron	15.6	4.92	4.67	1.47
Manganese	2.51	.79	41.6	.32
Titanium	.22	.68	.072	.023
Oil & Grease	143.6	45.3	71.8	22.7
TSS	251.3	79.3	179.5	56.6
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

**§ 466.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.**

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

**Subpart C.—BAT Effluent Limitations**

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
<b>Metric Units—mg/m<sup>2</sup> of Area Processed or Coated</b>				
Antimony	3.86	1.22	1.51	0.48
Arsenic	3.86	1.22	1.51	.48
Cadmium	1.47	.46	.60	.19
Chromium	9.47	2.99	3.51	1.11
Copper	45.97	14.50	16.6	5.87
Cyanide	5.26	1.66	2.11	.66
Lead	3.51	1.11	1.54	.49
Nickel	22.46	7.1	10.18	3.21
Selenium	.74	.23	.32	.10
Zinc	24.2	7.62	10.53	3.32
Aluminum	14.7	4.65	6.32	1.99
Cobalt	5.2	1.63	2.14	.68
Fluoride	1,105.3	348.7	456.17	143.91
Iron	65.6	20.7	22.46	7.08
Manganese	8.10	2.56	3.33	1.05
Titanium	.74	.23	.32	.10
<b>English Units—lbs/1 million ft<sup>2</sup> of Area Processed or Coated</b>				
Antimony	0.79	0.25	0.31	0.097
Arsenic	.79	.25	.31	.097
Cadmium	.30	.095	.12	.039
Chromium	1.94	.61	.72	.23
Copper	9.41	2.97	3.61	1.20
Cyanide	1.08	.34	.43	.14
Lead	.72	.23	.32	.10
Nickel	4.60	1.45	2.06	.66
Selenium	.15	.048	.065	.02
Zinc	4.95	1.56	2.15	.68
Aluminum	3.02	.95	1.29	.41
Cobalt	1.06	.33	.44	.14
Fluoride	226.2	71.36	93.35	29.45
Iron	13.42	4.24	4.60	1.45
Manganese	1.66	.52	.66	.22
Titanium	.15	.48	0.65	.20

**§ 466.33 New source performance standards.**

Any new source subject to this subpart must achieve the following performance standards.

(a) There shall be no discharge of wastewater pollutants from coating operations.

(b) The discharge of wastewater pollutants from all porcelain enameling operations other than coating operations shall not exceed the values set forth below:

**Subpart C.—NSPS**

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>2</sup> (lb/1 million ft <sup>2</sup> of Area Processed)			
Chromium	0.41	(0.16)	0.15	(0.06)
Cyanide	.23	(.09)	.09	(.04)
Lead	.15	(.06)	.07	(.026)
Zinc	1.06	(.38)	.46	(.18)
Aluminum	.64	(.25)	.28	(.11)
Oil & Grease	15.3	(6.0)	15.3	(6.0)
TSS	22.95	(9.0)	15.3	(6.0)
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.



## § 466.34 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The provision of 40 CFR Part 403 Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass of wastewater pollutants in porcelain enameling process wastewater introduced into a POTW shall not exceed the following values:

## Subpart C.—PSES

Pollutant or pollutant property	Maximum for any one day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—mg/m <sup>2</sup> of Area Processed or Coated				
Antimony	3.86	1.22	1.51	0.48
Arsenic	3.86	1.22	1.51	.48
Cadmium	1.47	.46	.60	.19
Chromium	9.47	2.99	3.51	1.11
Copper	45.97	14.50	18.6	5.87
Cyanide	5.26	1.66	2.11	.66
Lead	3.51	1.11	1.54	.49
Nickel	22.46	7.1	10.16	3.21
Selenium	.74	.23	.32	.10
Zinc	24.2	7.62	10.53	3.32
Cobalt	5.2	1.63	2.14	.68
Fluoride	1,105.3	348.7	456.17	143.91
Manganese	8.10	2.56	3.33	1.05
Titanium	.74	.23	.32	.10

English Units—lbs/1 million ft<sup>2</sup> of Area Processed or Coated

Antimony	0.79	0.25	0.31	0.097
Arsenic	.79	.25	.31	.097
Cadmium	.030	.095	.12	.039
Chromium	1.94	.61	.72	.23
Copper	9.41	2.97	3.81	1.20
Cyanide	1.08	.34	.43	.14
Lead	.72	.23	.32	.10
Nickel	4.60	1.45	2.08	.66
Selenium	.15	.048	.065	.02
Zinc	4.95	1.56	2.15	.68
Cobalt	1.06	.33	.44	.14
Fluoride	226.2	71.96	93.35	29.45
Manganese	1.66	.52	.68	.22
Titanium	.15	.48	.065	.020

## § 466.35 Pretreatment standards for new sources.

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The provision of 40 CFR Part 403 Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart:

(a) There shall be no discharge of wastewater pollutants from coating operations.

(b) The mass of wastewater pollutants in porcelain enameling process wastewater introduced into a POTW shall not exceed the following values:

## Subpart C.—PSMS

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>2</sup> (lb/1 million ft <sup>2</sup> of Area Processed)			
Chromium	0.41	(0.16)	0.15	(0.06)
Cyanide	.23	(.09)	.09	(.04)
Lead	.15	(.06)	.07	(.026)
Zinc	1.06	(.38)	.40	(.18)

## § 466.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology:

## Subpart C.—BCT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—mg/m <sup>2</sup> of Area Processed or Coated				
Oil and grease	71.8	0.102	71.8	0.102
TSS	107.7	.153	71.8	.102
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

Pollutant or pollutant property	Maximum for any one day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
English Units—lbs/1 million ft <sup>2</sup> of Area Processed or Coated				
Oil and grease	351	0.50	351	0.50
TSS	526	.75	351	.50
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

## Subpart D.—Copper Basis Material Subcategory

## § 466.40 Applicability: description of the copper basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from porcelain enameling of copper basis material.

## § 466.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

## Subpart D.—EPT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—mg/m <sup>2</sup> of Area Processed or Coated				
Antimony	10.8	.76	4.71	.33
Arsenic	10.8	.76	4.71	.33
Cadmium	4.04	.28	2.02	.14
Chromium	123.1	8.67	13.8	.97
Copper	131.2	9.24	13.8	3.74
Lead	6.73	.47	3.36	.24
Nickel	96.9	6.83	73.3	5.17
Selenium	2.02	.14	.67	.05
Zinc	100.9	7.11	43.7	3.08
Aluminum	43.1	2.03	17.5	1.23
Cobalt	14.8	1.04	6.06	.43
Fluoride	3,210	226	13.2	92.4
Iron	146	10.3	43.7	3.08
Manganese	23.6	1.66	9.42	.66
Titanium	2.02	.14	.67	.047
Oil & Grease	1,345	94.8	673	47.4
TSS	2,355	165.9	1,082	118.5
pH				

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

Pollutant or pollutant property	Maximum for any one day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
English Units—lbs/1 million ft <sup>2</sup> of Area Processed or Coated				
Antimony	2.20	.16	.96	.068
Arsenic	2.20	.16	.96	.068
Cadmium	.83	.058	.41	.029
Chromium	25.2	1.78	2.82	.20
Copper	26.9	1.89	10.9	.77

## Subpart D.—EPT Effluent Limitations—Continued

Pollutant or pollutant property	Maximum for any one day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
English Units—lbs/1 million ft <sup>2</sup> of Area Processed or Coated—Continued				
Lead	1.38	.097	.69	.049
Nickel	19.8	1.40	15	1.06
Selenium	.41	.03	.14	.010
Zinc	20.7	1.46	8.95	.63
Aluminum	8.81	.62	3.58	.25
Cobalt	3.03	.021	1.24	.087
Fluoride	656.9	46.3	269	18.9
Iron	30	2.10	8.95	0.63
Manganese	4.82	.34	1.93	.14
Titanium	.43	.029	.14	.010
Oil & Grease	275.4	19.4	138	9.7
TSS	462	34	344	24.3
pH				

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

§ 466.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR §§ 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

## Subpart D.—EAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—mg/m <sup>3</sup> of Area Processed or Coated				
Antimony	7.4	.52	2.89	.20
Arsenic	7.4	.52	2.89	.20
Cadmium	2.83	.20	1.14	.08
Chromium	18.17	1.28	6.73	.68
Copper	88.1	6.21	35.7	2.51
Lead	6.73	.47	2.96	.21
Nickel	43.07	3.03	19.5	1.37
Selenium	1.41	.10	.61	.04
Zinc	46.4	3.27	20.2	1.42
Aluminum	28.46	1.99	12.1	.85
Cobalt	9.89	.697	4.1	.3
Fluoride	2,119.6	149.3	874.8	61.62
Iron	125.8	8.86	43.1	3.03
Manganese	15.5	1.09	6.39	.45
Titanium	1.4	.10	.61	.04

English Units—lbs/1 million ft <sup>2</sup> of Area Processed or Coated				
Antimony	1.51	.11	.59	.04
Arsenic	1.51	.11	.59	.04
Cadmium	.58	.04	.23	.016
Chromium	3.72	.26	1.38	.10
Copper	18	1.27	7.30	.51
Lead	1.38	.10	.61	.04
Nickel	8.81	.62	3.99	.28
Selenium	.29	.02	.12	.009
Zinc	9.50	.67	4.13	.29
Aluminum	5.78	.41	2.48	.17
Cobalt	2.62	.14	.84	.06
Fluoride	433.8	30.56	179.02	12.6
Iron	25.8	1.81	8.81	.62
Manganese	3.18	.22	1.31	.09
Titanium	.29	.02	.12	.009

## § 466.43 New source performance standards.

Any new source subject to this subpart must achieve the following performance standards.

(a) There shall be no discharge of wastewater pollutants from coating operations.

(b) The discharge of wastewater pollutants from all porcelain enameling operations other than coating operations shall not exceed the values set forth below:

## Subpart D.—NSPS

Pollutant or pollutant property	Maximum for any one day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>3</sup> (lb/1 million ft <sup>3</sup> ) of Area Processed			
Copper.....	3.83	(0.79)	1.55	(0.32)
Zinc.....	2.02	(.41)	.88	(.18)
Iron.....	5.49	(1.12)	1.88	(.38)
Oil and grease.....	29.3	(6.0)	29.3	(6.0)
TSS.....	44.0	(9.0)	29.3	(6.0)
pH.....				

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

## § 466.44 Pretreatment standards for existing sources.

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The provision of 40 CFR Part 403 Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass of wastewater pollutants in porcelain enameling process wastewater introduced into a POTW shall not exceed the following values:

## Subpart D.—PSES

Pollutant or pollutant property	Maximum for any one day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—mg/m <sup>2</sup> of Area Processed or Coated				
Antimony.....	7.4	0.52	2.89	0.20
Arsenic.....	7.4	.52	2.89	.20
Cadmium.....	2.83	.20	1.14	.08
Chromium.....	18.17	1.28	6.73	.08
Copper.....	88.1	6.21	35.7	2.51
Lead.....	6.73	.47	2.96	.21
Nickel.....	43.07	3.03	19.5	1.37
Selenium.....	1.41	.10	.61	.04
Zinc.....	46.4	3.27	20.2	1.42
Cobalt.....	9.89	.697	4.1	.3
Fluoride.....	2,119.6	149.3	874.8	61.62
Manganese.....	15.5	1.09	6.39	.45
Titanium.....	1.4	.10	.61	.04

English Units—lbs/1 million ft <sup>3</sup> of Area Processed or Coated				
Antimony.....	1.51	0.11	0.59	0.04
Arsenic.....	1.51	.11	.59	.04
Cadmium.....	.58	.04	.23	.016
Chromium.....	13.72	.26	1.38	.10
Copper.....	18.0	1.27	7.30	.51
Lead.....	1.38	.10	.61	.04
Nickel.....	8.81	.62	3.99	.28
Selenium.....	.29	.02	.12	.009
Zinc.....	9.50	.67	4.13	.29
Cobalt.....	2.02	.14	.84	.06
Fluoride.....	433.8	30.56	179.02	12.6
Manganese.....	3.16	.22	1.31	.09
Titanium.....	.29	.02	.12	.009

## § 466.45 Pretreatment standards for new sources.

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The provision of 40 CFR Part 403 Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart:

(a) There shall be no discharge of wastewater pollutants from coating operations.

(b) The mass of wastewater pollutants in porcelain enameling process wastewater introduced into a POTW shall not exceed the following values:

## Subpart D.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	mg/m <sup>3</sup>	(lb/1 million ft <sup>3</sup> )	mg/m <sup>3</sup>	(lb/1 million ft <sup>3</sup> )
Copper	75.0	(15.3)	30.3	(0.70)
Zinc	39.5	(8.08)	17.2	(3.51)

§ 466.46 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology:

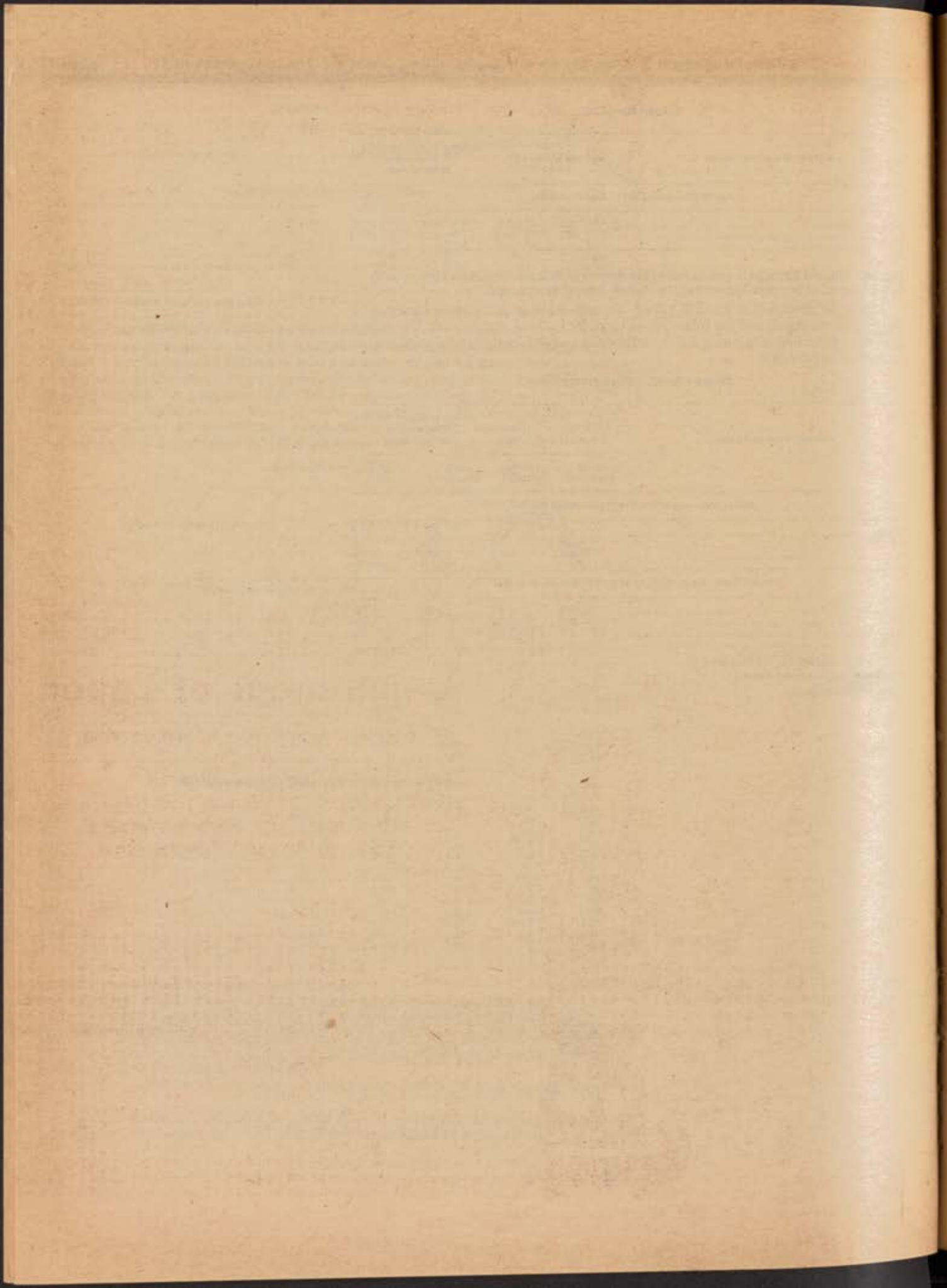
## Subpart A.—BCT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day		Average of daily values for 30 consecutive sampling days	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric Units—mg/m <sup>3</sup> of Area Processed or Coated				
Oil and grease	673	0.50	673	0.50
TSS	1,009	.75	673	.50
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
English Units—lbs/1 million ft <sup>3</sup> of Area Processed or Coated				
Oil and grease	138	0.102	138	0.102
TSS	207	.153	138	.102
pH	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range of 7.5 to 10.0 at all times.

[FR Doc. 81-2582 Filed 1-26-81; 8:45 am]

BILLING CODE 8560-29-M



# **federal register**

---

Tuesday  
January 27, 1981

---

## **Part IV**

### **Department of Labor**

**Employment Standards Administration**

---

**Procedure for Determination of  
Applicability of Section 8(f) of the  
Longshoremen's and Harbor Workers'  
Compensation Act and Special Fund  
Assessments**

## DEPARTMENT OF LABOR

## 20 CFR Part 702

**Procedure for Determination of Applicability of Section 8(f) of the Longshoremen's and Harbor Workers' Compensation Act and Special Fund Assessments**

**AGENCY:** Employment Standards Administration, DOL.

**ACTION:** Proposed rule.

**SUMMARY:** The Director, Office of Workers' Compensation Programs, has the responsibility for administering the Special Fund established under Section 44 of the Longshoremen's and Harbor Workers' Compensation Act 33 U.S.C. 944. The growing number of claims being asserted against the Fund under Section 8(f) of the Act, 33 U.S.C. 908(f), has demonstrated a need for more effective administrative handling of such claims. This proposal is designed to meet that need.

**DATES:** Comments on the proposed rules must be received on or before March 30, 1981.

**ADDRESSES:** Send comments to—Neil A. Montone, Associate Director for Longshore and Harbor Workers' Compensation Suite C-4315, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, D.C. 20210, Tel: 202-523-8572.

**FOR FURTHER INFORMATION CONTACT:** George M. Lilly, Counsel for the Longshoremen's Act, Office of the Solicitor, Suite N-2620, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, D.C. 20210, Tel: 202-357-0437.

**SUPPLEMENTARY INFORMATION:**

**Classification**

The Department of Labor has determined that this regulation is not significant for the purposes of Executive Order 12044. Regulatory Analysis:

It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order No. 12044, or the Department of Labor guidelines implementing the Executive Order (44 F.R. 5570, January 28, 1979).<sup>1</sup>

For the reasons set out in the preamble, Part 702 of Chapter VI of Title 20 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. The authority citation for Part 702 reads as follows:

The Secretary of Labor is authorized by statute (33 U.S.C. 939(a)) to make rules and regulations to administer the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901-950) and its extensions, the District of Columbia Workmen's Compensation Act (38 D.C. Code 501-502), the Defense Base Act (42 U.S.C. 1651-1654), the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343), and the Nonappropriated Fund Instrumentalities Act (5 U.S.C. 8171-8173).

2. Section 702.320 is added to Part 702 to read as follows:

**§ 702.320 Procedures for determining applicability of section 8(f) of the Act.**

(a) *Petition: filing, service, contents.* If an employer or insurance carrier seeks to invoke the provisions of section 8(f) of the Act, it shall file a petition for limitation of liability under section 8(f). The petition shall be filed with the deputy commissioner, or, if the case has been transferred to the Office of the Chief Administrative Law Judge under § 702.317 for a formal hearing, with that Office. The petition, whether filed with the deputy commissioner or the Office of the Chief Administrative Law Judge, shall be served on the claimant, the Director, and the Associate Solicitor of Labor for Employee Benefits. The petition shall specify with particularity the pre-existing condition relied upon as having caused or constituted an existing permanent partial disability. Unless fully evident from the circumstances, the petition shall state the reasons for believing that the claimant's permanent disability after the injury would be less were it not for the pre-existing disabling condition or that death would not have ensued but for the condition. The petition shall also state the basis for the assertion that the condition relief upon was manifest to the employer before the employment injury. Documentary medical evidence relied upon in support of the claimed applicability of section 8(f) of the Act shall be appended to the petition.

(b) *Petition: time for filing and consideration.* The petition described in paragraph (a) of this section may be filed at any time before the entry of a compensation order awarding compensation for permanent disability or death. The petition may not be actively considered, however, until the compensability of the injury and the extent of the claimant's permanent disability are established and a compensation order is issued. Further, an administrative law judge may not consider the applicability of section 8(f)

of the Act until section 8(f)'s applicability has been developed and considered by the Director through the procedures set forth in paragraph (c) of this section. To preserve the issue of the applicability of section 8(f) of the Act for future resolution, the employer and carrier must raise the issue before the entry of a compensation order awarding benefits for permanent disability or death.

(c) *Procedure for determination of section 8(f) relief.*—(1) *Consideration by OWCP.* (i) When a petition for section 8(f) relief is filed with a deputy commissioner, he or she shall undertake any necessary investigation under section 19(c) of the Act, and shall forward to the Director a memorandum concerning the applicability of section 8(f) of the Act and § 702.145(b) including the results of the investigation, a recommendation and copies of any documents in the administrative file bearing on the applicability of the provisions, other than those documents appended to the employer's petition. (ii) If the Director determines, on the basis of the employer's petition and the deputy commissioner's memorandum, that the case is appropriate for payment of compensation from the special fund under sections 8(f) and 44(j)(2) of the Act and § 702.145(b), he or she shall determine the date upon which payment should begin. The Director shall transmit this determination to the deputy commissioner, who shall inform the employer in writing of the Director's finding. If the employer agrees to continue payment of compensation until the date on which the Director has determined the special fund will commence payment, the deputy commissioner shall enter a compensation order finding the claimant to be entitled to compensation from the employer until that date and from the special fund after that date. If, however, the employer contends that its liability should terminate before the date determined by the Director, the deputy commissioner shall, by memorandum, so inform the Director, and shall transmit any additional documents submitted by the employer. If no agreement is reached, the case shall be transferred for a formal hearing, under § 702.317. (iii) If the Director determines that the case is not appropriate for payment of compensation from the special fund, he or she shall transmit this determination to the deputy commissioner, who shall promptly notify the employer in writing. Upon request by the employer, the case shall be transferred for a formal hearing under § 702.317. (iv) If formal proceedings are instituted to determine

<sup>1</sup> A copy of a letter, dated January 19, 1981, from Ray Marshall to the Small Business Administration was filed with the original document. This letter certified that this rule would not have a significant economic impact upon a substantial number of small business entities.



the applicability of section 8(f) of the Act and § 702.145(b), no determination of the Director may be admitted as evidence or considered for any purpose. Nevertheless, the deputy commissioner's transmittal letter referring a case to the Office of the Chief Administrative Law Judge under § 702.317(c) for determination, shall state that the issue has been considered and is ready for formal resolution.

(2) *Filing of petition with administrative law judge.* When a petition for section 8(f) relief is filed with an administrative law judge, he or she shall not consider it. The administrative law judge shall resolve the issues of the compensability of the injury and the extent of the claimant's permanent disability and issue a compensation order. The petition shall be forwarded to the deputy commissioner for consideration under paragraph (c)(1) of this section. Nothing herein shall preclude the granting of relief under section 8(f) of the Act in the compensation order of the administrative law judge if the Director determines before entry of the award that relief under section 8(f) is available.

3. In § 702.146, paragraph (c) is revised to read as follows:

**§ 702.146 Sources of the special fund.**

(c) The Director annually shall assess an amount against insurance carriers and employers that paid benefits under the Act during the preceding calendar year to replenish the fund. The total amount to be charged all carriers and employers to be assessed shall be based upon his estimate of the probable expenses of the fund during the calendar year. The assessment against each carrier and employer shall be based upon the amount each paid during the prior calendar year for compensation and medical benefits, in relation to the amount all carriers or employers paid during that period for compensation and medical benefits. If no amount was paid during the prior year, no assessment may be made. The resulting percentage each paid out for benefits the prior year shall be the percentage each shall pay into the fund under the current assessment (See Act, section 44(c)(2)). The Director may, in his discretion, condition renewal of authorization under part 703 of this subchapter upon prompt payment of the assessment. However, no action suspending or revoking authorization may be taken without affording the carrier or self-insurer a hearing before the Director or his designee. Termination of authorizations to insure or self insure will not relieve the affected carriers or

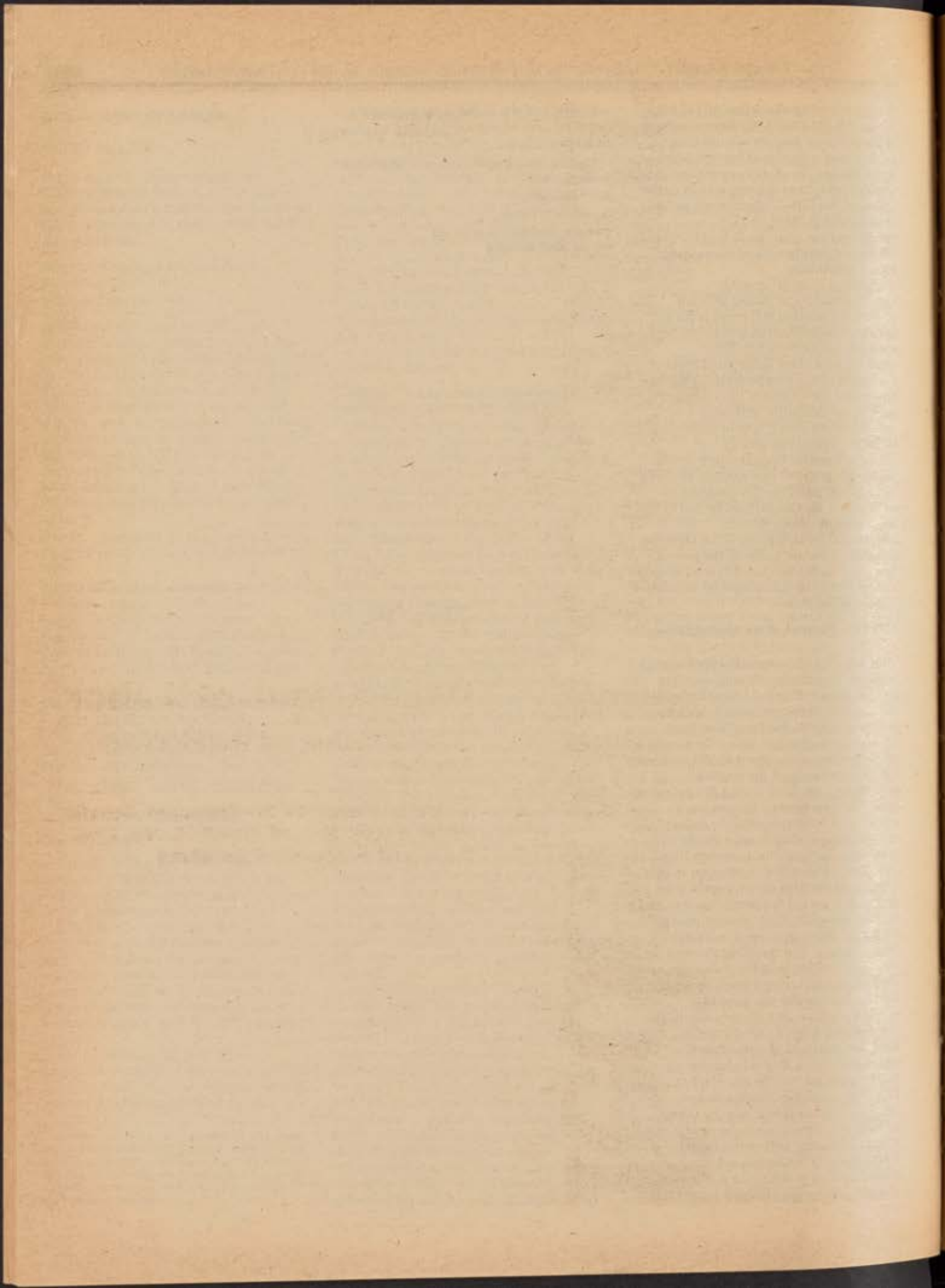
employers of the liability for paying the required annual assessment as described above.

Signed at Washington, D.C. this 19th day of January, 1981.

Ray Marshall,  
*Secretary of Labor.*

[FR Doc. 81-2462 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-27-M



# **federal register**

---

Tuesday  
January 27, 1981

---

**Part V**

## **Department of Labor**

**Office of Pension and Welfare Benefit  
Programs**

---

**Minimum Standards for Employee Benefit  
Plans; Suspension of Benefit Rules; Final  
Rules and Proposed Rulemaking**

## DEPARTMENT OF LABOR

## Office of Pension and Welfare Benefit Programs

## 29 CFR Part 2530

## Rules and Regulations for Minimum Standards for Employee Benefit Plans; Suspension of Benefit Rules

AGENCY: Department of Labor.

ACTION: Adoption of regulation.

**SUMMARY:** This document sets forth a regulation governing the circumstances in which it is permissible for a plan to suspend the payment of pension benefits to a retiree. The Employee Retirement Income Security Act of 1974 (the Act) authorizes the Secretary of Labor to prescribe regulations setting forth the circumstances and conditions under which the right of a retiree to a benefit payment is not treated as forfeitable solely because the plan provides that benefit payments are suspended during certain periods of reemployment. The regulation affects employees covered under employee pension benefit plans.

**DATES:** Written comments on the general operation of the adopted provisions of § 2530.203-3 as they affect plans covering employees in "seasonal industries" must be received by the Department during the period beginning May 27, 1982 and ending November 29, 1982. (See discussion of these provisions in *Supplementary Information* section below). The regulation is effective May 27, 1981.

**ADDRESSES:** Written comments (preferably at least three copies) should be submitted to the Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, Room N-4508, U.S. Department of Labor, Washington, D.C. 20216, Attention: § 2530.203-3. All written comments will be available for public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Jay S. Neuman, Esq., Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216; 202-523-8658 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** On December 19, 1978, notice was published in the *Federal Register* (43 FR 59048) that the Department had under consideration a proposal to adopt a regulation, 29 CFR 2530.203-3, under section 203(a)(3)(B) of the Act, relating to suspension of pension benefit payments under certain circumstances. On the basis of the comments received concerning the

December 19, 1978 proposal, the Department has decided to adopt, with certain modifications, § 2530.203-3 as proposed. Plans which provide for suspension of benefits will be required to comply with all relevant aspects of the regulation. To the extent that this regulation imposes specific requirements not provided for in the Act, it will have only a prospective effect on the operation of plans and the rights of employees. Suspension of benefit payments by plans prior to the effective date of the regulation will be governed by section 203(a)(3)(B) of the Act without reference to the regulation. Set forth below is a discussion of the regulation as adopted, the changes from the proposed regulation, and the primary views expressed in the public comments.

#### A. Statutory Provisions and Summary of the Regulation

Under the minimum vesting standards for employee pension benefit plans contained in section 203 of the Act, each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age. In addition, an employee's rights to benefits derived from his own contributions may never be forfeited. With respect to benefits derived from employer contributions, a plan is required to provide that such benefits become nonforfeitable within the time limits of one of three alternative vesting schedules set forth in section 203(a)(2) of the Act. However, section 203(a)(3)(B) of the Act (and section 411(a)(3)(B) of the Internal Revenue Code of 1954, as amended (Code)) permits, but does not require, a plan to provide that, under certain conditions, the right to an accrued benefit derived from employer contributions may be suspended for periods during which the employee is reemployed, without such suspension being deemed an impermissible forfeiture. For a plan other than a multiemployer plan, such benefits may be suspended upon an employee's reemployment only if such reemployment is with an employer under whose plan the benefits are being paid. In the case of a multiemployer plan, however, suspension is permitted when the employee is reemployed in any employment which is in the same industry, in the same trade or craft, and in the same geographic area covered by the plan, at the time the payment of benefits commenced.

The regulation being adopted, like the one proposed, provides that a pension plan may withhold certain accrued benefits which would otherwise have

been payable to the retiree (the "suspendible amount") if the retiree is employed in "section 203(a)(3)(B) service". Under the regulation, section 203(a)(3)(B) service results during a calendar month (and thus an amount not exceeding the suspendible amount of that month's benefit may be withheld), if a retiree completes 40 or more hours of service (as defined in 29 CFR 2530.200b-2(a)(1)) in the relevant type of employment referred to in section 203(a)(3)(B). Accordingly, in the case of any plan other than a "multiemployer plan" as defined in section 3(37) of the Act, section 203(a)(3)(B) service results for any month if a retiree of the plan who is otherwise eligible to receive benefits under the plan completes 40 or more hours of service in that month for an employer who maintains the plan, (including certain affiliated employers, as described in 29 CFR 2520.210 (d) and (e)). In the case of a multiemployer plan, as defined in section 3(37) of the Act, the employment of a retiree of the plan who is otherwise eligible to receive benefits under the plan results in section 203(a)(3)(B) service during a calendar month if the retiree, in such month, completes 40 or more hours of service in:

An industry in which employees covered by the plan were employed and accrued benefits under the plan as a result of such employment at the time that the payment of benefits commenced or would have commenced if the employee had not returned to employment, and

A trade or craft in which the employee was employed at any time under the plan, and

The geographic area covered by the plan at the time that the payment of benefits commenced or would have commenced if the employee had not returned to employment.

The regulation being adopted, like the one proposed, clarifies the terms "industry", "trade or craft", and "geographic area covered by the plan", and contains provisions relating to resumption of payments, notification obligations of plans and retirees, and calculation of the suspendible amount. These and other aspects of the regulation are discussed below.

It should be noted that section 203(a)(3)(B) and this regulation do not require plans to provide for or impose suspensions of benefits. In addition, while a suspension may not be imposed unless the requirements of the Act and this regulation would be met, the Department is of the view that a plan which has elected to provide for suspension of benefits is not required to provide for suspension of benefits to the fullest extent that the Act and this regulation would permit. For example, a plan could provide that "section 203(a)(3)(B) service" (as defined in the

regulation and discussed further below) would result when an employee completes 60 or more hours of service in a calendar month in the relevant type of employment, rather than providing, as permitted by the regulation, that such service results when the employee completes only 40 or more hours of service in a calendar month. As another example, a multiemployer plan could provide that the "geographic area covered by the plan" does not include all the territory which would qualify for inclusion under the Act and this regulation, and thereby permit retirees to return to work in such excluded locales without risk of suspension. Certain provisions of the regulation have been modified to reflect this view more clearly.

### B. Scope of Regulation

**Early retirement benefits.** The Department is aware that certain plans provide that under certain circumstances a plan participant may be entitled to begin receiving pension benefits prior to attainment of normal retirement age under the plan. The applicability of the regulation in the case of an early retiree was discussed in footnote 9 to the preamble of the proposed regulation. There the Department noted that because section 206(a) of the Act, section 401(a)(14) of the Code and the regulations thereunder require a plan only to pay the actuarial equivalent of the normal retirement benefit to an early retiree, a plan would not be prohibited from ceasing payment of benefits to an early retiree for any reemployment, so long as such benefits were actuarially recalculated in order to compensate for the temporary withholding, and if payment of benefits under the recalculation began no later than normal retirement age. The Department stated, however, that if a plan intended to withhold permanently the benefits of an early retiree, then the plan would be permitted to do so only in the circumstances described in the regulation.

Numerous commentators requested that the Department provide clarification regarding the extent to which suspensions of early retirement benefits must comply with the provisions of the regulation. The Department was also requested to state whether, or to what extent, certain types of benefits payable prior to normal retirement age would constitute "early retirement benefits" for purposes of applying the suspension of benefits rules. Commentators argued that, because the Act does not require a plan

to offer an early retirement option,<sup>1</sup> and because section 203(a) requires that rights to a normal retirement benefit must become nonforfeitable upon the attainment of normal retirement age, there should be no restrictions imposed regarding suspension of early retirement benefits.

In this regard, it is the Department's view that sections 203(a) and 206(a), as here relevant, are designed to protect a plan participant's right to receive a normal retirement benefit or its actuarial equivalent. Where a plan provides for payment of an early retirement benefit which provides the actuarial equivalent of a normal retirement benefit commencing at normal retirement age, a permanent withholding of a portion of such early retirement benefit would effect a forfeiture of a portion of the affected employee's normal retirement benefit that would have commenced at normal retirement age. The Department does not believe that, by commencing actuarially reduced benefits before normal retirement age, a plan is permitted to subject such benefits to forfeiture under circumstances other than those permitted under the Act. Accordingly, it is the Department's position that a permanent withholding of benefits payable prior to normal retirement age due to the early retiree's return to employment, to the extent that such withholding would affect the integrity of the actuarial equivalent of the normal retirement benefit, may be imposed only in a manner consistent with the requirements of section 203(a)(3)(B) and this regulation. A plan may, however, interrupt the payment of early retirement benefits on account of an early retiree's return to employment during the period prior to attainment of normal retirement age without

<sup>1</sup> Section 206(a) requires each pension plan to provide that "unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

"(1) \* \* \* the participant attains the earlier of age 65 or the normal retirement age specified under the plan.

"(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

"(3) the participant terminates his service with the employer."

This section also requires a plan which provides for the payment of an early retirement benefit to provide that a participant who satisfied the service requirements for such early retirement benefit, but separated from service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury.

complying with such requirements if the integrity of the normal retirement benefit would not be affected by such action. As stated in footnote 9 to the preamble to the proposed regulation, this would be the case where the affected employee's benefit is actuarially recalculated in order to compensate for benefit payments which were withheld and payment of such recalculated benefits begins no later than normal retirement age.<sup>2</sup> This would also be the case, as noted by commentators, where for example the early retirement benefit equals the normal retirement benefit, or where, upon attainment of normal retirement age, the participant receives a normal retirement benefit notwithstanding receipt of early retirement benefits. In response to commentators' suggestions, a provision has been added to the final regulation clarifying the applicability of the regulation in the case of an early retiree.

Commentators cited a number of court decisions<sup>3</sup> for the proposition that the protections of section 203(a) against forfeitures of benefits do not apply under any circumstances until attainment of normal retirement age. The cited decisions did not, however, address the question of the effect that the suspension of pre-normal retirement benefits would have on the receipt of the participants' normal retirement benefits upon their attainment of normal retirement age. As stated above, plans may provide for forfeitures of the right to receive an early retirement benefit without regard to section 203(a)(3)(B), so long as the normal retirement benefit payable at normal retirement age is not affected by such action. The regulation is, accordingly, not inconsistent with the cases cited by the commentators.

**Disability retirement benefits.** Several commentators requested clarification as to the applicability of section 203(a)(3)(B) and this regulation to programs which provide retirement income to persons because they are disabled.<sup>4</sup> It was argued that, because a disability pension is an "optional benefit form" not required under the Act, plans

<sup>2</sup> Of course, such recalculated benefits would not have to commence at normal retirement age if the employee was employed in section 203(a)(3)(B) service at such time and if benefits were suspended as authorized herein.

<sup>3</sup> *Copocci v. General Motors*, 444 F.Supp. 1306 (Ha., 1978); *Harr v. Retirement Tr. Fr. of P.H. and P.L.*, 460 F.Supp. 112 (C.D. Cal., 1978); *Riley v. MESA*, 586 F.2d 968 (2d Cir., 1978); and *Boyles v. Central States*, 602 F.2d 97 (5th Cir., 1979).

<sup>4</sup> It should be noted that section 203(a)(3)(B) and this regulation do not apply to disability payment programs which are "employee welfare benefit plans", within the meaning of section 3(1) of the Act.

which provide such benefits should not be subject to the same rules regarding suspension as apply to suspension of normal retirement benefits after attainment of normal retirement age. These commentators appear to be concerned about the situation where disability pensions commence prior to normal retirement age, or provide benefits in excess of normal retirement benefits, or both. It is the Department's view that the suspension rules generally apply to "disability pension" programs. However, to the extent that a disability retirement program provides for payment of pension benefits prior to attainment of normal retirement age, such payments may be suspended subject to the same limitations as other "early retirement" benefits (see discussion above). In addition, to the extent that disability benefits exceed normal retirement benefits, they may be withheld from a retiree after attainment of normal retirement age without regard to section 203(a)(3)(B) and this regulation.

#### C. Employment in Section 203(a)(3)(B) Service

*Requirement of commencement of benefits.* Section 203(a)(3)(B), provides, in part, that benefits may be suspended "for such period as the employee is employed, subsequent to the commencement of payment of such benefits" in certain types of employment. However, because under section 206(a) of the Act, section 401(a)(14) of the Code and the Treasury regulations thereunder, a plan is permitted to provide for the commencement of retirement benefits not later than the 60th day after the close of the year in which an event which signals the beginning of an entitlement to pension payments occurs, paragraph (c) of the proposal was drafted so as to permit a plan to treat as section 203(a)(3)(B) service relevant service prior to the time benefits commence as permitted by section 206(a). In this connection, proposed paragraph (c) read, in part, as follows: "the employment of an employee, subsequent to the time that benefits commenced or would have commenced if the employee had not remained in or returned to employment (will be treated as section 203(a)(3)(B) service if certain conditions are met) \* \* \* " (emphasis supplied). Several commentators noted that under the quoted language, it would be possible for the regulation to apply to a plan participant who merely continued in employment beyond normal retirement age, thereby entitling such participant to the employee-derived portion of his pension benefit even

though the participant had not "retired". These commentators are correct in their understanding that under the regulation service beyond normal retirement age may be treated as "section 203(a)(3)(B) service" if relevant requirements are met, even though no formal act of retirement has occurred. However, in such circumstances, a plan need not pay the affected participant the employee-derived portion of the pension benefit because, under section 206(a), a plan need not commence the payment of pension benefits until the participant terminates service with an employer maintaining the plan. In this regard, it should be noted that we have conferred with representatives of the Internal Revenue Service and they have informed us that although section 206(a) (section 401(a)(14) of the Code) authorizes, in some cases, a delay in the commencement of pension benefit payments, that section does not authorize a forfeiture of benefits. Accordingly, where a participant continues to work beyond normal retirement age with an employer maintaining the plan, but not in circumstances which would constitute "section 203(a)(3)(B) service," the plan could delay commencement of benefit payments only if the participant would be entitled under the plan to an actuarially increased benefit at the time the payment of benefits commenced.

*Minimum hour requirement.* Pursuant to the provision in section 203(a)(3)(B) which specifically authorizes the Secretary of Labor to define the term "employed" for purposes of suspension of benefits, the Department proposed that a retiree would not be considered "employed" in a month (and, therefore, benefits for that month could not be suspended) unless the retiree completed 40 or more hours of service in that month in the relevant type of employment. The Department also specifically requested comment as to whether there are circumstances which would compel a standard other than 40 or more hours per month.

A number of commentators objected to the imposition of any minimum number of hours of service criteria for determining whether someone is "employed", arguing that establishment of an employment relationship should be sufficient for purposes of suspension of benefits, regardless of the period of employment. Relevant legislative history indicates, however, that section 203(a)(3)(B) was not intended to authorize suspension of benefits for every instance of post retirement employment; rather, it appears that a minimum standard for determining

whether someone was employed for purposes of section 203(a)(3)(B) was contemplated by Congress.<sup>9</sup> In addition, commentators have not convinced the Department that elimination of any minimum standard in this regard would be necessary or desirable to achieve the purposes of section 203(a)(3)(B). Accordingly, the Department has decided not to accept these comments.

Many comments were received which urged the Department to set the minimum number of hours at a lower level than that proposed, while a few commentators suggested a higher minimum number of hours. The Department specifically requested persons commenting on this aspect of the proposed regulation to specify the factors upon which they base any suggested alternative, particularly any relevant statistical data. Comments received by the Department were not specific enough to enable the Department to conclude at this time that any suggested alternative minimum number of hours of service would be more appropriate than that contained in the proposal.

In this regard, some commentators argued for adoption of a standard of less than 40 hours in order to avoid placing undue "policing" burdens on plans which choose to adopt and enforce suspension of benefit provisions. The Department believes, however, that adoption of a standard of 40 hours does give plans sufficient flexibility to encourage participants to self-police the suspension of benefits provisions of a plan by honest reporting of post-retirement employment. As noted in part A above, a plan is not required to provide for suspension of benefits to the fullest extent that the Act and this regulation would permit. Moreover, a plan which has a suspension of benefits provision may or may not have a self-policing or "reporting" system by which it seeks to become aware of post-retirement employment in section 203(a)(3)(B) service. If a plan provides for benefit suspension and has a self-policing system, the plan could, in order to encourage the reporting of post-retirement employment, provide that retirees who comply with the system would be permitted to work in relevant employment up to some number of hours greater than the plan's threshold (which could under the regulation be as little as 40 hours) without loss of benefits. It does not appear to the Department that

<sup>9</sup> See, e.g., remarks of Senator Javits, Congressional Record—Senate, August 22, 1974, reprinted in U.S. Senate Comm. on Labor and Pub. Welfare, 94th Cong., 2d Sess., Legislative History of the Employee Retirement Income Security Act of 1974 (hereafter "Legislative History"), at 4772.

setting the permissible minimum at 40 would interfere with a plan's ability to provide a real incentive to participants' accurate and timely reporting of employment while at the same time to suspend the benefits of employed retirees in accordance with objectives permitted by the statute. For example, a multiemployer plan could provide that pension benefit payments of retirees will be suspended for any month in which the retiree completes 40 or more hours of service in an appropriate industry, trade or craft, and geographic area (as defined in the regulation), but that the first 20, (or 10, or 40, etc.) hours of any such employment reported to the plan in accordance with the plan's reporting system would not be counted. In this manner, plans should be able to tailor the incentives for reporting to fit their individual circumstances.

Moreover, as explained further below, the Department has included in the regulation as adopted special provisions which are designed to further alleviate difficulties which plans may face in this area.

A number of commentators stated that, regardless of the general propriety of a 40 hours a month standard, such standard would not be appropriate in certain circumstances because of the "seasonal" nature of a particular type of employment. These commentators argued, in general terms, that the final regulation should reflect the fact that employment in certain industries in parts of the country may vary widely from season to season, with the result that the customary number of hours of service performed by employees in such industries is, at least during certain periods, substantially less than that of employees in other industries. In this regard, it should be noted that sections 202(a)(3)(B), 203(b)(2)(C), and 204(b)(3)(1) of the Act (respectively, sections 410(a)(3)(B), 411(a)(5)(C), and 411(b)(3)(D) of the Code) provide that the terms "year of service" or a "year of participation" in the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year shall be determined in accordance with regulations. (Generally, under applicable provisions of the Act and the Code, 1,000 hours is the figure used in measuring a year of service and a year of participation.) Under Presidential Reorganization Plan No. 4 of 1978, the authority to draft regulations, rulings, and opinions relating to "seasonal industries" rests generally with the Secretary of the Treasury. Such regulations have not yet been issued. It is the view of the Department that it

would be inappropriate at this time, in light of the limited information available to the Department and the responsibility of the Treasury Department in this area, for the Department to adopt specific rules for plans whose participants are employed in a "seasonal industry." In addition, it appears that the need, if any, for such special rules would be affected by the Department's decision to include in the regulation, as described below, provisions relating to presumptions which may be used in initially determining when a retiree can be considered "employed" in a month for purposes of suspension of benefits. The Department will, however, monitor the operation of § 2530.203-3 to determine, among other things, whether the regulation should be amended in light of the concerns expressed in these comments. In this connection, the Department invites the submission of further comments, during the period beginning one year after the effective date of this regulation and ending six months thereafter, relating to the effect of § 2530.203-3 on suspension of benefits for plans covering employees in "seasonal industries."

The Department received many comments which urged that the final regulation permit the use of the equivalencies set forth in 29 CFR 2530.200b-2, or the elapsed time method set forth in 29 CFR 2530.200b-9, for purposes of determining whether a retiree was "employed" for purposes of section 203(a)(3)(B). Commentators argued that plans which use equivalencies or the elapsed time method, rather than counting hours of service under 29 CFR 2530.200b-2(a)(1), for crediting service under the plan would be subject to added administrative costs and inconvenience if they were required to begin keeping records of hours of service solely for purposes of suspension of benefits. While the Department believes that unnecessary administrative burdens should not be placed on plans, it does not appear that application of the equivalency or elapsed time methods of crediting service would be appropriate for determining whether a suspension of benefits may be imposed. It appears that, in some circumstances, direct application of the equivalencies or elapsed time method to determine whether a person is "employed" for purposes of section 203(a)(3)(B) might result in a suspension of benefits even though the affected retiree had not rendered an amount of service to the employer which would justify a suspension of benefits. In the Department's view, suspension under

such circumstances would be inconsistent with the purposes of section 203(a)(3)(B) and would be beyond the scope of the activity which that section is intended to regulate.

A number of commentators suggested that the Department replace the proposed hours per month standard with a standard based on the amount of compensation earned by a retiree in relevant types of service. Other commentators suggested that plans should be given the option to use a monetary standard as an alternative to an hours standard. The use of such an alternative, the commentators argued, would obviate the need for plans to count hours of service.<sup>6</sup>

The Department is not convinced that use of a monetary standard would be appropriate. Section 203(a)(3)(B) permits suspension of benefits only "for such period as the employee is employed," thereby suggesting application of a time-related standard. In addition, application of an earnings based standard could lead to results which may not be consistent with the purposes of section 203(a)(3)(B) (for example, highly compensated retirees could have benefits suspended for a relatively brief period of employment, while lower wage retirees could work many more hours before reaching the earnings limitation). Further, it appears to the Department that it is unlikely a monetary standard could be developed which would accommodate in an appropriate and equitable manner the diverse characteristics of the populations which would be affected, and that if such a standard could be developed it would be so complex as to be unworkable.

Under the proposed regulation, only hours of service as defined in 29 CFR 2530.200-2(a)(1) would be relevant in determining section 203(a)(3)(B) service. Because 2530.200b-2(a)(1) refers only to hours for which an employee is paid, or entitled to payment, for the performance of duties for an employer, a retiree could not be subject to a suspension of pension benefits due to receipt of, for example, workmen's compensation, vacation, disability, unemployment, holiday, or sick leave benefits. Commentators objected to the exclusion from the calculation of hours for which

<sup>6</sup>Commentators also argued that if the monetary standard were set at the same figure as that which a pensioner could earn without suffering a decrease in social security benefits, use of such standard would allow retirees to keep track of only one set of numbers to safeguard against a decrease in both private pension and social security benefits. This approach, however, would not necessarily have the advantage suggested by the commentators because only compensation for certain types of service would be relevant for purposes of section 203(a)(3)(B).

the above types of payments are received, and suggested that certain payments which are received other than for the performance of services should be deducted from pension payments. Because section 203(a)(3)(B) permits suspension of benefits only "for such period as the employee is employed," the Department has decided not to adopt these suggested changes since it could not be said that a retiree is "employed" solely because he is receiving payments of the types enumerated above.

*"Period" of employment and of suspension.* The Act provides that "payment of benefits (may be) suspended for such period as the employee is employed \* \* \*." The legislative history to this provision indicates that the period of suspension should bear a "reasonable" relation to the period of reemployment.<sup>7</sup> Accordingly, and since it appeared that most plans make pension payments on a monthly basis, the Department proposed that "employment" be determined on a monthly basis and that a suspension of benefits could be imposed each month that the retiree was employed. Having proposed that performance of a given number of hours of service in any one calendar month in a relevant type of employment would cause a retiree to be "employed" in that month for purposes of section 203(a)(3)(B), the Department proposed that the suspendible amount of one month's benefit could be withheld. Thus, under the proposal, when a retiree engaged in one or more months of "section 203(a)(3)(B) service", the plan could withhold the suspendible amount of a corresponding number of the retiree's monthly pension payments.

In footnote 4 to the preamble to the proposed regulation, the Department noted that some plans provide for a period of suspension of benefits which is greater than either the actual period of post-retirement employment or the period provided in the proposal. In response to a specific request for comments on this aspect of the proposal, a number of commentators urged the Department to expand substantially the period during which benefits could be suspended. It was suggested, for example, that plans should be permitted to withhold the suspendible amount of six or, in some cases, 12 monthly payments for every month a retiree engaged in section 203(a)(3)(B) service.\*

<sup>7</sup> See, e.g., remarks of Rep. Dent, Congressional Report—House, August 20, 1974 reprinted in Legislative History at 4670; remarks of Sen. Williams, Congressional Record—Senate, August 22, 1974, reprinted in Legislative History at 4738.

\* Where a retiree fails to comply with plan provisions requiring that the plan be notified of

the above types of payments are received, and suggested that certain payments which are received other than for the performance of services should be deducted from pension payments. Because section 203(a)(3)(B) permits suspension of benefits only "for such period as the employee is employed," the Department has decided not to adopt these suggested changes since it could not be said that a retiree is "employed" solely because he is receiving payments of the types enumerated above.

In the opinion of the commentators, an extended period of suspension is necessary or desirable in order to: Create a disincentive for retirees to return to work; penalize retirees who receive benefits in contravention of plan provisions; and prevent pension plans from being converted, in part, into supplementary unemployment insurance plans. After careful consideration of these comments, the Department has decided not to change the regulation in this regard. It appears that a month is the most generally convenient and reasonable period upon which to base a determination of "employment". The Department believes that, consistent with the language and legislative history of section 203(a)(3)(B), it is reasonable to authorize a one month suspension of benefits for each month of relevant employment, and that such a standard generally would strike an appropriate balance among the interests of the plan, the general intent of the Act to protect the rights of plan participants and beneficiaries to their vested accrued benefits, the interests of younger workers in employment opportunities and the needs of older persons regarding post-retirement employment. In addition, the Department believes that imposition of a suspension for a period which exceeds by a multiplicative factor the period of employment, as suggested by some commentators, would not be a suspension for the "period (during which) the employee was employed" within the meaning of the statute.

The regulation does not allow the imposition of additional periods of suspension in cases where a retiree fails to inform, or misinforms, the plan of reemployment status. As indicated by the commentators, suspensions for these or similar types of "undesirable" conduct would amount to "penalties." It appears from the statutory language and relevant legislative history that the circumstances which section 203(a)(3)(B) is meant to address are limited to actual post-retirement employment. In the Department's view, because such penalties would be imposed for actions which are independent of the period or the fact of post-retirement employment, they are not permitted under section 203(a)(3)(B).<sup>8</sup> Moreover, as discussed in the preceding section, it appears that plans have available a means of encouraging the reporting of post-retirement employment which is

post-retirement employment, commentators requested that the regulation permit even additional withholdings.

<sup>8</sup> Recent legislative proposals would alter the present statutory provisions in this regard. See, S. 209, 96th Cong., 1st Sess., section 125.

permissible under the regulation. The Department is, however, aware that a plan which chooses to provide for suspension of benefits could encounter difficulties in enforcing such provisions, even if the plan has adopted, and, as described above, encourages the use of, employment verification reporting requirements under paragraph (b)(5) of the regulation. These difficulties would be most severe in cases where a retiree does not comply with the plan's reporting requirements. The Department agrees with the view, expressed by some commentators, that a plan should not be put in the position of having to assume unreasonable burdens in order to make its suspension of benefits provisions workable, and has determined to address this issue by including in the regulation provisions which would permit such a plan to employ certain presumptions in these circumstances, subject to appropriate procedural safeguards. Under the regulation, a plan which has adopted and adequately communicated to participants a reporting system could adopt a provision to the effect that when the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service and the retiree has not complied with the plan's reporting system with regard to that employment, the plan may, unless it would be unreasonable under the circumstances to do so, act on the basis of a presumption that the retiree had exceeded the plan's minimum number of hours for that month. In recognition of the special problems in this area which might be faced by a plan covering persons employed in the building trades, the regulation provides for an additional possible presumption which such a plan could use. In this regard, the regulation permits such a plan to adopt a provision to the effect that when the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service at a construction site and the retiree has not complied with the plan's reporting system with regard to that employment, then the plan fiduciaries may, unless it would be unreasonable under the circumstances to do so, act on the basis of a presumption that the retiree has been engaged in such employment for the same employer in work at that site for so long before the work in question as that same employer has been performing that work at that construction site.

In such cases, the plan could implement its suspension of benefit mechanisms immediately and without further inquiry. This would enable the plan to avoid the burden of having to



verify beforehand that the retiree exceeded the minimum number of hours for the period involved in cases where it would be reasonable to infer that the retiree had so worked. Of course, the presumptions used by the plan fiduciaries are rebuttable and in any such case, the affected retiree would have the opportunity to come forward at a suspension review proceeding and demonstrate that, in fact, he or she did not work the minimum number of hours of relevant service for the month(s) in question. It should be noted, however, that under the regulation the use of the presumptions is not permissible unless the retiree is sufficiently apprised of the plan's reporting requirements.

Accordingly, plans which elect to take advantage of the opportunity under the regulation to "self-police" their suspension of benefits provisions, by adopting reporting requirements and providing for the above described presumptions, must disclose those requirements and the nature and effect of the presumptions to persons entitled to benefits under the plan: in the plan's summary plan description; in any communication to participants regarding the reporting requirements (e.g., reporting reminders or forms distributed by the plan); and, in any event, at least once every 12 months. Moreover, plan fiduciaries who decide to initiate or continue suspensions of benefit payments in reliance upon these presumptions should be aware that such decisions in these circumstances would be subject to the general requirements of section 404 of the Act and would have to be based on a reasonable, good faith determination that all the requirements of the regulation had been met.

An "employer maintaining the plan"—non-multiemployer plans. The Act provides that, in the case of a plan other than a multiemployer plan, benefits may be suspended if a retiree is reemployed by an employer who maintains the plan under which such benefits were being paid. The Department proposed to include employers described in 29 CFR 2530.210(d) and (e) as "employers who maintain the plan" for purposes of suspension of benefits.

Section 2530.210 generally sets forth rules for determining the employer or employers who maintain a plan. Paragraph (d) of that section requires, in effect, that under a plan maintained by one or more members of a controlled group of corporations,<sup>10</sup> service with any employer which is a member of the

controlled group shall be taken into account for purposes of participation, vesting, and benefit accrual. Similarly, paragraph (e) of that section requires, in effect, that under a plan which is maintained by one or more trades or businesses which are under common control,<sup>11</sup> service with any employer which is under common control shall be taken into account for these purposes.

Inclusion of the above described entities as "employers who maintain the plan" was criticized in the comments on the ground that it could result, especially in the case of large corporate conglomerates, in a far reaching limitation on post-retirement employment. This provision was also criticized as being too limited, and not accommodating situations where a non-multiemployer plan credits participants for service with related employers who maintain separate plans and who would not be considered members of a controlled group, or under common control, with an employer maintaining the plan.<sup>12</sup>

Because the minimum standards rules under 29 CFR Part 2530 generally present a body of interdependent provisions, and because the Department believes that interpretation of the phrase "an employer who maintains the plan" in section 203(a)(3)(B)(i) should be consistent with the meaning given to that phrase as used in other sections of Part 2 of Title I of the Act, the Department believes that it is appropriate to include employers described in § 2530.210(d) and (e) as employers maintaining the plan for purposes of suspension of benefits. However, in order to prevent suspension of a retiree's benefits for post-retirement employment with an employer where pre-retirement service with that employer was not required to be counted for purposes of participation, vesting and benefit accrual, this provision has been modified to include only those employers maintaining the plan at the time the retiree's benefits commenced. It should be noted, as discussed above under the heading Statutory Provisions and Summary of the Regulation, that this regulation does not require the suspension of benefit payments under any circumstances, but describes circumstances in which such suspensions are permitted. Clearly, a plan may always provide more liberal suspension of benefit rules than are described in this regulation.

<sup>10</sup> Within the meaning of section 414(c) of the Code.

<sup>12</sup> This aspect of the comments is further discussed below under the heading of "Reciprocity" and similar arrangements."

Accordingly, a plan may provide that post-retirement employment with certain members of a controlled group would not constitute "section 203(a)(3)(B) service."

"Reciprocity" and similar arrangements. Many commentators urged the Department to clarify the applicability of provisions of the proposed regulation in the situation where a plan is a party to a reciprocal or similar type of arrangement, under which service by a plan participant for an employer which maintains a separate plan may, for example, be treated as service under the participant's plan for various purposes, or may be combined with service under the participant's plan in order to calculate the participant's entitlement to benefits. In the context of multiemployer plans, commentators suggested that terms "industry" and "geographic area covered by the plan" should be defined to include the industries and geographic area covered by plans with which the participant's plan has entered into a reciprocal agreement. With respect to plans other than multiemployer plans, it was suggested that the definition of the term "an employer which maintains the plan" should be defined to include an employer with which the participant's plan has an agreement for crediting service. Commentators argued that these changes should be adopted because under these types of arrangements, plan participants are afforded opportunities for benefit accrual, vesting, and portability beyond those required by the Act. While the Department generally supports the goals which reciprocal and similar arrangements seek to achieve, the Department is concerned that adoption of the suggestions described above might broaden the authority of plans to impose suspensions beyond that contemplated by Congress. Accordingly, pending further study of the general nature, extent and effect of reciprocal and similar arrangements, the Department has decided not to adopt, at this time, the changes suggested in this regard. The Department wishes to note, however, that where an individual is receiving benefits under more than one pension plan (whether or not as a result of a reciprocal arrangement), each plan is permitted to apply its suspension provisions to that individual independently of any other plan.

"Same industry" requirement. In the case of multiemployer plans, one of the criteria for determining section 203(a)(3)(B) service is whether the retiree returned to employment in an industry in which employees covered by the plan were employed and accruing

<sup>11</sup> Within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(C).

benefits at the time the retiree became entitled to receive benefits. Under the proposal, an "industry" was defined to mean "the business activities of any employers maintaining the plan".

Several commentators interpreted this provision as requiring that a retiree return to work for an employer who contributes to the plan in order for the retiree to be considered employed in the same industry, and argued that such a limitation would be inconsistent with the purposes underlying section 203(a)(3)(B). It should be noted, however, that under this provision it is the type of business activity engaged in by the employer of the retiree, and not whether the retiree's employer contributes to the plan, which is relevant in determining whether the retiree is reemployed in the same industry. Accordingly, a retiree may be considered employed in the same industry regardless of whether employment is with an employer maintaining the plan or with an employer who does not, or whether the retiree returns to work in a self-employed capacity.<sup>13</sup> The regulation as adopted has been modified to clarify the definition in this regard.

It should also be noted that, because an industry which is relevant for purposes of suspension of benefits must be one in which employees covered by the plan were employed and accruing benefits under the plan as a result of such employment at the time that the payment of benefits to the affected retiree commenced (or would have commenced if the retiree had not returned to employment), the business activity of a contributing employer which is not covered by the plan at such time would not be a relevant industry for purposes of suspension of benefits. For example, an employer contributing to multiemployer Plan A engages in mining and furniture manufacturing. The plan does not cover any employees in the mining industry. The benefits of a retiree of Plan A who returns to employment in the mining industry may not be suspended under section 203(a)(3)(B) and this regulation. In addition, if coverage under Plan A were extended to employees in the mining industry subsequent to the time that payment of benefits to a retiree of Plan A commenced, such benefits could not be suspended if that retiree returned to employment in the mining industry.

**"Same trade or craft" requirement.** Another prerequisite to the suspension of benefits by a multiemployer plan is that the retiree be employed in the

"same trade or craft." Under the proposal, a relevant trade or craft would be any one in which the retiree was employed at any time under the plan, and the term "trade or craft" was defined as a skill or skills, learned during a significant period of training or practice, which is applicable so as to result in opportunities for employment in occupations in some industry. The term also includes those skills relating to selling, retailing, managerial, clerical or professional occupations, as well as those skills relating to the supervision of persons engaged in any trade or craft. The proposal indicated that a determination as to whether a particular job constitutes or falls within a trade or craft must be made on the basis of all relevant facts, but the registration of an apprenticeship program with the Bureau of Apprenticeship and Training of the Employment Training Administration of the Department would be sufficient to show that a skill or skills which is the subject of the apprenticeship program constitutes a trade or craft.

Some commentators suggested that the trade or craft requirement be revised to provide that benefits could be suspended if a retiree returned to employment in any trade or craft practiced by any of the participants of the plan. The Department, however, is not convinced that such an expansive definition of trade or craft is necessary or desirable in order to achieve the purposes of section 203(a)(3)(B), and has therefore, determined not to alter the regulation in this manner.

Commentators also noted that very similar duties might be performed by members of several different trades or crafts, and requested further guidance regarding the applicability of this criterion in such situations. The Department recognized these concerns by stating in proposed § 2530.203-3(c)(2)(ii) that the determination whether a particular job classification, job description or industrial occupation constitutes or is included in a trade or craft shall be based upon the facts and circumstances of each case. In the Department's view, it is the use by the retiree of the skills described above, rather than performance of duties under any specified job description or classification, which is important for determining whether there is employment in the same trade or craft under section 203(a)(3)(B). Thus, under this "functional" type of analysis, a retiree would be employed in the same trade or craft if post-retirement employment required the use of the same skills as preretirement employment, regardless of whether, for

example, the preretirement employment was as a "bricklayer" and the post-retirement employment was as a "mason".

The Department also received comment regarding the inclusion in the definition of trade or craft of supervisory activities relating to a relevant skill or skills. It was suggested that suspension of benefits due to performance of supervisory duties might not be appropriate in all circumstances. It should be noted, however, that under the regulation the supervisory activities must relate to an appropriate type of skill or skills in order to be considered as incident to the same trade or craft. Supervisory activities which are not meaningfully related to the "underlying" skill or skills would, therefore, not constitute the "same trade or craft" with regard to those skills. This provision is in recognition of the facts that employees may often become supervisors or foremen in later years of employment, and that performance of such duties often requires prior experience in the trade or craft.

**"Same geographic area" requirement—generally.** Under the Act, a multiemployer plan may suspend benefits only if, *inter alia*, the retiree returns to employment in "the same geographic area covered by the plan," as when the retiree's benefits commenced (or would have commenced if the retiree had not returned to employment). Under the proposal, the geographic area was generally defined to consist of any state (or province of Canada) in which contributions have been made or have been required to be made on behalf of an employer within the immediately preceding five years and the remainder of any Standard Metropolitan Statistical Area (SMSA) which falls in part within such state.

It was suggested in the comments that the "five year look-back" aspect of the definition be eliminated and that the geographic area should be defined in terms of the employers contributing to the plan on the contract date of the collective bargaining agreement in effect when the retiree's benefits commenced. The Department has decided to delete the five year look-back provision in order to reflect the true scope of the geographic area in which the plan was maintained with regard to an individual at the time of retirement. For this same reason, the Department has not adopted the suggestion that the geographic area be defined by reference to the effective collective bargaining agreement. However, it should be noted that, to the extent that reference solely to a collective bargaining agreement would

<sup>13</sup> See footnote 5 to the preamble to the proposed regulation.

result in coverage of a geographic area which is smaller than that permitted under this regulation, plans retain the flexibility to provide for such a definition of geographic area.

It was also suggested in the comments that the geographic area for some plans should be determined as "national" or "regional," based upon a definition in the plan which would be consistent with the claimed jurisdiction of the participating union. The commentators noted that under such an arrangement, for example, a plan would be considered as "national" in scope (and thus the geographic area would consist of the entire country) if the participating union considered that its jurisdiction encompassed the entire country notwithstanding coverage under another plan of employees in the same industry and trade or craft in certain locales. In the Department's view, such a broad interpretation can not be reconciled with the requirement of section 203(a)(3)(B) that the geographic area must be that covered by the plan, and does not appear to be appropriate to effectuate the purposes of this section.

A number of commentators asked the Department to clarify whether the geographic area of a plan includes locales outside the area of a contributing employer's normal business operations where the employer performs an occasional or isolated project in connection with which contributions are made to the plan. Under the proposal, this question would only arise when the project is performed outside the employer's "home" state or states and the SMSAs which fall in part therein. The Department believes that it would be inappropriate to extend a plan's geographic area to cover entire states (and the related SMSAs) based upon such ephemeral contacts. Accordingly, under such circumstances, the contributions would be deemed to have been made in the employer's "home" state.

**Geographic area—maritime industries.** As part of the proposal, the Department requested specific comment regarding whether and to what extent the "geographic area covered by the plan" should be specially defined for purposes of plans covering employees in the maritime industries. In response to comments which suggested the need for such a special definition, the Department is publishing for comment elsewhere in this issue of the Federal Register a Notice of Proposed Rulemaking to define the geographic area covered by plans covering employees in the maritime industries. Proposed paragraph (c)(2)(iii)(B) defines

this area in terms of ports of embarkation because it appears that these are the most appropriate territorial reference points for such plans. The proposal provides that the geographic area covered by a plan that covers employees in a maritime industry consists of any port of embarkation at which employers hired employees for whom contributions have been made or have been required to be made as of the time that the payment of benefits commenced or would have commenced if the employee had not returned to employment.

Persons interested in commenting on this proposed paragraph should consult the separate Notice of Proposed Rulemaking for relevant information.

#### D. Notice Requirements

**Notification by the plan.** Paragraph (b)(4) of the proposal provided that no payment shall be withheld by a plan pursuant to section 203(a)(3)(B) unless the plan complied with the notification provisions set forth in that paragraph. Several commentators argued that it would be improper for the Department to impose such a restraint on the plan's right to withhold payments. This provision, however, affects only the plan's right to begin withholding payments—it does not affect the plan's entitlement to ultimately withhold or recoup all payments which it is entitled to withhold under § 2530.203-3. Thus, the effect of this provision is that, solely for purposes of a plan's entitlement to commence the withholding of benefits, a retiree will not be deemed to be employed in section 203(a)(3)(B) service until the plan has complied with the notice requirements of paragraph (b)(4) of the regulation. The Department believes that it is important for the affected retiree to be apprised of the information which the required notice would provide, and that the provision in question is an appropriate method to assure that such disclosure is made.

A number of commentators argued that the summary plan description (SPD), which is required to be furnished to plan participants and beneficiaries, provides adequate notice with regard to suspension of benefits.<sup>14</sup> Because the SPD contains only a general description of plan provisions, the Department believes that an additional notice is necessary to inform the retiree regarding the circumstances of his particular case. It was also argued by the commentators that the notice of suspension would

duplicate the SPD to an unnecessary extent. The Department has considered these comments and has revised the regulation to eliminate any duplicative disclosure. The final regulation provides that to the extent the SPD contains information substantially similar to that required by paragraph (b)(4), the notice of suspension need only refer the retiree to the relevant pages of the SPD. In such cases, in order to assure complete disclosure, the suspension notice must also inform the retiree of how to obtain a copy of the SPD, or relevant pages thereof. A request by a retiree for the information contained in the SPD must be honored within a reasonable period of time, not to exceed 30 days. The provisions of section 502(c) of the Act would apply to such requests, and accordingly a plan administrator may be subject to a fine or other penalty for failure to respond to such requests within 30 days.

Other commentators, while recognizing the need for a special notice to the retiree, objected to the specific requirements of paragraph (b)(4). It was argued that the requirement to furnish a copy of plan provisions relating to the suspension of payments in addition to a general description thereof was unnecessary and burdensome. In the Department's view, however, because a suspension of benefits can be expected to affect a retiree significantly, it is important that the retiree be furnished the actual provisions which purport to authorize the suspension. The retiree may seek advice whether the plan acted properly in suspending benefits, or may request a review of the suspension, or both. In either case, the ready availability of the relevant plan provisions would aid the retiree (or an authorized representative) in their consideration of the plan's decision to suspend benefits. For these same reasons, the Department has added a provision to paragraph (b)(4) of the final regulation which requires the suspension notice to inform the retiree that relevant rules of the Department of Labor may be found in § 2530.203-3 of volume 29 of the Code of Federal Regulations.

Commentators also objected to the requirement that notice be made by personal delivery or certified mail, and argued for the provision of other acceptable, and potentially less costly, methods of delivery (e.g., first class mail). The Department has determined not to change this requirement because it believes, in view of the importance of the document, that there must be greater assurance than is provided by first class

<sup>14</sup> In this regard, 29 CFR 2520.102-3(1), part of the SPD regulations, requires that a plan clearly identify in the SPD circumstances which may result in, *inter alia*, the forfeiture or suspension of any benefit.

mail that a participant has received the Notice.

As noted above, plans wishing to employ the presumptions available under the final regulation must comply with relevant notice requirements.

A number of commentators requested the Department to clarify whether the plan's claims procedure, required by section 503 of the Act and 29 CFR 2560.503-1, could be used for the purposes of reviewing suspensions and rendering status determinations. It is the Department's view that the section 503 claims procedure may be used for both purposes, although under the regulation a plan may adopt alternative procedures for suspension matters.

**Notification by the retiree.** The regulation being adopted, like the one proposed, permits plans to require retirees to furnish two types of notice. Under paragraph (b)(2), relating to resumption of payments, a plan may adopt a reasonable procedure requiring a retiree whose benefits have been suspended under the regulation to notify the plan of cessation of section 203(a)(3)(B) service. Under this provision, a plan which has elected to adopt such a procedure may delay the resumption of payments beyond the period specified in paragraph (b)(2) until the retiree has given the requisite notice. The effect of this provision is that, solely for the purpose of resumption of payments, a retiree will not be deemed to have ceased employment in section 203(a)(3)(B) service until the retiree complies with the plan procedures for giving this type of notice. In response to comments objecting to this provision, the Department believes that it places no undue burden on the reemployed retiree; rather, it appears to be in the retiree's interest to inform the plan promptly of the cessation of section 203(a)(3)(B) service. Moreover, absence of such provision would place plans in the untenable position of having to monitor continually the activities of persons known to be engaged in section 203(a)(3)(B) service. Finally, because under the regulation the initial payment upon resumption shall include any amounts withheld between the actual cessation of section 203(a)(3)(B) service and the resumption of payments, this provision does not subject a retiree to any additional loss of benefits.

The second provision regarding provision of notice by retirees relates to verification of employment status. Under paragraph (b)(5) of the regulation, a plan is authorized to request information relating to post-retirement employment and is permitted, but not required, to condition the payment of

future benefit payments on the receipt of such information.

Under this provision, the information which a plan may request must be reasonably related to a verification of employment and section 203(a)(3)(B) service; this provision does not authorize plans to inquire into unrelated areas of a retiree's personal affairs and circumstances. For example, the Department would not consider as reasonable a plan requirement that a retiree furnish a complete copy of his latest personal income tax return. Disclosure of all the information contained in an income tax return is unwarranted, in light of the plan's legitimate interest in only a limited kind of information. On the other hand, a requirement that the plan be furnished copies of all tax withholding statements received by a retiree in a given period generally would be reasonable because such information directly relates to employment and may indicate the nature and extent of such employment.

Commentators objected to paragraph (b)(5), arguing that it would authorize a suspension of benefits for reasons other than actual employment in section 203(a)(3)(B) service, result in needless processing costs to the plan and require unnecessary record keeping by the participant. In response to these comments, it should be noted that paragraph (b)(5) does not authorize a permanent withholding of benefit payments. This provision only authorizes a plan to hold payments temporarily in abeyance, pending receipt of the requested information. Once such information has been received, to the extent it verifies that the retiree had not been employed in section 203(a)(3)(B) service during the month or months in which benefits were held in abeyance, then the plan must forward, at the next regularly scheduled time for payment of benefits, all payments which the plan may not suspend under section 203(a)(3)(B) and this regulation. The Department also believes that the provisions of paragraph (b)(5) are necessary to achieve the purposes of section 203(a)(3)(B), and that it is appropriate to permit plans to request and receive this type of information from a retiree, because facts relevant to the retiree's employment status are peculiarly within the retiree's knowledge, and because absence of this type of authority might cause plans to expend considerable resources in order to keep apprised of retirees' employment activities.

#### E. Offset Rules

Under paragraph (b)(3) of the proposal, a plan would be permitted to

deduct from benefit payments to be made by the plan any payments previously made by the plan during those calendar months in which the employee was employed in section 203(a)(3)(B) service, provided that such deduction or offset does not exceed, in any one month, 25 percent of that month's total benefit payment which would have been due but for the offset.

Many commentators objected to imposition of any limitation on the amount a plan could offset in any month because of the length of time which would be necessary for a plan to recoup the total amount of benefits which were paid while the retiree was employed in section 203(a)(3)(B) service. It was argued that such a limitation is unjustified, unfair to the plan, and likely in some cases to result in the inability of a plan to recapture the full amount to which it is entitled. Commentators also expressed concern that under this provision plan fiduciaries would, in effect, be extending credit to parties in interest, which would constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.

In relevant part, section 203(a)(3)(B) provides that "the payment of benefits (may be) suspended for such period as the employee is employed \* \* \*". Because offsets would operate only during periods when the retiree was not employed, they would work to reduce the payment of benefits during periods and in a manner other than that specifically referred to in the statute. While the statutory provisions may not explicitly authorize recoupment, it appears that the purposes of section 203(a)(3)(B) would be served by permitting a plan to provide for recoupment of amounts which it was entitled to withhold permanently through offsets from future benefit payments under that plan.<sup>15</sup> In the Department's view, the offset rules, as proposed, adequately serve the purposes of this section by reconciling the competing interests of plans and affected retirees. The Department, therefore, has decided to adopt the offset rules without substantive change. It should be noted that it is the Department's opinion that operation of the offset rules, in and of themselves, would not give rise to prohibited transactions under Titles I or II of the Act.

<sup>15</sup> A plan's ability to effect recoupment by means other than offsets from future benefit payments is beyond the scope of this regulation.

#### F. Suspendible Amount

Under paragraph (b)(1) of the proposal, a plan would be permitted to provide for the withholding of the "suspendible amount" of an employee's accrued benefit for each calendar month of section 203(a)(3)(B) service. Paragraph (d)(1) of the proposal defined the "suspendible amount" in the case of benefits payable on a monthly basis for as long as life (or lives) continues as an amount not greater than the portion of the monthly benefit derived from employer contributions. In the case of benefits payable in any form other than that described in paragraph (d)(1), paragraph (d)(2) specified the suspendible amount as an amount of the employer-derived portion of benefit payments not exceeding the lesser of: The amount of benefits which would have been payable if the employee had been receiving monthly benefits under the plan since actual retirement in the form of a single life annuity, or the actual amount of benefits paid (or scheduled to be paid) calculated on a monthly basis.

Commentators argued that the calculation requirements of proposed paragraph (d)(2) are unfair and unjustified because a participant who elected to receive benefits actuarially equivalent to a life annuity, but for a shorter term and at a higher rate than benefits payable as a life annuity, should be subject to a correspondingly increased suspendible amount for performance of section 203(a)(3)(B) service. It was also argued that conversion to a straight life annuity of other benefit forms is administratively burdensome.

The Department has decided not to accept these comments because in some cases the suspension of benefits at a higher rate than the benefit payable as a life annuity could result in the suspension of all or a substantial portion of a participant's contemplated retirement benefit for a relatively short period of section 203(a)(3)(B) service.

Other commentators objected to the requirement that a plan may not suspend the employee-derived portion of a monthly benefit and offered a variety of arguments in support of permitting the suspension of the employee-derived amount. Because section 203(a)(3)(B) addresses only rights to accrued benefits derived from employer contributions, the Department believes it would be inappropriate to permit suspension of the employee-derived portion of benefits under section 203(a)(3)(B). Moreover, to the extent that permitting suspension of the employee-derived portion of benefits would affect

the general requirement of section 203(a)(1) regarding nonforfeitability of an employee's rights in his accrued benefits derived from his contributions, the Department believes that it would be acting beyond the scope of its authority under Presidential Reorganization Plan No. 4 of 1978 if it were to undertake to regulate the possible suspension of such benefits.

#### G. Other Matters

In response to comments which indicated that the general practice among plans is to make benefit payments on the first day of the month, the date by which payments must be resumed following the cessation of section 203(a)(3)(B) service has been changed. Paragraph (b)(2) of the final regulation requires resumption of payment no later than the first calendar day of the third calendar month after the month section 203(a)(3)(B) service ceased.

Commentators requested clarification regarding the effect of a suspension on joint and survivor benefits. It is the Department's view that a surviving spouse's rights to benefits is not affected by the death of the participant spouse during a period of section 203(a)(3)(B) service. Such service, obviously, ceases upon the death of the participant spouse, at which time the rights of the survivor become enforceable. However, where the participant spouse dies while employed in section 203(a)(3)(B) service, the plan would be permitted to recoup from survivor benefits to be paid by the plan to a surviving spouse amounts which the plan was entitled to withhold as a result of the participant's section 203(a)(3)(B) service, subject to the "offset rules" of paragraph (b)(3) of the regulation. Similarly, where a plan has commenced recoupment and the participant spouse dies before the plan fully recovers the amount to which it is entitled under this regulation, the plan may continue to apply offsets to the survivor's benefits.

A question was raised in the comments regarding the applicability of section 203(a)(3)(B) in cases where a retiree receives a lump sum distribution of his or her entire benefit entitlement from the plan and subsequently returns to employment which would constitute section 203(a)(3)(B) service. Because the Act only authorizes the suspension of "the payment of benefits," under such circumstances (*i.e.*, where the retiree is not entitled to any further payment of benefits) a plan would not have any claim to those benefits under section 203(a)(3)(B).

A number of commentators objected to the proposal on the ground that, in

order to comply with the suspension rules, many plans would require amendment and, possibly, obtaining a new determination from the Internal Revenue Service (IRS). The Department believes that plans could effectuate required changes to their suspension of benefits practices by adoption of rules which comply with the regulation without the necessity of amending the plan document. In this regard, it is noted that under section 404(a)(1) of the Act plan fiduciaries may not apply provisions of plan documents which are inconsistent with provisions of Title I of the Act. It should also be noted that a determination of qualification of plan amendments by the IRS is not required under the Code, but may be sought at the option of the plan sponsor.

#### Statutory Authority

The regulation is adopted under the authority contained in sections 203(a)(3)(B) and 505 of the Act (Pub. L. 93-406, 88 Stat. 854, 894, 29 U.S.C. 1053, 1135) and section 411(a)(3)(B) of the Code. Accordingly, Part 2530 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding in the appropriate place the following:

#### § 2530.203-3 Suspension of pension benefits upon reemployment of retirees.

(a) *General.* Section 203(a)(3)(B) of the Act provides that the right to the employer-derived portion of an accrued pension benefit shall not be treated as forfeitable solely because an employee pension benefit plan provides that the payment of benefits is suspended during certain periods of reemployment which occur subsequent to the commencement of payment of such benefits. This section sets forth the circumstances and conditions under which such benefit payments may be suspended. A plan may provide for the suspension of pension benefits which commence prior to the attainment of normal retirement age, or for the suspension of that portion of pension benefits which exceeds the normal retirement benefit, or both, for any reemployment and without regard to the provisions of section 203(a)(3)(B) and this regulation to the extent (but only to the extent) that suspension of such benefits does not affect a retiree's entitlement to normal retirement benefits payable after attainment of normal retirement age, or the actuarial equivalent thereof.

(b) *Suspension rules.*— (1) *General rule.* A plan may provide for the permanent withholding of an amount which does not exceed the suspendible amount of an employee's accrued benefit for each calendar month during which an employee is employed in

"section 203(a)(3)(B) service", as described in § 2530.203-3(c).

(2) *Resumption of payments.* If benefit payments have been suspended pursuant to paragraph (b)(1) of this section, payments shall resume no later than the first day of the third calendar month after the calendar month in which the employee ceases to be employed in section 203(a)(3)(B) service: *Provided*, That the employee has complied with any reasonable procedure adopted by the plan for notifying the plan that he has ceased such employment. The initial payment upon resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of employment and the resumption of payments, less any amounts which are subject to offset.

(3) *Offset rules.* A plan which provides for the permanent withholding of benefits may deduct from benefit payments to be made by the plan any payments previously made by the plan during those calendar months in which the employee was employed in section 203(a)(3)(B) service: *Provided*, That such deduction or offset does not exceed, in any one month, 25 percent of that month's total benefit payment (including amounts described in paragraph (b)(2) of this section which would have been due but for the offset.

(4) *Notification.* No payment shall be withheld by a plan pursuant to this section unless the plan notifies the employee, by personal delivery or certified mail, during the first calendar month in which the plan withholds payments, that his benefits are suspended. Such notification shall contain a description of the specific reasons why benefit payments are being suspended, a general description of the plan provisions relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable Department of Labor regulations may be found in § 2530.203-3 of the Code of Federal Regulations. In addition, the suspension notification shall inform the employee of the plan's procedure for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of the Act and applicable regulations. In the case of a plan which requires the filing of a benefit resumption notice as a condition precedent to the resumption of benefits, the suspension notification shall also describe the procedure for filing such notice and include the forms (if any)

which must be filed. Furthermore, if a plan intends to offset any suspendible amounts actually paid during the periods of employment in section 203(a)(3)(B) service, the notification shall identify specifically the periods of employment, the suspendible amounts which are subject to offset, and the manner in which the plan intends to offset such suspendible amounts. Where the plan's summary plan description (SPD) contains information which is substantially the same as information required by this subparagraph (4), the suspension notification may refer the employee to relevant pages of the SPD for information as to a particular item, provided the employee is informed how to obtain a copy of the SPD, or relevant pages thereof, and provided requests for referenced information are honored within a reasonable period of time, not to exceed 30 days.

(5) *Verification.* A plan may provide that an employee must notify the plan of any employment. A plan may request from an employee access to reasonable information for the purpose of verifying such employment. Furthermore, a plan may provide that an employee must, at such time and with such frequency as may be reasonable, as a condition to receiving future benefit payments, either certify that he is unemployed or provide factual information sufficient to establish that any employment does not constitute section 203(a)(3)(B) service if specifically requested by the plan administrator. Once an employee has furnished the required certification or information, the plan must forward, at the next regularly scheduled time for payment of benefits, all payments which had been withheld pursuant to this subparagraph (5) except to the extent that payments may be withheld and offset pursuant to other provisions of this regulation.

(6) *Status determination.* If a plan provides for benefits suspension, the plan shall adopt a procedure, and so inform employees, whereunder an employee may request, and the plan administrator in a reasonable amount of time will render, a determination of whether specific contemplated employment will be section 203(a)(3)(B) service for purposes of plan provisions concerning suspension of benefits. Requests for status determinations may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of the Act and applicable regulations.

(7) *Presumptions.* (i) A plan which has adopted verification requirements described in paragraph (b)(5) of this section, and which complies with the

notice requirements set forth in paragraph (b)(7)(ii) of this section may provide that whenever the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service and the retiree has not complied with the plan's reporting requirements with regard to that employment, the plan fiduciaries may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the retiree had worked a period exceeding the plan's minimum number of hours for that month. In addition, a plan covering persons employed in the building trades which has adopted verification requirements described in paragraph (b)(5) of this section and which complies with the notice requirements set forth in paragraph (b)(7)(ii) of this section may provide that whenever the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service at a construction site and the retiree has not complied with the plan's reporting requirements with regard to that employment, then the plan fiduciaries may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the retiree engaged in such employment for the same employer in work at that site for so long before the work in question as that same employer performed that work at that construction site.

(ii) A plan which provides for a presumption described in paragraph (b)(7)(i) of this section may employ such presumption only if the following requirements are met. The plan must describe its employment verification requirements and the nature and effect of such presumption in the plan's summary plan description and in any communication to plan participants which relates to such verification requirements (for example, employment reporting reminders or forms), and retirees must be furnished such disclosure, whether through receipt of the above communications or by special distribution, at least once every 12 months.

(c) *Section 203(a)(3)(B) Service.—(1) Plans other than multiemployer plans.* In the case of a plan other than a multiemployer plan, as defined in section 3(37) of the Act, the employment of an employee, subsequent to the time the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, results in section 203(a)(3)(B) service during a calendar month if the employee, in such month, completes 40 or more hours of service,

as defined in 29 CFR 2530.200b-2(a)(1), for an employer which maintains the plan, including employers described in § 2530.210(d) and (e), as of the time that the payment of benefits commenced or would have commenced if the employee had not returned to employment.

(2) *Multiemployer plans.* In the case of a multiemployer plan, as defined in section 3(37) of the Act, the employment of an employee subsequent to the time the payment of benefits commence or would have commenced if the employee had not remained in or returned to employment results in section 203(a)(3)(B) service during a calendar month if the employee, in such month, completes 40 or more hours of service in:

- An industry in which employees covered by the plan were employed and accrued benefits under the plan as a result of such employment at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, and
- A trade or craft in which the employee was employed at any time under the plan, and
- The geographic area covered by the plan at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment.

(i) *Industry.* The term "industry" means the business activities of the types engaged in by any employers maintaining the plan.

*Example.* One of the employers contributing to a multiemployer plan engages in heavy construction, another in textile manufacturing, and another in communications. Employee E began his career as an employee of an employer engaged in heavy construction. Later E was employed by an employer in communications. With both employers, E accrued benefits under the plan. If E retires and then becomes reemployed in the same trade or craft and in the same geographic area, employment by E in either heavy construction, communications or textile manufacturing, whether or not with an employer who contributes to the plan or in a self-employed capacity, may be considered by the plan to be employment in the same industry, assuming that employees covered by the plan were accruing benefits as a result of employment in these industries at the time E commenced receiving benefits. This is true even though E did not previously accrue benefits as a result of employment with an employer engaged in textile manufacturing because other employees covered by the plan were employed in that industry and were accruing benefits under the plan as a result of such employment at the time when benefit payments to E commenced or would have commenced if E had not returned to employment.

(ii) *Trade or craft.* A trade or craft is (A) a skill or skills, learned during a significant period of training or practice, which is applicable in occupations in some industry, (B) a skill or skills relating to selling, retailing, managerial, clerical or professional occupations, or (C) supervisory activities relating to a skill or skills described in (A) or (B) of this paragraph (c)(2)(ii). For purposes of this paragraph (c)(2)(ii), the determination whether a particular job classification, job description or industrial occupation constitutes or is included in a trade or craft shall be based upon the facts and circumstances of each case. Factors which may be examined include whether there is a customary and substantial period of practical, on-the-job training or a period of related supplementary instruction. Notwithstanding any other factor, the registration of an apprenticeship program with the Bureau of Apprenticeship and Training of the U.S. Department of Labor is sufficient for the conclusion that a skill or skills which is the subject of the apprenticeship program constitutes a trade or craft.

*Example.* Participation in a multiemployer plan is limited solely to electricians. Electrician E retired and then became reemployed as a foreman of electricians. Because a "trade or craft" includes related supervisory activities, E remains within his trade or craft for purposes of this section.

(iii) *Geographic area covered by the plan.* (A) With the exception of a plan covering employees in a maritime industry, the "geographic area covered by the plan" consists of any state or any province of Canada in which contributions were made or were required to be made by or on behalf of an employer and the remainder of any Standard Metropolitan Statistical Area (SMSA) which falls in part within such state, determined as of the time that the payment of benefits commenced or would have commenced if the employee had not returned to employment.

*Example.* A multiemployer plan covers plumbers in Pennsylvania. All contributing employers have always been located within Pennsylvania. Accordingly, the "geographic area covered by the plan" consists of Pennsylvania and any SMSAs which fall in part within Pennsylvania. Thus, for example, in the case of the Philadelphia SMSA, Burlington, Camden and Gloucester Counties in New Jersey are within the "geographic area covered by the plan".

(B) [Reserved—For definition of the geographic area covered by a plan that covers employees in a maritime industry.]

For purposes of this paragraph (c)(2)(iii), contributions shall not include amounts contributed: after December 31, 1978 by or on behalf of an employer where no contributions were made by or on behalf of that employer before that date, if the primary purpose of such contribution is to allow for the suspension of plan benefits in a geographic area not otherwise covered by the plan; or with respect to isolated projects performed in states where plan participants were not otherwise employed.

(3) *Employment in a maritime industry.* For plans covering employees employed in a maritime industry, as defined in § 2530.200b-6, the standard of "five or more days of service, as defined in § 2530.200b-7(a)(1)" shall be used in lieu of the standard "40 or more hours of service", for purposes of determining whether an employee is employed in section 203(a)(3)(B) service.

(d) *Suspendable amount.*—(1) *Life annuity.* In the case of benefits payable periodically on a monthly basis for as long as a life (or lives) continues, such as a straight life annuity or a qualified joint and survivor annuity, a plan may provide that an amount not greater than the portion of a monthly benefit payment derived from employer contributions may be withheld permanently for a calendar month in which the employee is employed in section 203(a)(3)(B) service.

(2) *Other benefit forms.* In the case of benefits payable in a form other than the form described in paragraph (d)(1) of this section, a plan may provide for the permanent withholding of an amount of the employer-derived portion of benefit payments, for a calendar month in which the retiree is employed in section 203(a)(3)(B) service, not exceeding the lesser of (i) the amount of benefits which would have been payable to the employee if he had been receiving monthly benefits under the plan since actual retirement based on a single life annuity commencing at actual retirement age or (ii) the actual amount paid or scheduled to be paid to the employee for such month. Payments which are scheduled to be paid less frequently than monthly may be converted to monthly payments for purposes of this paragraph (d)(2)(ii).

Signed at Washington, D.C., this 19th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 81-3443 Filed 1-26-81; 6:45 am]

BILLING CODE 4510-29-M

## DEPARTMENT OF LABOR

## Office of Pension and Welfare Benefit Programs

## 29 CFR Part 2530

## Rules and Regulations for Minimum Standards for Employee Benefit Plans; Suspension of Benefit Rules

AGENCY: Department of Labor.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document sets forth a proposed amendment to a rule relating to certain circumstances in which it is permissible for a plan to suspend the payment of pension benefits to a retiree. The Employee Retirement Income Security Act of 1974 (the Act) authorizes the Secretary of Labor to prescribe regulations setting forth the circumstances and conditions under which the right of a retiree to a benefit payment is not treated as forfeitable solely because the plan provides that benefit payments are suspended during certain periods of reemployment. The proposal would affect employees in maritime industries covered under employee pension benefit plans.

**DATE:** Written comments on proposed paragraph (c)(2)(iii)(B) must be received by the Department of Labor (the Department) on or before March 30, 1981.

**ADDRESSES:** Written comments (preferably at least three copies) should be submitted to the Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, Room N-4508, U.S. Department of Labor, Washington, D.C. 20216, Attention: § 2530.203-3(c)(2)(iii)(B). All written comments will be available for public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C.

## FOR FURTHER INFORMATION CONTACT:

Jay S. Neuman, Esq., Office of the Solicitor of Labor, (202) 523-8658; or Judith Bleich Kahn, Pension and Welfare Benefit Programs, (202-523-8430). These telephone numbers are not toll free.

**SUPPLEMENTARY INFORMATION:** On December 19, 1978, notice was published in the Federal Register (43 FR 59098) that the Department had under consideration a proposal to adopt a regulation, 29 CFR 2530.203-3, under section 203(a)(3)(B) of the Act, relating to suspension of pension benefit payments under certain circumstances. As part of the proposal, the Department requested specific comment regarding whether and to what extent the "geographic area covered by the plan" should be specially defined for purposes of plans covering employees in the maritime industries.<sup>1</sup> In response to comments which suggested the need for such a special definition, the Department is publishing for comment proposed paragraph (c)(2)(iii)(B). The proposal defines the geographic area covered by plans covering employees in the maritime industries in terms of ports of embarkation because it appears that these are the most appropriate territorial reference points for such plans. The proposal provides that the geographic area covered by a plan that covers employees in a maritime industry consists of any port of embarkation at which employers hired employees for whom contributions have been made or have been required to be made as of the time that the payment of benefits

<sup>1</sup> In relevant part, section 203(a)(3)(B) provides that—

(B) A right to an accrued benefit from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(ii) In the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

commenced or would have commenced if the employee had not returned to employment.

It should be noted that the Department has decided to adopt, with certain modifications, § 2530.203-3 as proposed. This final regulation appears elsewhere in this issue of the Federal Register. Persons who are interested in commenting on proposed § 2530.203-3(c)(2)(iii)(B) should refer to the adopted portions of § 2530.203-3 in order to appreciate how this proposed paragraph would operate in the context of the regulation as a whole.

## Statutory Authority

Paragraph (c)(2)(iii)(B) is proposed under the authority contained in sections 203(a)(3)(B) and 505 of the Act (Pub. L. 93-406, 88 Stat. 854, 894, 29 U.S.C. 1053, 1135) and section 411(a)(3)(B) of the Internal Revenue Code of 1954.

## § 2520.203-3 Suspension of pension benefits upon reemployment of retirees.

(c) Section 203(a)(3)(B) Service. \* \* \*  
(2) Multiemployer plans. \* \* \*  
(iii) Geographic area covered by the plan. \* \* \*

(B) The geographic area covered by a plan that covers employees in a maritime industry consists of any port of embarkation at which employers hired employees for whom contributions were made or were required to be made as of the time the payment of benefits commenced or would have commenced if the employee had not returned to employment.

Signed at Washington, D.C. this 19th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 81-2444 Filed 1-26-81; 8:45 am]

BILLING CODE 4510-29-M



# **federal register**

---

Tuesday  
January 27, 1981

---

**Part VI [DELETED]**

## **Department of Labor**

---

**Employment and Training Administration  
and Labor-Management Services  
Administration**

---

**Airline Employee Protection Program;  
Regulations for Implementation**

REPRODUCTION OF THE  
ORIGINAL MANUSCRIPT

# **federal register**

---

Tuesday  
January 27, 1981

---

## **Part VII**

### **Department of Commerce**

---

Office of the Secretary

---

**Proposed Amendments to the National  
Voluntary Laboratory Accreditation  
Program Procedures To Include Criteria  
for Accrediting Testing Laboratories and  
To Eliminate the Need for Criteria  
Committees**

## DEPARTMENT OF COMMERCE

## Office of the Secretary

## 15 CFR Parts 7a, 7b, and 7c

**Proposed Amendment to the National Voluntary Laboratory Accreditation Program Procedures To Include Criteria for Accrediting Testing Laboratories and To Eliminate the Need for Criteria Committees**

**AGENCY:** Assistant Secretary of Commerce for Productivity, Technology and Innovation.

**ACTION:** Proposed change in procedures.

**SUMMARY:** This document proposes to amend the National Voluntary Laboratory Accreditation Program (NVLAP) procedures (15 CFR Parts 7a, 7b, and 7c) in two ways. First, it would add to the procedures the general and specific criteria which testing laboratories must meet in order to be accredited by the Department of Commerce (DoC). This would establish universal criteria for evaluating laboratories in all product or service areas. The use of universal criteria is intended to assure uniform evaluation of laboratories, to prevent the possibility of conflicting criteria, and to minimize accreditation costs to the laboratory. Changes in the criteria could be made where deemed necessary in some product or service areas.

Second, it would eliminate the need to establish National Laboratory Accreditation Criteria Committees (Criteria Committees) to develop and recommend to the Secretary of Commerce (Secretary) criteria for each laboratory accreditation program (LAP). It would establish a National Laboratory Accreditation Advisory Committee (Advisory Committee) to provide advice to DoC on the NVLAP accreditation process, amendments to the criteria, and accreditation on the national and international levels.

**DATES:** Interested parties are requested to submit their comments on or before March 30, 1981. A request for an informal hearing may be made before February 15, 1981.

**ADDRESS:** Comments should be in writing and addressed to the Assistant Secretary for Productivity, Technology and Innovation, Room 3864, U.S. Department of Commerce, Washington, D.C. 20230, or delivered to Room 3864, Main Commerce Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Dr. Howard I. Forman, Deputy Assistant

Secretary for Product Standards Policy, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-3221.

**SUPPLEMENTARY INFORMATION:****Current Procedures**

NVLAP was established by a regulation promulgated in the *Federal Register* on February 25, 1976 (41 FR 8163-8166, 15 CFR Part 7 which has been redesignated 15 CFR Part 7a), pursuant to 15 U.S.C. 272, and Part VI of Reorganization Plan No. 3 of 1946. This notice of rule making describes the procedures for the operation of NVLAP including the development of general and specific criteria for accrediting testing laboratories. This regulation was amended by the addition of optional procedures for use by Federal agencies (15 CFR Part 7b) published in the *Federal Register* on March 9, 1979 (44 FR 12982-12990), and later by the addition of optional procedures for use by private sector organizations (15 CFR Part 7c) published in the *Federal Register* on April 25, 1979 (44 FR 24272-24282).

**Part 7a Procedures.** The Part 7a procedures set out the requirements for establishing a laboratory accreditation program (LAP) to accredit laboratories that test in a particular product or service area. Several steps are involved:

1. After having published a proposed determination of need, and having considered public comments on the proposed determination, the Secretary (or his/her designee) finds that there is a need for a LAP requested in a particular product or service area.

2. When a finding of need is made, the Secretary appoints a Criteria Committee composed of members selected from Federal agencies, State and local government agencies, and the private sector to fairly represent the interests affected by the Secretary's finding of need for the LAP.

3. Based on a request from the Secretary, the Criteria Committee develops and recommends general and specific criteria to accredit testing laboratories that serve the specific product or service area for which the Committee was formed.

4. Upon receipt and analysis of the Committee's recommendations, the Secretary publishes in the *Federal Register* for public comment a notice containing proposed general and specific criteria.

5. After receipt of all written and oral comments, the Criteria Committee evaluates the comments and makes recommendations with respect to the comments received.

6. After appropriate analysis of the recommendations, the Secretary

publishes a notice in the *Federal Register* announcing the final general and specific criteria that testing laboratories must meet in order to be accredited by NVLAP for the particular product or service area.

**Part 7b and 7c Procedures.** The optional procedures for use by Federal agencies (15 CFR Part 7b) and the optional procedures for use by private sector organizations (15 CFR Part 7c) provide two alternatives for developing general and specific criteria:

1. The Federal agency or private sector organization which is requesting the LAP may recommend to the Secretary general and specific criteria compatible with criteria already established and in use in other LAPs. The Secretary decides, after consultation with the requesting party, on the precise language of the proposed general and specific criteria.

2. In those cases where the requesting Federal agency or private sector organization chooses not to recommend laboratory accreditation criteria, the Secretary establishes a Criteria Committee to develop and recommend proposed criteria as under the Part 7a procedures.

Whether recommended by the requesting party or by a Criteria Committee, the proposed general and specific criteria are published in the *Federal Register* for public comment. The Secretary evaluates the recommendations and public comments and publishes final general and specific criteria for the specified product or service as required under the Part 7a procedures.

With careful coordination it is possible under all three sets of procedures to establish one set of criteria for several product or service areas.

**Background**

Three LAPs are fully operational under these NVLAP procedures—thermal insulation materials, freshly mixed field concrete, and carpet. Under the Part 7a procedures, the two Criteria Committees formed by DoC developed and recommended criteria for thermal insulation materials and freshly mixed field concrete. The Department of Housing and Urban Development (HUD), under Part 7b procedures, recommended criteria for the LAP in carpet. The Secretary was able to combine the three recommendations to establish one set of criteria to be used in accrediting testing laboratories in the three product or service areas. These criteria were published in the *Federal Register* on January 23, 1980 (45 FR 5572-5600).

The use of a Criteria Committee to develop and recommend criteria for each product or service area was originally included in the NVLAP procedures so that DoC could benefit from the knowledge, experience, and expertise of individuals from both the private and public sectors who were involved in accreditation, the operation of testing laboratories, or technical areas relevant to the specific product or service areas.

#### Basis and Purpose of Amendment

NVLAP was developed to provide national recognition of the capability of laboratories qualified to perform tests in product or service areas where such recognition is needed. DoC believes that the criteria used in conferring this national recognition should be identical or as consistent as possible among various product or service areas for which accreditation is granted. It is generally understood that there are certain fundamental elements relative to facilities, equipment, personnel, and quality control practices that all laboratories should possess. The established criteria reflect the basis of those fundamental elements as they apply to the LAPs for insulation, concrete, and carpet. The consistent criteria for these three LAPs are expected to be applicable to future LAPs in other product or service areas. The use of consistent criteria will tend to assure that NVLAP accredited laboratories have been uniformly assessed regardless of the product or service area. Similarly, laboratories seeking accreditation in more than one area will be less likely to be faced with different and possibly conflicting criteria. From an operational point of view, consistent evaluation criteria, regardless of the number of LAPs or test methods for which a laboratory may seek accreditation, are desirable in order to minimize accreditation costs to the laboratories and the likelihood of confusion in administering the program.

DoC has concluded, through the actual implementation of the present laboratory accreditation criteria in assessing the approximately 100 testing laboratories which requested accreditation in the three LAPs, that the present criteria are appropriate to the three product areas and practical to the operations of NVLAP.

Since DoC anticipates that the criteria will continue to be similar from one product to the next, the agency believes there is no longer a need to develop new criteria for each requested LAP. Using a single set of criteria would mean that a testing laboratory would not have to supply similar data in different formats

when seeking accreditation in more than one product or service area. The testing laboratory would be required to supply only additional data as needed to evaluate new test methods being added to its list of accredited methods. The testing laboratory would be supplied with explanatory information to tailor the criteria to the particular characteristics of each test method for which it has applied for accreditation.

DoC realizes that changes in the universal language of the criteria may be necessary in the future, but believes these changes are likely to be few in number. Sound analysis and persuasive logic will be needed to justify proposing a change in the present criteria.

DoC believes that since appropriate universal general and specific criteria have now been developed which can be used in all future LAPs with only occasional changes, there is no longer any need to establish a Criteria Committee for each new product or service area.

To continue to receive the benefit of the knowledge, experience, and expertise of individuals involved in accreditation or the operation of testing laboratories, DoC believes that a single National Laboratory Accreditation Advisory Committee (Advisory Committee) should be established and maintained. This Advisory Committee would be composed of qualified individuals from Federal, State, and local governments, testing laboratories, and groups who use testing laboratories. The Committee would meet at the request of DoC and would function solely in an advisory capacity. Its activities would include providing advice on the accreditation process, amendments to the general and specific criteria, the changing needs of testing laboratories and industry, and all aspects of accreditation on both the national and international levels.

In the past the Criteria Committee also served as an informal source of information on precision and accuracy expectations for test methods, proficiency testing approaches, materials and protocols for assessing a laboratory's performance, and the generation of explanatory information to tailor the criteria to the test methods within a LAP. To continue to receive this valuable information on technical matters DoC plans to hold workshops for specific product or service areas. These workshops will be open to anyone from the public or private sectors interested in the specific LAP, and could include testing laboratory personnel, manufacturers, research organizations, standards writing bodies, and Federal, State, and local agencies

whose regulations impact the product or service area under consideration.

#### Proposed Amendments

DoC proposes to amend the NVLAP procedures to include the universal general and specific criteria that must be met by a testing laboratory in order to receive NVLAP accreditation. These criteria are identical to those published in the *Federal Register* on January 23, 1980 (45 FR 5572-5600) as the final criteria for accrediting laboratories that test thermal insulation materials, freshly mixed field concrete, or carpet. Section 7a.19, *General and Specific Criteria for Accrediting Testing Laboratories*, is added to the Part 7a procedures to provide a description of the criteria along with requirements and limitations placed on DoC and testing laboratories relevant to the criteria. Sections 7a.20 through 7a.30 are added setting forth the actual general and specific criteria along with the specific conformance requirements for each criterion. Sections 7a.7, 7b.7, and 7c.7, of the Part 7a, 7b, and 7c procedures, respectively, *Development and Recommendation of Criteria for Accrediting Testing Laboratories*, are deleted.

DoC proposes to amend §§ 7a.4(b)(5), 7b.4(b)(5), and 7c.4(b)(5) to allow the party requesting a LAP in a product or service area to include in the request recommendations of amendments to the criteria. Sections 7a.4(h)(3), 7a.5(a), 7b.5 and 7c.5 are amended to allow DoC to take the appropriate action needed to make amendments to the criteria when deemed to be in the public interest. Sections 7a.16, 7b.16, and 7c.16, *Amendment or Revision of Criteria*, are deleted.

Under the present procedures, the availability of a LAP is announced simultaneously with publication of the final criteria. Since publication of separate criteria for each individual LAP will no longer be required under this amendment, DoC proposes to change sections 7a.8, 7b.8, and 7c.8 of the present procedures, *Publication of Proposed Criteria*, to respective sections entitled, *Announcement of Establishment of a LAP*. This amendment requires that an announcement of establishment of a LAP be published in the *Federal Register* after notice of the final finding of need under Part 7a procedures or after notice of the request for a LAP under parts 7b or 7c procedures has been published. This notice will include the list of available test methods for that LAP, instructions for making application for accreditation in the specific LAP, and descriptions of the accreditation process and proficiency testing programs. This

information was previously contained in the announcement in the *Federal Register* of the final criteria.

Under the present procedures DoC is required to announce in the *Federal Register* the fees to be charged testing laboratories applying for accreditation simultaneously with the announcement of the final criteria. DoC proposes to amend §§ 7a.10, 7b.10, and 7c.10, *Establishment of Fees and Charges*, to state that the notice announcing the fees should be published in the *Federal Register* at the time of the announcement of establishment of a LAP.

As the universal general and specific criteria will ordinarily remain constant from one product or service area to the next under this amendment, there will no longer be a need to establish a Criteria Committee for each LAP. DoC proposes, therefore, the establishment of one Advisory Committee under § 7a.6, composed of qualified members from government, testing laboratories, and users of testing laboratories. This Advisory Committee will be used by DoC as an informal source of information and advice relative to all aspects of the accreditation process. Public workshops for specific products or services may be held by DoC. All interested parties will be invited to attend and to provide information and advice on the technical aspects of the test methods for the particular product or service.

Several other sections of the procedures require amendments to reflect editorial revisions such as changing Criteria Committee to Advisory Committee, changing the referenced paragraph numbers to the appropriate numbers under the new amendments, and deleting references to "establishment of criteria".

#### Future Revisions

DoC believes that this amendment is necessary at this time in order to expedite establishment of future LAPs under these procedures and to insure that testing laboratories wishing to apply for accreditation in more than one product area will not be required to submit similar information in different formats. DoC plans to undertake a further rulemaking proceeding to consolidate the present three sets of procedures, once an Advisory Committee has been formed. At that time, every effort will be made to present the procedures in a fashion which will more clearly identify the differences among the three approaches to initiating a LAP to make the procedures easier to read and reference.

#### Request for Comments

Persons interested in commenting on this proposed amendment to the procedures contained in 15 CFR Part 7a, Part 7b, and Part 7c, are invited to submit their comments, in four copies, on or before March 30, 1981, to the Assistant Secretary for Productivity, Technology and Innovation, Room 3864, U.S. Department of Commerce, Washington, D.C. 20230.

Any person desiring to express his or her views on this proposed amendment at an informal hearing may notify the Assistant Secretary for Productivity, Technology and Innovation in writing on or before February 11, 1981, at the address shown in the preceding paragraph. Upon receipt of such a request, an informal public hearing will be held to give all interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to the opportunity to make written submissions. Notice of a hearing will be published in the *Federal Register* at least twenty (20) days before the scheduled hearing. A transcript will be made of any oral presentations.

All written and oral comments furnished in response to this invitation will become part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution and Pennsylvania Avenues, NW, Washington, D.C. 20230.

Dated: January 19, 1981.

Jordan J. Baruch,

*Assistant Secretary for Productivity, Technology and Innovation.*

For the reasons set out in the preamble, Parts 7a, 7b, and 7c of Title 15 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for Parts 7a, 7b, and 7c is amended to read as follows:

Authority: Sec. 2, 31 Stat. 1449, as amended (15 U.S.C. 272); Reorganization Plan No. 3 of 1946, Part VI.

#### PART 7a—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM: GENERAL

2. Section 7a.3 is amended by revising paragraphs (c), (f), and (g) to read as follows:

##### § 7a.3 Definitions.

(c) The term "Advisory Committee" means the National Laboratory

Accreditation Advisory Committee appointed by the Secretary under § 7a.6.

(f) The term "general criteria" means those characteristics and qualifications generally expected of a laboratory which engages in the testing of products or services under consideration. See in this connection § 7a.19.

(g) The term "specific criteria" means those characteristics of a laboratory which pertain to the technical testing functions conducted by a laboratory in meeting the requirements of the test method(s) for the product or services under consideration. See in this connection § 7a.19.

3. Section 7a.4 is amended by revising paragraphs (b)(3) and (b)(4)(ii), adding paragraph (b)(5), and revising paragraph (h)(3), to read as follows:

##### § 7a.4 Finding of need to accredit testing laboratories.

(b) \* \* \*

(3) Text of a test method, if not included in the applicable standard identified in paragraph (b)(2) of this section;

(4) \* \* \*

(ii) The number of users of testing laboratories that is believed will desire services of testing laboratories accredited to serve the product identified in paragraph (b)(1) of this section; and

(5) When deemed necessary, recommendations for amendments to the general and specific criteria referenced in § 7a.19 of these procedures.

(h) \* \* \*

(3) The identification of any amendment to the criteria in these procedures (see § 7a.5(a)), the adoption of which would benefit the public interest.

(i) If any amendments are so identified, the Secretary shall decide, after consultation with the requestor, whether to propose the amendments to the criteria referenced in § 7a.19. If the decision is to propose one or more amendments, the Secretary shall decide upon the precise language, propose the amendment(s) by publication in the *Federal Register* and make a final determination following the procedures of 5 U.S.C. 553, before the LAP is actually established.

(ii) In making these decisions the Secretary shall consider the following:

(A) The needs and scope of the program of the requestor;

(B) The needs and scope of the user population;

(C) Compatibility with the existing criteria referenced in § 7a.19; and

(D) The nature and content of other relevant public and private sector laboratory accreditation programs.

(iii) No amendment to the criteria referenced in section 7a.19 will be issued unless the Secretary determines that compliance with, and implementation of, the amendment is feasible, practical, and consistent with the public interest.

4. Section 7a.5 is amended by revising paragraph (a) to read as follows:

**§ 7a.5 Statement of the basis for a preliminary finding of need.**

(a) Whether an amendment to these procedures to modify the existing general or specific criteria referenced in § 7a.19, to establish additional general or specific criteria, or to establish other conditions for accrediting testing laboratories would benefit the public interest.

5. Section 7a.6 is revised to read as follows:

**§ 7a.6 Establishment and functions of a National Laboratory Accreditation Advisory Committee.**

(a) The Secretary shall establish a National Laboratory Accreditation Advisory Committee (Advisory Committee) and appoint the Chairman and members thereto following the filing of a chapter setting forth the purpose and nature of the Committee.

(b) The Committee will be composed of members who are qualified by their training and experience in the field of accreditation or the operations of testing laboratories. The composition of the Committee will be as follows:

- (1) One-third from Federal, State and local governments;
- (2) One-third from testing laboratories; and
- (3) One-third from users of testing laboratories.

(c) The establishment and functioning of this Advisory Committee formed and utilized by the Secretary under these procedures shall be governed by the applicable provisions of the Federal Advisory Committee Act (Pub. L. 92-463, dated October 6, 1972). Persons selected to serve on this Advisory Committee may be paid travel expenses and per diem, provided authorized travel is involved.

(d) This Advisory Committee will function solely in an advisory capacity with functions to include the following:

(1) Assessing the future and continuing role of laboratory accreditation and NVLAP in terms of the changing requirements of industry and commerce;

(2) Informing NVLAP of the technical requirements of testing laboratories and industry;

(3) Advising on the necessity and implementation of proposed amendments to the general and specific criteria referenced in § 7a.19;

(4) Evaluating the interaction of other laboratory accreditation systems with NVLAP; and

(5) Reviewing and giving recommendations on the development of international accreditation activities and assessing the impact of such activities on testing laboratories and industry.

(e) The Advisory Committee shall meet periodically as called upon by DoC or may be consulted through periodic mailings from DoC.

(f) DoC may supplement the Advisory Committee by holding informal public workshops for the specific product or service under consideration. All interested parties, as well as the Advisory Committee, will be invited to participate. Information will be sought on the following technical matters:

- (1) Precision and accuracy expectations for test methods;
- (2) Proficiency testing approaches;
- (3) Materials and protocols for assessing a laboratory's performance; and
- (4) The generation of explanatory information to tailor the criteria to the test methods of the particular LAP

**§ 7a.7 [Removed]**

6. Section 7a.7 is removed in its entirety.

7. Section 7a.8 is revised to read as follows:

**§ 7a.8 Announcement of establishment of a LAP.**

(a) After publication of the final finding of need for a specific product under § 7a.4(g), a final notice will be published in the Federal Register announcing the formal establishment of the LAP.

(b) This notice will contain the following:

- (1) The list of test methods for which accreditation is available in the particular LAP;
- (2) Instructions for making application for accreditation by laboratories testing the product or service involved, including what information must be provided in the request for an application; and

(3) A description of the accreditation process and the specific proficiency testing programs which may be required for the particular product area.

(c) This notice will also require that each testing laboratory that desires to participate in this program must agree to conditions that include but are not limited to the following:

(1) Be examined and audited initially and on a continuing basis;

(2) Pay accreditation fees and charges; and

(3) Avoid reference by itself and forbid others utilizing the services of an accredited testing laboratory from referencing its accredited status under NVLAP in consumer media and in product advertising or on product labels, containers and packaging or the contents therein, or in any other way which might convey the concept of product certification by the Department of Commerce.

8. Section 7a.9 is revised to read as follows:

**§ 7a.9 Coordination with Federal agencies.**

As a means of assuring effective and meaningful cooperation, input, and participation by those Federal agencies that have an interest in and may be impacted by the laboratory accreditation program carried out under these procedures, the Secretary shall undertake to communicate and consult with appropriate officials at policy making levels within those agencies. These coordination efforts will include opportunities for representatives designated by those agencies to serve on the Advisory Committee established by the Secretary under § 7a.6 and to participate in any public workshops held by DoC (described in § 7a.8(f)).

9. Section 7a.10 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 7a.10 Establishment of fees and charges.**

(a) The Secretary, using the Working Capital Fund of the National Bureau of Standards, as authorized by section 12 of the Act of March 3, 1901, as amended (15 U.S.C. 278b), or any similar financial arrangement for this program, shall establish fees and charges for examining, assessing, and accrediting testing laboratories. The fees and charges established by the Secretary, which may be revised when the Secretary deems it appropriate to do so, shall be in amounts calculated to enable the self-sufficiency of this program.

(b) When the Secretary publishes the notice of Announcement of Establishment of a LAP referred to in § 7a.8, the Secretary shall

simultaneously publish a separate notice in the Federal Register setting forth the schedule of fees that will be charged testing laboratories that request accreditation for a specific product or service area. The schedule of fees will go into effect on the day it is published.

10. Section 7a.11 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 7a.11 Participation of testing laboratories.**

(a) Each testing laboratory serving a product or service for which a notice has been published under § 7a.8 announcing the establishment of a LAP for that product or service, and desiring to be accredited under this program, will notify NVLAP of its desire by requesting an application pursuant to the provisions of the above-mentioned notice (§ 7a.8(b)(1)).

(d) Upon receipt by the National Bureau of Standards of the applicant testing laboratory's written application and of the fees and charges specified in paragraph (b) of this section, the National Bureau of Standards, on behalf of the Secretary, shall arrange for by contract or shall itself conduct the examination in accordance with the examination requirements of the Secretary. In all cases where testing laboratories are examined, the National Bureau of Standards shall assure that the personnel used by the contractor or by the National Bureau of Standards possess the necessary professional and technical qualifications to assess the laboratory in the product or service area being evaluated. If the National Bureau of Standards conducts the examination, the resultant examination report will be forwarded to the Secretary. In cases where the examination report is prepared by a contractor the National Bureau of Standards, before making payment thereunder or forwarding the report to the Secretary, will review the report to assure that the contract terms have been fulfilled.

11. Section 7a.13 is amended by revising paragraph (d) to read as follows:

**§ 7a.13 Revocation or termination of accreditation of a testing laboratory.**

(d) A testing laboratory whose application has been rejected or whose accreditation has been denied, revoked or terminated, or which has withdrawn its application prior to being accredited, may reapply for and be accredited if it meets the applicable general and

specific criteria referenced in § 7a.19, and agrees also to meet the conditions set out under § 7a.8(c) and the provisions of § 7a.12.

12. Section 7a.14 is amended by revising paragraph (e) to read as follows:

**§ 7a.14 Cessation of accreditations.**

(e) If the Secretary ceases the accreditation of testing laboratories that serve a specific product or service as provided for in this section, the Secretary shall withdraw the accreditations previously issued to all those testing laboratories serving that product or service. Any testing laboratory whose accreditation has been withdrawn by the Secretary under this paragraph may seek to be accredited to serve a different specific product under these procedures, and may be so accredited if it meets the general and specific criteria referenced in § 7a.19 and if it agrees to meet the conditions set out under § 7a.8(c) and the provisions of section § 7a.12.

**§ 7a.16 [Removed]**

13. Section 7a.16 is removed in its entirety.

14. Part 7a is amended by adding § 7a.19 to read as follows:

**§ 7a.19 General and specific criteria for accrediting testing laboratories.**

(a)(1) Laboratories which voluntarily request accreditation for one or more LAPs established under Parts 7a, 7b, or 7c will be accredited on the basis of their conformance to the general criteria set out in §§ 7a.20 through 7a.25 and the specific criteria set out in §§ 7a.26 through 7a.30.

(2) Accreditation for certain test methods may also require participation in proficiency testing programs described in the notice of Announcement of establishment of a LAP under § 7a.8(b)(3) (or under § 7a.8(b)(3) or § 7c.8(b)(3) as applicable).

(b) In each of the sections containing the criteria, identified in paragraph (a) of this section, the criterion itself is set forth as paragraph (a) of each of §§ 7a.20 through 7a.30. The remaining paragraph(s) of each of those sections set forth implementing requirements which laboratories must meet to ensure, or to enable assessment of, conformance with the criterion.

(c) Compliance with the general and specific criteria and other conditions established by the Secretary, and accreditation under these procedures, shall in no way relieve testing laboratories from the necessity of also

observing and complying with any existing Federal, State, and local statutes, ordinances, and regulations that may be applicable to the operation of such laboratories, including consumer protection and antitrust laws.

(d) In carrying out the activities authorized by this section—

(1) No action will be taken to develop further criteria that would prohibit the accreditation of a testing laboratory solely on the basis of that laboratory's association or nonassociation with manufacturing, distributing or vending organizations, or because the testing laboratory is a foreign firm;

(2) No action will be taken under this program to develop a product standard, a test method standard, or a comparable administrative rule;

(3) No action will be taken under this program to modify a product standard, a test method standard, or a comparable administrative rule where such a standard or rule is in existence; and

(4) The Secretary, under this program, will not ask for or accept confidential business data, trade secrets, or other proprietary information.

(e) General criteria include information and characteristics that should be obtainable from or found in reputable testing laboratories. They include general information about a laboratory (e.g., name, address, ownership, management structure); professional and ethical business practices that must exist for accreditation (e.g., agreement to adopt certain policies); and the maintenance of a quality control manual (e.g., written procedures and information addressing the control of staff, physical plant, operational processes, testing control procedures, and quality assurance) for use by laboratory staff in the laboratory. For initial and continued accreditation, each applicant shall provide, in writing, information in response to the provisions of §§ 7a.20 through 7a.25.

(f) Specific criteria detail requirements for accreditation which relate to individual test methods. The specific criteria are designed so that they may be applied to all test methods in any NVLAP activity without having to be changed each time a test method is added or revised. Because "universal" language is used, some portions of the specific criteria may not be applicable for all test methods. This is why the words, "as applicable," are used in several places in the specific criteria. Explanatory information will be sent to each applicant laboratory showing how the specific criteria relate to each of the test methods for which accreditation is sought. This information identifies those sections of the specific criteria that are



not applicable, indicates how those sections which are applicable are to be interpreted and implemented, and describes the conduct of an on-site inspection and the subsequent assessment process. In essence, this information tailors the specific criteria to the particular characteristics of individual test methods. It will not extend the criteria into new areas and will be revised, as necessary, each time any test method is revised. The provisions of the specific criteria are contained in §§ 7a.26 through 7a.30.

15. Sections 7a.20 through 7a.30 are added to 15 CFR Part 7a to read as follows:

**§ 7a.20 General criterion: Organizational structure.**

(a) *Criterion G1.* The laboratory has a legally identifiable organizational structure that enables it to develop and maintain a testing capability to perform satisfactorily the functions for which accreditation is sought.

(b) *Organization Description.* The laboratory shall submit a description of its organization including—

(1) The name and full address of the laboratory which is seeking accreditation;

(2) If the laboratory is part of a larger organization, the complete legal name and address of that larger organization;

(3) The ownership and management structure of the laboratory, including the names and positions of its principal officers and board of directors;

(4) An outline or organizational chart identifying all key management and supervisory positions in each relevant operating, support, and service unit in the laboratory's functional organization, and defining at least those reporting relationships that are relevant to this accreditation request;

(5) A position description, including the required qualifications, of the person who has technical responsibility for the laboratory in the testing area(s) for which accreditation is sought; and

(6) A general description of the laboratory, including its facilities and scope of operation.

(c) *Changes in Organization.* The laboratory shall submit a statement of any fundamental changes related to the provisions of paragraph (b) of this section within 30 calendar days of such changes.

**§ 7a.22 General criterion: Professional and ethical business practices.**

(a) *Criterion G2.* The laboratory is operated in accordance with generally accepted professional and ethical business practices.

(b) *Statement of Ethical Practices.* The laboratory shall agree in writing that as a minimum it will be its policy to—

(1) Perform the tests for which accreditation is sought in accordance with the designated test methods, and to report and explain deviations from those test methods in its test reports;

(2) Assure that reported values accurately reflect measured data;

(3) Limit test work to that for which competence and capacity are available;

(4) Treat test data, records, and reports as proprietary information;

(5) Respond to and attempt to resolve complaints contesting test results;

(6) Be capable of performing each test for which it is accredited according to the latest version of each test method within one year after publication or within another time limit specified by the Department of Commerce (DoC);

(7) Maintain an independent decisional relationship between its clients, affiliates, or other organizations, so that the laboratory's capacity to render test reports objectively and without bias is not adversely affected; and

(8) Return to DoC its certificate of accreditation for possible revision or other action should it become unable to conform to any of these general and specific criteria for accreditation.

(c) *Ascertainment of Compliance.* Ordinarily, compliance with this criterion will be assessed when a complaint or other evidence, which is received by DoC, questions the accredited laboratory's compliance with this criterion.

**§ 7a.24 General criterion: Quality control system.**

(a) *Criterion G3.* The laboratory maintains a quality control system to help assure the technical integrity of its work.

(b) *Documentation of Quality Control System.* The laboratory's quality control system must include a quality control manual or a laboratory operations control manual containing written procedures and information in response to the applicable requirements of the specific criteria. The procedures and information may be explicitly contained in the manual or may be referenced so that their location in the laboratory is clearly identified. The written procedures and information must be adequate to guide a testing technician (who is deemed qualified by the National Bureau of Standards (NBS) or by an NBS contractor) in conducting the tests in accordance with the test methods for which accreditation is sought.

(c) *Availability of Quality Control Documentation.* The laboratory shall have a current copy of its quality control manual or laboratory operations control manual available in the laboratory for use by laboratory personnel and shall make the manual available for DoC review and audit.

(d) *Definitions.* For NVLAP purposes the terms "quality control manual" and "laboratory operations control manual" are understood as follows:

(1) A quality control manual consists of general guidelines for the quality control of the laboratory's method of operation; specific information is provided for portions of individual test methods whenever specifics are needed to comply with the criteria or otherwise support the laboratory's operations; and

(2) A laboratory operations control manual consists of specific procedures and information for each test method responding to the applicable requirements of the specific criteria.

**§ 7a.26 Specific criteria: Personnel requirements.**

(a) *Criterion S1.* The laboratory is staffed by personnel who are competent to perform the tests for which accreditation is sought.

(b) *Assurance of Staff Competence.* The laboratory shall assure the competency of its staff through the observation and/or examination of each relevant staff member in the performance of each test method or part thereof that each member is assigned to perform. Staff members who perform relatively simple tests at field locations with limited on-site supervision must annually pass an examination supplied by DoC. The observations at the laboratory must be conducted at intervals not exceeding one year by one or more individuals judged qualified by the person who has technical responsibility for the laboratory. In lieu of an annual observation or examination, current approval of staff members by DoC-recognized certification or licensing organizations in areas of competence encompassing these test methods is acceptable.

(c) *Description of Training Program.* The laboratory shall make available the description of its training program for assuring that new or untrained staff will be able to perform tests properly and uniformly to the requisite degree of precision and accuracy.

(d) *Personnel Records.* The laboratory shall maintain in its personnel files—

(1) A record, including dates and results, of the observation or examination of performance for each test method or part thereof for which

each staff member is assigned to perform;

- (2) Certification of competence, if any, from recognized outside agencies; and
- (3) A listing of training courses completed.

**§ 7a.28 Specific criterion: Facilities, equipment, and procedures.**

(a) *Criterion S2.* The laboratory's facilities, equipment, and procedures are appropriate for accreditation.

(b) *Description of Equipment and Facilities.* The laboratory shall maintain a list of its facilities and equipment required for each test method for which accreditation is sought, and, as applicable, a description of those facilities and equipment including—

- (1) Sufficient identification of test instruments to allow correlations with calibration records;
- (2) Schematics, drawings, diagrams or photographs of equipment and facilities for demonstrating conformance with the requirements of the test method; and
- (3) A description of environmental or sample conditioning equipment and facilities showing how compliance with the requirements of the test method is measured and maintained.

(c) *Calibration, Verification and maintenance.* The laboratory shall provide evidence of the calibration, verification, and maintenance of the facilities and equipment specified for each test method for which accreditation is sought, through the following:

- (1) A description of the procedures used in calibrating, verifying, and maintaining the test equipment and facilities, including, as applicable—
  - (i) Calibration and verification equipment or services used;
  - (ii) Reference standards and materials used;
  - (iii) Measurement assurance, collaborative reference, or other programs in which the laboratory participates;
  - (iv) Routine maintenance; and
- (2) Calibration and verification records including, as applicable—
  - (i) Equipment description or name;
  - (ii) Name of manufacturer;
  - (iii) Model, style, and serial number, or other identification;
  - (iv) Equipment variables subject to calibration and verification;
  - (v) Range of operation and range of calibration and verification;
  - (vi) Resolution of the instrument and allowable error tolerances on readings;
  - (vii) Calibration or verification schedule (intervals);
  - (viii) Date and result of last calibration or verification and date of the next calibration or verification;

(ix) Name of laboratory person or outside service providing the above calibration or verification; and

(x) Traceability to NBS or other authority as required.

(d) *Supplementary Test Method Plan.* The laboratory shall maintain a test plan supplementing each test method for which accreditation is sought which includes, as applicable, instruction for—

- (1) Equipment maintenance and verification checks;
- (2) Specimen selection, handling, and disposal;
- (3) Data collection, analysis, and reporting;
- (4) Quality control checks and audits; and
- (5) Any subcontractors performing part of the test and a description of how the laboratory assures the required precision and accuracy.

(i) *Note.* The intent of paragraph (d)(5) of this section, is to allow subcontractors to perform common repetitive tasks (such as making slides or taking pictures) which are required by certain test methods. However, only laboratories having the measuring equipment by which final test data are obtained can be accredited. If data obtained using one test method in this accreditation program are used as input data for a second test method, or if the test procedures for one test method affects the results obtained in a second test method, a laboratory seeking accreditation for the second method must also be accredited for the first method. An accredited laboratory may not present final test data to a client as data from an accredited laboratory unless the final test data actually were obtained from an accredited laboratory.

(e) *Evidence of Conformance.* The laboratory shall maintain, as applicable, documented evidence that no degradation of performance results from the use of equipment, facilities, or procedures which are not in strict conformance with each test method for which accreditation is sought.

**§ 7a.30 Specific criterion: Records of operations.**

(a) *Criterion S3.* The laboratory maintains records of its operations.

(b) *Test Reports and Related Information.* The laboratory shall maintain records of those testing activities associated with each test method for which accreditation is sought, including the following:

- (1) Test reports containing, as applicable—
  - (i) Name and address of the laboratory;
  - (ii) Pertinent dates and identifying numbers;

(iii) Name of client;

(iv) Description and identification of the specimen (including, as necessary, location of the batch, lot, or project of the sampled material from which the specimen was taken);

- (v) An appropriate title;
- (vi) Identification of the test method, procedure, or specification;
- (vii) Known deviations, additions to, or exclusions from the test method;
- (viii) Measurements, examinations, derived results, and identification of test anomalies;
- (ix) If necessary, a statement as to whether or not the test results comply with the requirements of product or project specifications;
- (x) Signature of person having technical responsibility for the test report; and
- (xi) All items required by the test method;

(2) Data generated during testing if not included in the test report, such as raw data, calculations, tables, graphs, sketches, and photographs; and

(3) Specimen control forms which document the receipt, handling, storage, shipping, and testing of specimens or a written description of the procedures and separate records that are maintained to control these operations.

(c) *Example Test Report.* The laboratory shall make available to DoC, upon request, a typical completed test report with the name of the client and source of any product deleted.

(d) *Standards and Similar Documents.* The laboratory shall have copies of applicable standards and other documents referred to or used in performing each test method for which accreditation is sought.

(e) *Quality Control Records.* The laboratory shall maintain records of its quality control checks and audits for monitoring its test work including—

- (1) Records of audit sampling of the test results; and
- (2) Records of detected errors and discrepancies and actions taken subsequent to such detection.

(f) *Complaints.* The laboratory shall maintain a file of written complaints and disposition thereof.

(g) *Retention of Records.* The laboratory shall retain records required by these general and specific criteria for a minimum of three years or for any longer period of time specified by Federal, State, or local requirements or other contractual requirements.

**PART 7b—NATIONAL VOLUNTARY  
LABORATORY ACCREDITATION  
PROGRAM: FEDERAL GOVERNMENT**

16. Section 7b.3 is amended by revising paragraphs (c), (f), and (g) to read as follows:

**§ 7b.3 Definitions.**

(c) The term "Advisory Committee" means the National Laboratory Accreditation Advisory Committee appointed by the Secretary under § 7a.6 of 15 CFR Part 7a.

(f) The term "general criteria" means those characteristics and qualifications generally expected of a laboratory which engages in the testing of products or services under consideration. See in this connection § 7a.19 of 15 CFR Part 7a.

(g) The term "specific criteria" means those characteristics of a laboratory which pertain to the technical testing functions conducted by a laboratory in meeting the requirements of the test method(s) for the product or services under consideration. See in this connection § 7a.19.

17. Section 7b.4 is amended by revising paragraph (b)(5) to read as follows:

**§ 7b.4 Request to establish a laboratory accreditation program (LAP).**

(b) \* \* \*  
(5) When deemed necessary, recommendations for amendments to the general and specific criteria referenced in § 7a.19 of 15 CFR Part 7a;

18. Section 7b.5 is revised to read as follows:

**§ 7b.5 Amendment of criteria used to accredit laboratories.**

(a) If one or more amendments are recommended under § 7b.4(b)(5), the Secretary shall decide, after consultation with the requesting Federal agency, whether to propose any amendments to the criteria referenced in § 7a.19 of 15 CFR Part 7a. If the decision is to propose one or more amendments, the Secretary shall decide upon the precise language, propose the amendment(s) by publication in the Federal Register, and make a final determination following the procedures of 5 U.S.C. 553, before the LAP is actually established.

(b) In making these decisions the Secretary shall consider the following:

(1) The needs and scope of the program of the requesting Federal agency;

(2) The needs and scope of the user population;

(3) Compatibility with the existing criteria referenced in section 7a.19; and

(4) the nature and content of other relevant public and private sector laboratory accreditation programs.

(c) No amendment to the criteria referenced in § 7a.19 will be issued unless the Secretary has determined that compliance with and implementation of the amendment is feasible, practical, and consistent with the public interest.

19. Section 7b.6 is revised to read as follows:

**§ 7b.6 Establishment and functions of a National Laboratory Accreditation Advisory Committee.**

(a) the Secretary shall establish a National Laboratory Accreditation Advisory Committee (Advisory Committee) under the provisions of § 7a.6 of 15 CFR Part 7a.

(b) This Advisory Committee will function solely in an advisory capacity pursuant to § 7a.6 (d) and (e).

**§ 7b.7 [Removed]**

20. Section 7b.7 is removed in its entirety.

21. Section 7b.8 is revised to read as follows:

**§ 7b.8 Announcement of establishment of a LAP.**

(a) After publication of the request for a LAP for a specific product under § 7b.4(c), a final notice will be published in the Federal Register announcing the formal establishment of the LAP.

(b) This notice will contain the following:

(1) The list of test methods for which accreditation is available in the particular LAP;

(2) Instructions for making application for accreditation by laboratories testing the product or service involved, including what information must be provided in the request for an application; and

(3) A description of the accreditation process and the specific proficiency testing programs which may be required for the particular product area.

(c) This notice will also require that each testing laboratory that desires to participate in this program must agree to conditions that include but are not limited to the following:

(1) Be examined and audited initially and on a continuing basis;

(2) Pay accreditation fees and charges; and

(3) Avoid reference by itself and forbid others utilizing the services of an accredited testing laboratory from referencing its accredited status under NVLAP in consumer media and in product advertising or on product labels, containers and packaging or the contents therein, or in any other way which might convey the concept of product certification by the Department of Commerce.

22. Section 7b.9 is revised to read as follows:

**§ 7b.9 Coordination with Federal agencies.**

As a means of assuring effective and meaningful cooperation, input, and participation by those Federal agencies (other than the requesting agency) that have an interest in and may be impacted by the laboratory accreditation program carried out under these procedures, the Secretary shall undertake to communicate and consult with appropriate officials within those agencies. The coordination efforts will include opportunities for representatives designated by those agencies to serve on the Advisory Committee established by the Secretary under § 7a.6 and to participate in any public workshops held by DoC (described in § 7a.6(f)).

23. Section 7b.10 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 7b.10 Establishment of fees and charges.**

(a) The Secretary, using the Working Capital Fund of the National Bureau of Standards, as authorized by section 12 of the Act of March 3, 1901, as amended (15 U.S.C. 278b), or any similar financial arrangement for this program, shall establish fees and charges for examining, assessing, and accrediting testing laboratories. The fees and charges established by the Secretary, which may be revised when the Secretary deems it appropriate to do so, shall be in amounts calculated to enable the self-sufficiency of this program.

(b) When the Secretary publishes the notice of Announcement of Establishment of a LAP referred to in § 7b.8, the Secretary shall simultaneously publish a separate notice in the Federal Register setting forth the schedule of fees that will be charged testing laboratories that request accreditation for a specific product or service area. The schedule of fees will go into effect on the day it is published.

24. Section 7b.11 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 7b.11 Participation of testing laboratories.**

(a) Each testing laboratory serving a product or service for which a notice has been published under § 7b.8 announcing the establishment of a LAP for that product or service, and desiring to be accredited under this program, will notify NVLAP of its desire by requesting an application pursuant to the provisions of the above-mentioned notice) § 7b.8(b)(1)).

(d) Upon receipt by the National Bureau of Standards of the applicant testing laboratory's written application and of the fees and charges specified in paragraph (b) of this section, the National Bureau of Standards, on behalf of the Secretary, shall arrange for by contract or shall itself conduct the examination in accordance with the examination requirements of the Secretary. In all cases where testing laboratories are examined, the National Bureau of Standards shall assure that the personnel used by the contractor or by the National Bureau of Standards, possess the necessary professional and technical qualifications to assess the laboratory in the product or service area being evaluated. If the National Bureau of Standards conducts the examination, the resultant examination report will be forwarded to the Secretary. In cases where the examination report is prepared by a contractor, the National Bureau of Standards, before making payment thereunder or forwarding the report to the Secretary, will review the report to assure that the contract terms have been fulfilled.

25. Section 7b.13 is amended by revising paragraph (d) to read as follows:

**§ 7b.13 Revocation or termination of accreditation of a testing laboratory.**

(d) A testing laboratory whose application has been rejected or whose accreditation has been denied, revoked or terminated, or which has withdrawn its application prior to being accredited, may reapply for and be accredited if it meets the applicable general and specific criteria referenced in § 7a.19, and agrees also to meet the conditions set out under § 7b.8(c) and the provisions § 7b.12.

**§ 7b.16 [Removed]**

26. Section 7b.16 is removed in its entirety.

27. Part 7b is amended by adding § 7b.19 to read as follows:

**§ 7b.19 General and specific criteria for accrediting test laboratories.**

(a) Laboratories which voluntarily request accreditation for one or more LAPs established under this Part 7b will be accredited on the basis of their conformance to the general and specific criteria as referenced in § 7a.19 and set out in §§ 7a.20 through 7a.30 of 15 CFR Part 7a.

(b) [Reserved].

**PART 7c—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM: PRIVATE SECTOR ORGANIZATIONS**

28. Section 7c.3 is amended by revising paragraphs (d), (g), and (h) to read as follows:

**§ 7c.3 Definitions.**

(d) The term "Advisory Committee" means the National Laboratory Accreditation Advisory Committee appointed by the Secretary under § 7a.6 of 15 CFR Part 7a.

(g) The term "general criteria" means those characteristics and qualifications generally expected of a laboratory which engages in the testing of products or services under consideration. See in this connection § 7a.19 of 15 CFR Part 7a.

(h) The term "specific criteria" means those characteristics of a laboratory which pertain to the technical testing functions conducted by a laboratory in meeting the requirements of the test method(s) for the product or services under consideration. See in this connection § 7a.19.

29. Section 7c.4 is amended by revising paragraph (b)(4) to read as follows:

**§ 7c.4 Request to establish a laboratory accreditation program (LAP).**

(b) . . .  
(4) When deemed necessary, recommendations for amendments to the general and specific criteria referenced in § 7a.19 of 15 CFR Part 7a;

30. Section 7c.5 is revised to read as follows:

**§ 7c.5 Amendment of criteria used to accredit laboratories.**

(a) If one or more amendments are recommended under § 7c.4(b)(4), the Secretary shall decide, after consultation with the requesting organization, whether to propose any amendments to the criteria referenced in

§ 7a.19 of 15 CFR Part 7a. If the decision is to propose one or more amendments, the Secretary shall decide upon the precise language, propose the amendment(s) by publication in the Federal Register, and make a final determination following the procedures of 5 U.S.C. 553, before the LAP is actually established.

(b) In making these decisions the Secretary shall consider the following—

(1) The needs and scope of the program of the requesting organization;

(2) The needs and scope of the user population;

(3) Compatibility with the existing criteria referenced in § 7a.19; and

(4) The nature and content of other relevant public and private sector laboratory accreditation programs.

(c) No amendment to the criteria referenced in § 7a.19 will be issued unless the Secretary has determined that compliance with and implementation of the amendment is feasible, practical, and consistent with the public interest.

31. Section 7c.6 is revised to read as follows:

**§ 7c.6 Establishment and functions of a National Laboratory Accreditation Advisory Committee.**

(a) The Secretary shall establish a National Laboratory Accreditation Advisory Committee (Advisory Committee) under the provisions of § 7a.6 of 15 CFR Part 7a.

(b) This Advisory Committee will function solely in an advisory capacity pursuant to § 7a.6 (d) and (e).

**§ 7c.7 [Removed]**

32. Section 7c.7 is removed in its entirety.

33. Section 7c.8 is revised to read as follows:

**§ 7c.8 Announcement of establishment of a LAP.**

(a) After publication of the request for a LAP for a specific product under § 7c.4(c) a final notice will be published in the Federal Register announcing the formal establishment of the LAP.

(b) This notice will contain the following:

(1) The list of test methods for which accreditation is available in the particular LAP;

(2) Instructions for making application for accreditation by laboratories testing the product or service involved, including what information must be provided in the request for an application; and

(3) A description of the accreditation process and the specific proficiency

testing programs which may be required for the particular product area.

(c) This notice will also require that each testing laboratory that desires to participate in this program must agree to conditions that include but are not limited to the following:

(1) Be examined and audited initially and on a continuing basis;

(2) Pay accreditation fees and charges; and

(3) Avoid reference by itself and forbid others utilizing the services of an accredited testing laboratory from referencing its accredited status under NVLAP in consumer media and in product advertising or on product labels, containers and packaging or the contents therein, or in any other way which might convey the concept of product certification by the Department of Commerce.

34. Section 7c.9 is revised to read as follows:

**§ 7c.9 Coordination with Federal agencies.**

(a) As a means of assuring effective and meaningful cooperation, input, and participation by those Federal agencies that have an interest in and may be impacted by the laboratory accreditation program carried out under these procedures, the Secretary shall undertake to communicate and consult with appropriate officials at policy making levels within those agencies. These coordination efforts will include opportunities for representatives designated by those agencies to serve on the Advisory Committee established by the Secretary under § 7a.6 and to participate in any public workshops held by DoC (described in § 7a.6(f)).

(b) [Reserved]

35. Section 7c.10 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 7c.10 Establishment of fees and charges.**

(a) The Secretary, using the Working Capital Fund of the National Bureau of Standards, as authorized by section 12 of the Act of March 3, 1901, as amended (15 U.S.C. 278b), or any similar financial arrangement for this program, shall establish fees and charges for examining, assessing, and accrediting testing laboratories. The fees and charges established by the Secretary, which may be revised when the Secretary deems it appropriate to do so, shall be in amounts calculated to enable the self-sufficiency of this program.

(b) When the Secretary publishes the notice of Announcement of Establishment of a LAP referred to in § 7c.8, the Secretary shall simultaneously publish a separate notice

in the Federal Register setting forth the schedule of fees that will be charged testing laboratories that request accreditation for a specific product or service area. The schedule of fees will go into effect on the day it is published.

36. Section 7c.11 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 7c.11 Participation of testing laboratories.**

(a) Each testing laboratory serving a product or service for which a notice has been published under § 7c.8 announcing the establishment of a LAP for that product or service, and desiring to be accredited under this program, will notify NVLAP of its desire by requesting an application pursuant to the provisions of the above-mentioned notice (§ 7c.8(b)(1)).

(d) Upon receipt by the National Bureau of Standards of the applicant testing laboratory's written application and of the fees and charges specified in paragraph (b) of this section, the National Bureau of Standards, on behalf of the Secretary, shall arrange for by contract or shall itself conduct the examination in accordance with the examination requirements of the Secretary. In all cases where testing laboratories are examined, the National Bureau of Standards shall assure that the personnel used by the contractor or by the National Bureau of Standards possess the necessary professional and technical qualifications to assess the laboratory in the product or service area being evaluated. If the National Bureau of Standards conducts the examination, the resultant examination report will be forwarded to the Secretary. In cases where the examination report is prepared by a contractor, the National Bureau of Standards, before making payment thereunder or forwarding the report to the Secretary, will review the report to assure that the contract terms have been fulfilled.

37. Section 7c.13 is amended by revising paragraph (d) to read as follows:

**§ 7c.13 Revocation or termination of accreditation of a testing laboratory.**

(d) A testing laboratory whose application has been rejected or whose accreditation has been denied, revoked or terminated, or which has withdrawn its application prior to being accredited, may reapply for and be accredited if it meets the applicable general and specific criteria referenced in § 7a.19, and agrees also to meet the conditions

set out under § 7c.8(c) and the provisions of § 7c.12.

38. Section 7c.14 is amended by revising paragraph (e) to read as follows:

**§ 7c.14 Cessation of accreditations.**

(e) If the Secretary ceases the accreditation of testing laboratories that serve a specific product or service as provided for in this section, the Secretary shall withdraw the accreditations previously issued to all those testing laboratories serving that product or service. Any testing laboratory whose accreditation has been withdrawn by the Secretary under this paragraph may seek to be accredited to serve a different specific product under these procedures, and may be so accredited if it meets the general and specific criteria referenced in § 7a.19 and if it agrees to meet the conditions set out under § 7c.8(c) and the provisions of § 7c.12.

**§ 7c.16 [Removed]**

39. Section 7c.16 is removed in its entirety.

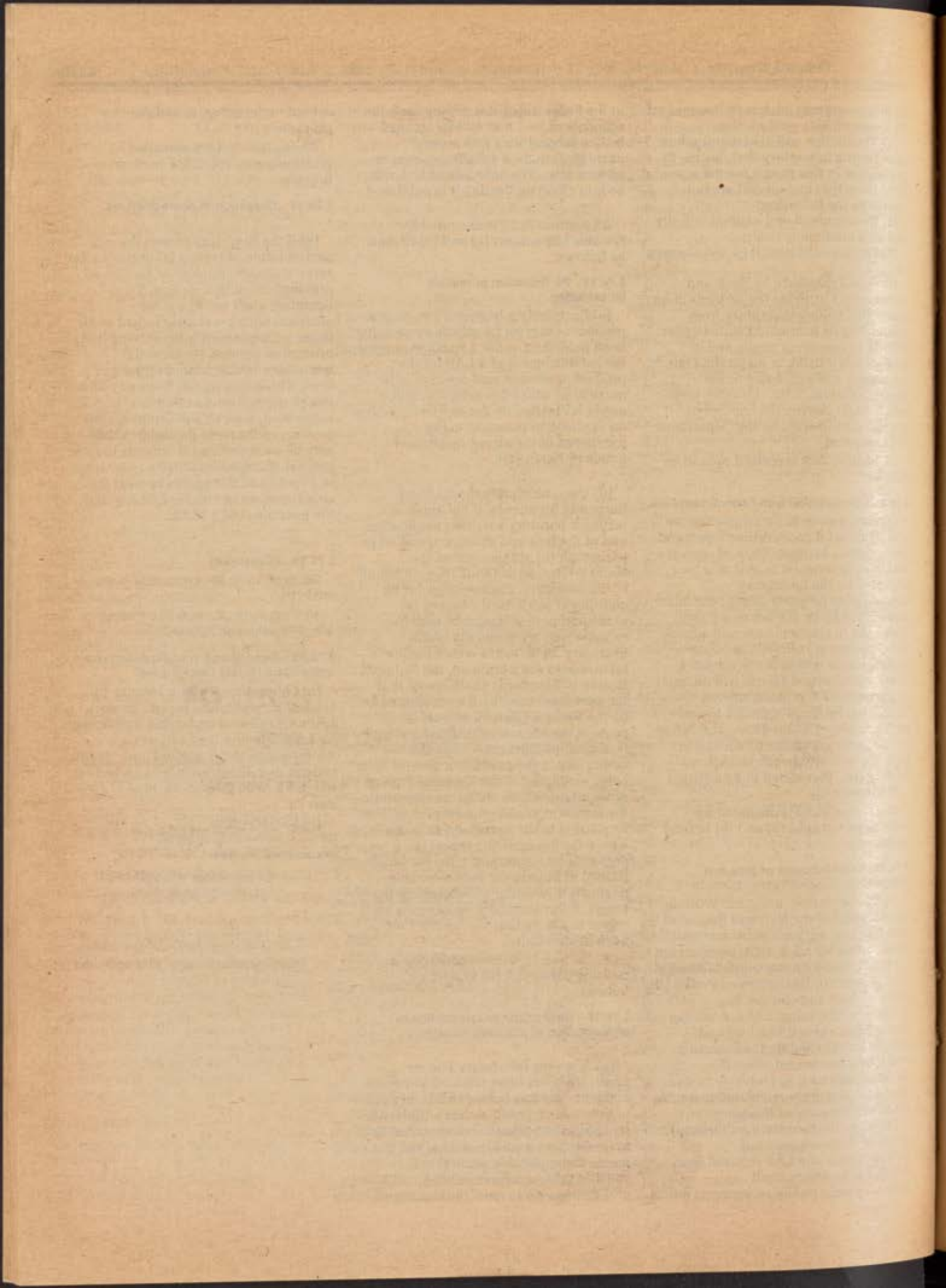
40. Part 7c is amended by adding § 7c.19 to read as follows:

**§ 7c.19 General and specific criteria for accrediting testing laboratories.**

(a) Laboratories which voluntarily request accreditation for one or more LAPs established under this Part 7c will be accredited on the basis of their conformance to the general and specific criteria as referenced in § 7a.19 and set out in §§ 7a.20 through 7a.30 of 15 CFR Part 7a.

(b) [Reserved]

[FR Doc. 81-3822 Filed 1-26-81; 8:45 am]  
BILLING CODE 3510-13-M



# **federal register**

---

Tuesday  
January 27, 1981

---

## **Part VIII**

### **Department of Agriculture**

---

#### **Food and Nutrition Service**

---

**Food Stamp Program—Emergency Food Assistance for Victims of Disasters; Emergency Rulemaking and Proposed Rule and Proposed Rule Establishing Procedures for Replacement of Lost or Stolen Food Stamp Authorizations, and Replacement of Nondelivered, Stolen or Destroyed Coupons**

## DEPARTMENT OF AGRICULTURE

## Food and Nutrition Service

## 7 CFR Part 280

[Amdt. No. 192]

## Food Stamp Program—Emergency Food Assistance for Victims of Disasters

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency rulemaking.

**SUMMARY:** This emergency final rulemaking would implement Section 5(h)(1) of the Food Stamp Act of 1977 which requires the Secretary to establish temporary emergency standards for food stamp eligibility for the duration of the emergency. The Act also directs the Secretary to promulgate such standards without regard to Section 4(c) of the Act or the procedures set forth in Section 553 of Title 5 of the United States Code.

**DATE:** This rulemaking is effective January 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** Susan D. McAndrew, Chief, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-6535.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as not significant. The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement.

Robert Greenstein, Administrator, Food and Nutrition Service, has determined that an emergency situation exists which warrants publication of this emergency final action without opportunity for public comment prior to its effective date so that, in the event a disaster situation occurs prior to finalization of the proposed disaster procedures, the Department may immediately put such procedures into effect.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest, and good cause is found for making this emergency final action effective less than 30 days after

publication of this document in the Federal Register.

Currently, State agencies are following FNS' disaster instructions derived from the Food Stamp Act of 1964. In part, this Act, as amended, authorized the Secretary to establish temporary emergency standards of eligibility without regard to income and other financial resources for project areas that had suffered the effects of disasters.

Section 5 of the Food Stamp Act of 1977 deleted the phrase "without regard to income and other financial resources," thus allowing income and resources of applicants to be considered when determining eligibility for emergency assistance. A proposed rulemaking will be published shortly incorporating this provision. The proposed rulemaking will also include other changes established by law or Congressional intent.

In the interim, this emergency rule will implement Section 5(h)(1) of the Food Stamp Act of 1977 which allows the Secretary to promulgate standards as are prescribed for individual emergencies without regard to Section 4(c) of the Food Stamp Act of 1977 or the procedures established in Section 553 of Title 5 of the United States Code.

In the event that a natural disaster occurs prior to a final rulemaking of the disaster procedures which necessitates an FNS disaster authorization, State agencies will use those procedures prescribed by the Department as necessary to establish temporary emergency standards for food stamp eligibility.

This emergency final rulemaking will be in effect upon publication and will remain in effect until the proposed disaster rulemaking is published in final format.

A new Part 280, previously reserved is being added and reads as follows:

**PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS**

Sec.

280.1 Interim disaster procedures.

**§ 280.1 Interim disaster procedures.**

The Secretary shall, after consultation with the official empowered to exercise the authority provided for by Section 302(a) of the Disaster Relief Act of 1974, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food

distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to Section 4(c) of this Act or the procedures set forth in Section 553 of Title 5 of the United States Code.

(Catalog of Federal Domestic Assistance Program No. 10.551 Food Stamps)

(Pub. L. 95-113, 91 Stat. 858, (7 U.S.C. 2011-2027) Pub. L. 93-288, 88 Stat. 143)

Dated: January 9, 1981.

Robert Greenstein,  
Administrator.

[FR Doc. 81-2649 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-30-M



## DEPARTMENT OF AGRICULTURE

## Food and Nutrition Service

## 7 CFR Part 280

[Amdt. No. 193]

## Emergency Food Assistance for Victims of Disasters

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule sets forth procedures for the issuance of temporary emergency food stamp assistance during natural disasters. The proposed rule implements section 5(h) of the Food Stamp Act of 1977, which requires the Secretary to establish temporary emergency standards for food stamp eligibility for households that are victims of a disaster which disrupts commercial channels of food distribution. The proposed rule would also replace current regulations governing implementation of section 409 of the Disaster Relief Act of 1974, which authorizes the President to distribute, through the Secretary of Agriculture, emergency food stamp allotments to low income households which are unable to purchase adequate amounts of nutritious food as a result of a disaster which has been declared a "major disaster" by the President. This rule would establish eligibility requirements, including an income/resource test, for use in all disaster situations in which emergency food stamp assistance is authorized. In accordance with the Food Stamp Act of 1977, the proposed rule would also establish a Food and Nutrition Service (FNS) Food Stamp Disaster Task Force to assist States in implementing and operating the disaster program and would require each State agency to formulate a plan of operation for providing emergency food assistance during disasters. This proposed rule should improve program integrity without creating barriers to households with legitimate need for emergency food assistance.

**DATE:** Comments must be received on or before March 30, 1981, to be assured of consideration.

**ADDRESS:** Comments should be submitted to: Alberta Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 am to 5:00 pm,

Monday through Friday) at Room 678, 500 12th Street, SW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Sue McAndrew, Chief, Program Standards Branch, Program Development Division, Food and Nutrition Service, Washington, D.C. 20250, (202) 447-6535. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available from Ms. McAndrew.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant". The Disaster Relief Act of 1974 authorizes the President to declare a "major disaster" upon request by the State or States affected by natural disasters. The Secretary of Agriculture is authorized by executive order to determine whether households residing in food stamp project areas within major disaster areas are in need of food assistance which cannot be met by the existing Food Stamp Program.

The proposal has also been reviewed with regard to the requirements of Pub. L. 96-354. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that the proposal does not have significant economic impact on a substantial number of small entities. The proposal includes State planning requirements, but does not require the submission of planning documents from local jurisdictions. It establishes eligibility standards and procedures for use in the event of issuance of emergency food stamps resulting from a natural disaster. The primary impact of these standards and procedures is on State governments and on potential individual recipients. To the extent that county or other local governments assist in emergency food stamp administration in the event of a disaster, they would be affected. However, the number of natural disasters in which emergency food stamps are issued is very small, and only a very small number of jurisdictions are affected. Even for those that are affected the economic impact should not be significant, especially since the proposal allows the State agency flexibility to use volunteers, disaster relief agencies, etc. to assist in administering the emergency food stamp program during disasters.

The Food Stamp Act of 1964 authorized the Secretary to provide for emergency coupon issuance in disasters which were not Presidentially declared.

This type of disaster declaration was to be made only in circumstances which involved the disruption, and subsequent restoration, of commercial channels of food distribution. The Act also authorized the Secretary to establish temporary emergency standards of eligibility without regard to income and other financial resources for disaster victims. These temporary standards also applied to victims of mechanical disasters; for example, situations where equipment, such as computers used for the production of authorization-to-purchase documents, was not operable.

The Food Stamp Act of 1977, Pub. L. 95-113, 91 Stat. 958, September 29, 1977, retains the provisions requiring the use of emergency standards of eligibility in any natural disaster that disrupts commercial channels of food distribution but deletes the provisions permitting such standards for victims of mechanical disasters. The House Committee Report notes that this latter provision was deleted because it did not appear to be a necessary one and would have been administratively difficult to apply (House Report No. 95-464, 95th Congress, 1st Session, p. 152). The 1977 Act also deleted the provision which required the disregard of income and other financial resources of households applying for disaster assistance. The theme of the 1977 Act and its legislative history, as it related to disasters, was that the Program must adequately meet the food needs of disaster victims but must also do a more effective job of ensuring that only needy victims are served.

Since the passage of the 1977 Act, the Department has tightened disaster food stamp operations substantially. Effective screening techniques have been used in a number of disasters, such as in Alabama and Mississippi following Hurricane Frederick in 1979 and in Grand Island, Nebraska following a tornado in 1980.

Nevertheless, there is a need for a formal amendment of the food stamp regulations governing disasters to establish and codify systematic procedures for disaster situations. These proposals build upon the Department's experience in tightening and improving disaster operations in recent years. The proposals apply both to major disasters that are Presidentially declared (under the authority of the Disaster Relief Act of 1974) and to other disasters where a disaster declaration is made under the authority of the Food Stamp Act of 1977. The proposals would, in nearly all circumstances, apply a single set of rules to both types of disaster declarations.

In reviewing these regulations, commenters should keep two basic points in mind. First, these regulations make a shift in the purpose of disaster food stamp issuance. The 1964 Act required that disaster victims be eligible for emergency food stamps without regard to income and resources. As a result, the Food Stamp Program was available as a general form of disaster aid to stricken areas. The 1977 Act deleted this requirement, and left to the Department's discretion the issue of establishing eligibility standards for disaster victims. The eligibility standards set forth in these proposals are, in some respects, more restrictive than those governing the regular Food Stamp Program. The underlying concept of this proposal is to limit the issuance of disaster food stamps to those individuals facing emergency situations.

This leads to the second key issue underlying these regulations. These proposals assume that the regular Food Stamp Program will continue to operate during the disaster. Rather than operate a large disaster Food Stamp Program which, in large part, replaces the regular Food Stamp Program and for which a significant proportion of the population in a stricken area might be eligible (as could have occurred in the past), these new rules envision a restricted disaster Food Stamp Program that operates alongside the regular Program. For example, persons who had been laid off shortly before the disaster and are eligible for the regular Food Stamp Program might, under these rules, be ineligible for disaster food stamps. Such persons would, under these proposals, still be able to apply and be processed for the regular Food Stamp Program during the disaster.

This shift in the nature of the disaster Food Stamp Program should reduce both food stamp costs and the potential for error and abuse during disasters. Fewer persons will be eligible for and receive emergency food stamps. In addition, since some new applicants will continue to apply for the regular rather than the disaster Food Stamp Program, they will be subject to more extensive verification procedures.

The proposed rule also is designed to increase advance planning for disasters at the Federal, State and local levels. Planning should produce more efficient food stamp operations during a disaster. This can result in better service for those in legitimate need and in reduced errors and management problems.

The proposal also requires the evaluation and auditing of disaster activities after disaster food stamp issuance has been completed. These provisions are designed to identify

weaknesses in Program operations so that corrective actions can prevent or minimize their occurrence in the future.

#### Implementation and Submission of State Disaster Plans

A State Disaster Plan, which would be an attachment to the State Plan of Operation, would be submitted to FNS within 120 days of publication of final rules. FNS would approve or deny the plan or request additional information within 30 days of receipt. The plan would include the identification of key contact persons involved in coordination of overall disaster relief activities at the Federal and State levels and in the principal private disaster relief agencies in the State; identification of which responsibilities will be borne by the local project area and which by State level officials in the event of a disaster; the designation of a State food stamp disaster coordinator; procedures to identify and prevent duplicate disaster food stamp issuance; and plans for post-disaster audit activity.

The purpose of this Plan is to ensure that necessary advance preparations are made. As recently issued final regulations on the State Plan of Operations make clear, the Disaster Plan would not necessarily have to be redone each year. The State agency would be required each year, as part of its State Plan submittal process, to review the existing Disaster Plan, update any parts that were no longer current, and submit any necessary updates to FNS along with a certification that all parts not updated have been reviewed and are still current. This means that much of the State agency work in designing and writing the Disaster Plan can be on a one-time basis.

The Plan would not encompass all necessary State planning activities. Other advance planning by State agencies is also needed to ensure efficient food stamp operations in the event of a disaster, but the Department does not believe it necessary for State agencies to submit material on other disaster planning activities as a formal part of the State Plan. Instead, the proposed rules require that State agencies develop procedures for such tasks as determining the geographical boundaries of the disaster area, coordinating with other agencies, and informing the public during a disaster about the disaster food stamp procedures and requirements. These procedures would be subject to review during the annual FNS review of State agency operations rather than attached to the State Plan.

#### Application Forms

The Department is developing a special application form for temporary emergency food stamp assistance during disasters. State agencies would be allowed to print State forms using the FNS-designed format or submit their own application form to FNS for approval. State-designed application forms would, at a minimum, have to include the information required by § 280.7(c)(1) in this proposed rule, which is necessary to make the eligibility determinations prescribed by this rule. In addition, State agencies would be allowed to request social security numbers (SSN), although a household could not be denied benefits solely for failure to provide an SSN. The Department would encourage those State agencies that design their own forms to design them so that they serve as applications, worksheets, and issuance documents. The Department also encourages State agencies to keep the disaster application short and simple. These forms would have to be available for use within 180 days after publication of final rules.

#### Disaster Task Force

Section 5(h) of the Food Stamp Act of 1977 directs the Secretary to establish a food stamp disaster task force to assist State agencies in implementing and operating the disaster program. The Act further provides that this disaster task force shall be available to go into a disaster area and provide direct assistance to State and local officials. In accordance with this mandate, two groups would be established to provide this assistance: An FNS National Disaster Task Force and a Regional Disaster Task Force.

The FNS National Disaster Task Force would assist the Regional Disaster Task Force in coordinating overall Food Stamp and Food Distribution Program disaster response activities and expedite approval of disaster designation requests and policy clarifications through the normal channels.

The Regional Disaster Task Force would serve as the primary coordinator for disaster activities, gathering data, evaluating the need for emergency assistance, and providing information and/or recommendations to the National Disaster Task Force.

The Department is not requiring a disaster task force at the State level because it believes States should be provided flexibility on how to structure their disaster food stamp operations. State agencies should ensure that they have appropriate organizational

arrangements to respond promptly and effectively to disasters, and may wish to consider establishing their own State Task Force.

#### Disaster Declarations

Section 5(h) of the Food Stamp Act of 1977 directs that a disaster declaration may be issued only when a disaster has caused the disruption and subsequent restoration of commercial channels of food distribution. The Disaster Relief Act of 1974 does not contain similar conditions. It authorizes the President to distribute emergency food stamps through the Secretary of Agriculture to victims of a Presidentially declared major disaster.

This proposed rule would require that three conditions be met before disaster food stamp assistance could be authorized under the Food Stamp Act of 1977. The conditions are: (1) That commercial channels of food distribution must have been disrupted; (2) that channels of food distribution must have been restored; and (3) that the normal, ongoing Food Stamp Program is unable to expeditiously handle the volume of households affected by the disaster and in need of emergency food stamp assistance.

The proposed rule requires that two of these conditions be met before disaster food stamps will be authorized in areas affected by a Presidentially declared major disaster. The two conditions are that commercial channels of food distribution must be available (otherwise food stamps would be of no use) and that the ongoing Food Stamp Program is unable to handle the increased number of households needing assistance.

Under the proposed rule, commercial channels of food distribution would not need to have been disrupted in a Presidentially declared major disaster area before the disaster assistance procedures could be used. It is conceivable that such a disaster could occur without disrupting normal channels of food distribution. However, the conditions for a food stamp disaster designation would be (except in unusual circumstances) the same for major disasters declared by the President and for other disasters where emergency food stamp issuance is authorized under the Food Stamp Act of 1977.

In the event that a more limited emergency occurs which does not meet these disaster criteria, State agencies should be able to meet the needs of disaster victims through the regular Food Stamp Program. State agencies would be encouraged in such circumstances to request disaster relief agencies that are responding to the

limited disaster to provide information on the ongoing Food Stamp Program and to refer potentially eligible households to the Program.

The Department has proposed to define a disruption in the commercial channels of food distribution to include conditions that limit households' access to food outlets as well as the closing and reopening of retailer and wholesaler concerns. Significantly curtailed business hours and impassable roads would be considered as evidence of disrupted food distribution.

Current rules are very flexible with regard to disaster authorizations. They permit authorization periods, i.e., the period of time during which disaster certification procedures are authorized for use, of one week, a half-month, three-quarters of a month and a full month. The current rules also allow disaster benefits to be issued to households in full month, three-quarter month, half month and one-quarter month increments. The proposed rules modify this approach to simplify Program administration. Under the proposed rules, separate decisions would be made regarding the length of the authorization period and the length of the benefit period. In the event of a disaster, State agencies could request an authorization period of from 3 to 30 days. The Department expects that only in unusual circumstances would more than 2 weeks be needed. State agencies could get extensions to their initially approved authorized period. In many instances, it may be desirable to request an authorization period of 2 weeks and get an extension, if necessary, since it may not be possible to accurately predict, at the onset of a disaster, how much time will be needed to process households.

The other decision State agencies and FNS would have to make is how long the benefit period should be. This decision would be limited to either a half-month or full month. This proposed change from four options to two is based on our experience that showed that the one week and three-quarter month options were rarely used and the half-month and full-month options fit nearly all situations. These latter two options are also the most feasible administratively.

The way that disaster designations would be made under the proposed rules would be for State agencies to request authorization periods of 3 to 30 days, preferably no longer than 2 weeks, and half-month or full-month benefit periods. The determination as to the length of the authorization period, which is the length of time State agencies can use disaster certification procedures, would be based

on an estimate of the time it will take to process all of the households affected by the disaster. The length of the benefit period, which is the length of time corresponding to the portion of the allotment to be provided (i.e., one half month and full month), would be based on an estimate of how long it will take households to return to their normal means of support. The authorization and benefit periods may be the same or the benefit period may be longer than the authorization period. The authorization period should not be longer than the benefit period.

Extensions of the authorization period would be made if the original period proves to be too short to process all affected households. If the extension goes beyond the original benefit period, FNS will determine whether those households that received disaster benefits during the initial authorization period can be recertified and receive them once again. In most disaster situations, however, extensions, should not be needed.

#### Determination of Household Eligibility

Given the Congressional mandate to "screen out those who have high income and resources," (H.R. Rpt. No. 95-464, 95th Cong., 1st Sess., p. 153) the Department has given careful consideration to establishing guidelines for eligibility that would limit disaster eligibility to those households in need of emergency assistance (that is, those persons affected in such a way that they could not meet their own food needs). The proposed rule established two criteria which households must meet to be eligible for disaster food stamps.

The first criterion is designed to restrict eligibility for disaster food stamp issuance to those households who were adversely affected by the disaster. Unless a household had experienced at least one of the following expenses, it would be automatically ineligible: Expenses to repair damage to its home or other property essential to the household's employment or self-employment; expenses for temporary shelter if the household's home is uninhabitable or if the household cannot reach its home; expenses for moving out of an area evacuated due to a disaster; expenses related to protecting a home or business from the effects of a disaster (such as expenses for boarding up windows in advance of hurricanes); expenses due to a disaster-related personal injury including funeral and burial expenses should a household member die as a result of a disaster; loss or inaccessibility of income due to the disaster or inaccessibility of cash resources that is expected to last

through most of the benefit period. Loss or inaccessibility of income involves a reduction, termination, or a significant delay in receipt of income, due to interruption of earnings or of other income. This could occur, for example, if a household missed work because its place of employment closed due to the disaster. Cash resources, such as money in checking and saving accounts, would be inaccessible if, among other things, the funds were in a bank or other financial institution that was closed by the disaster and was expected to remain closed during most or all of the disaster benefit period.

The second criterion is designed to screen out those households that, while they were adversely affected by the disaster, are not in sufficient need to warrant emergency food stamp issuance. The second standard is that a household is eligible for disaster food stamps assistance only if the total of its take-home pay expected to be received during the benefit period, plus available cash resources, minus its disaster-caused expenses, is less than or equal to the maximum food stamp monthly income limit (disregarding for the earned income deduction) for its household size. In computing the maximum food stamp maximum income limit, the standard deduction and the maximum shelter/child care deduction for non-elderly or non-disabled households would be added to the food stamp net income limit for the appropriate household size. The medical deduction for the elderly and disabled and unlimited shelter deduction for the elderly and disabled would not be used, as these elderly/disabled deductions do not have maximums. In addition, the earned income deduction would not be added because households' take-home pay, rather than their gross income, would be compared to this income limit. (Take-home pay rather than gross income is used in order to expedite certifications, as households are more likely to know their monthly take-home pay than their monthly gross income). FNS would supply all State agencies with a table showing the appropriate income ceiling by household size, so that State agencies would not have to perform these computations themselves.

Because this standard requires that cash resources be added to income, large numbers of households in disaster areas would be effectively screened out of the disaster program. A modest amount of available cash resources could disqualify a household. This is in keeping with the notion that the disaster food stamp program should be limited to those with emergency needs.

In connection with this income/resource test, there is a need to determine how income and resources are counted, and which expenses are allowed to be deducted. Income would be counted if it had already been received in the disaster benefit period or if it is reasonably certain to be received during the benefit period. All cash on hand and all funds in checking and savings accounts would be counted. The only exception to this provision would be those cash resources that are determined to be unavailable to the household for most of the disaster benefit period. State agencies would disregard these inaccessible resources.

Allowable disaster-related expenses would be the same expenses as those which would be used to identify a household as having been affected by a disaster. The allowable expenses would be expenses to repair damage to the household's home or other property essential to employment or self-employment; expenses for temporary shelter if the household's home is uninhabitable or the household cannot reach its home; evacuation expenses; expenses related to protecting property from disaster damage; and expenses due to a disaster-related personal injury (or death).

For an expense to be deductible, the household has to have paid or expect to pay for the expense during the disaster benefit period. Simply incurring the expense, if the household will not pay for it until after the disaster benefit period, would not render the expense deductible. In addition, if the household has received or reasonably anticipates receiving a reimbursement for part of all of the expense during the disaster benefit period, only the net expense to the household would be deductible. (If reimbursement were not anticipated until after the benefit period ended, the full amount of the expense would be deductible.)

Certification periods for persons qualifying for disaster would coincide with the disaster benefit period declared by FNS. If the disaster benefit period was a month, income over the full month period would be counted, disaster-caused expenses that are paid or expected to be paid over the *full month* would be deducted, and the food stamp *monthly* maximum income limit for the appropriate household size would constitute the applicable income/resource limit.

If the disaster benefit period were for a half-month, income over the *half-month* period would be counted, disaster expenses paid or expected to be paid over the *half-month* period would be deducted, and the income/resource

limit would be half of the food stamp monthly maximum income limit for the appropriate household size.

Regardless of whether the disaster benefit period was for a half month or a full month, the full amount of accessible cash would be counted.

The State agency would be required to ask households to provide estimates of total take-home pay, accessible cash resources, and allowable disaster caused expenses. The State agency would *not* be required to request itemization of those items, however, because of the need to minimize the length and complexity of the application process.

To summarize, a household would have to meet these two criteria to qualify for emergency food stamps during a disaster.

1. The household has been adversely affected by the disaster.
2. The total of the household's currently available income and cash resources, after deducting disaster related expenses, is less than or equal to the food stamp maximum income limit for its household size.

The household would also have to be purchasing food and preparing meals during the disaster benefit period, and would have to have resided at the time of the disaster within the geographical area authorized for disaster procedures.

The Department recognizes that these eligibility standards are the heart of this proposed rulemaking, and is especially interested in comment on this matter. In addition, the Department wishes to call attention to the fact that section 5(h) of the Food Stamp Act of 1977 permits the Secretary to establish temporary emergency standards for food stamp eligibility during a disaster without regard to the normal requirements of the Administrative Procedures Act (Sec. 553 of Title 5 of the U.S. Code). This means that if an unusual disaster situation warranted unique eligibility standards that differ from those set forth in this rulemaking, the Department could establish separate eligibility standards for that particular disaster.

#### Verification

This proposed rulemaking adopts a verification system, similar to current disaster rules, which would emphasize food need and rapid application processing. Verification of eligibility criteria, with the exception of identity and residency in the disaster area, would be waived. Verification of both identity and residency would be required and would normally be accomplished through documentary evidence provided by the household, such as, but not limited to, a driver's

license, work or school ID, voter registration card or birth certificate. Residency in the disaster area could also be verified by such means as rent receipts and utility bills. The Department recognizes that such documents can be destroyed or be unobtainable in a disaster situation. Therefore, the regulations would allow verification of residency through sources such as telephone books or city directories. This rule proposes to allow the State agency to use a collateral contact as a source of verification when the household's identity and residency cannot be verified through documentary evidence or when a collateral contact would expedite the households' certification. Finally, the Department recognizes that in some unusual situations (such as in the case of a household that arrived in the area just prior to the disaster), verification of residency may simply not be possible. If, despite the efforts of the State agency and the household, residency cannot readily be verified, the household would not be denied for this reason.

Verification of items other than identity and residency would be waived. This is necessary for several reasons. In a disaster situation, households must be served promptly (other provisions of these proposed rules mandate same day service unless this is impossible). In addition, where large numbers of households are adversely affected by a disaster, the amount of staff time the State agency can make available for each case is generally very limited, and does not allow for extensive verification. However, the application for disaster assistance would include a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act and a statement that, after the disaster is over, audits which include verification will be conducted of a sample of households (this is discussed in more detail later in this preamble). An oral explanation of the applicable penalties, and of the fact that post-disaster audits will be conducted, would be provided during the interview as well.

#### Processing Standards

Households applying for disaster assistance would be provided same day service unless restrictions such as curfews make it impossible for the State agency to do so. In these situations, eligible households would be provided an opportunity to participate no later than the day following the date of application. These standards are designed to ensure prompt service to households in immediate need due to the disaster.

#### Fair Hearings

The question of fair hearings poses a troublesome issue. Normal fair hearing processing standards do not afford much relief to a disaster victim aggrieved by a State agency determination to deny it disaster food stamp assistance. At the same time, however, State agency staff are frequently strained to their limits during a disaster, and requirements for expedited fair hearings would not be administratively feasible.

Therefore, these rules propose that an aggrieved household be able to receive an immediate supervisory review of the determination. Households would still have the right to fair hearings in addition to the supervisory reviews. Requirements for fair hearing processing standards would not be altered for disaster applicants wishing a fair hearing.

#### Current Food Stamp Program Participants

Households previously certified under the ongoing Food Stamp Program may be adversely affected by a disaster. These households could suffer a loss of income, have their homes damaged, or have members injured, just like other households. To automatically deny them emergency food stamp assistance during a disaster would be inequitable. They consequently need to be able to apply for disaster food stamp assistance on the same basis as other households.

Under these rules, those households that participate in the regular Food Stamp Program, and who meet the same disaster eligibility criteria that all other households applying for disaster food stamps must satisfy, would be eligible for disaster food stamp assistance. Those households participating in the regular Food Stamp Program that do not meet the disaster eligibility criteria (e.g., food stamp recipients who are not adversely affected by the disaster) would be ineligible for disaster assistance.

For those households participating in the regular Food Stamp Program that also qualify for disaster assistance, a difficult matter arises. It would be desirable to subtract the benefits such households have received under the regular Food Stamp Program from the full disaster allotments they would otherwise receive for the same time period. However, in a disaster situation this could prove extremely difficult administratively, and could be highly subject to error. Regular food stamp certification records may not be readily accessible to disaster certification staff, and there may not be the necessary staff to match these records. Moreover, some

households may not have received their regular ATP or coupon allotment due to the disaster. Therefore, these regulations propose that households file a statement with the State agency indicating whether the household currently receives food stamp benefits and, if so, the amount of those benefits. This statement may be verified by the State agency prior to issuance of the allotment.

These regulations propose that when applying for a disaster declaration from FNS, State agencies would indicate whether or not it will be possible for them to "factor out" regular food stamp benefits for food stamp households that also qualify for disaster assistance. The State agency would be permitted, with FNS approval, to forego efforts to factor out regular food stamp benefits if this were determined to be the only practicable administrative alternative.

#### Transition to the Regular Program

Some households that received disaster benefits may subsequently apply for and be determined eligible for the regular Food Stamp Program. In such cases, the disaster certification period and the certification period under the regular Food Stamp Program could overlap. For example, a household could be certified for disaster food stamps from December 10 to January 10, while being certified for the regular program effective January 1. In this circumstance, there would be a 10-day period that is covered by both programs.

While the Department recognizes (as explained above) the potential administrative difficulties in attempting to "factor out" regular food stamp allotments as part of the disaster certification process, eliminating overlapping benefits for new applicants in the regular Food Stamp Program should be feasible. Accordingly, these rules propose that if a household receiving disaster food stamp benefits is subsequently determined eligible as a new participant in the regular Food Stamp Program, and if the certification periods overlap, then the portion of the disaster benefits that was provided for the overlapping period would be subtracted from the first normal monthly issuance under the regular program. For example, in the case cited above of the household certified for disaster assistance from December 10 to January 10 and also certified for the regular Food Stamp Program effective January 1, one-third of the disaster benefits would be subtracted from the regular January food stamp issuance. The Department is especially interested in comments on any administrative issues associated with this requirement.

## Accountability

The proposed rule would mandate a post-disaster review of disaster certification activities. This would be accomplished by having the State agency select and review a sample of cases that had been certified for disaster issuance. FNS would determine the number of cases to be reviewed for each disaster. For cases in the sample, the review would: Examine the case data and all information on the application; determine the household's eligibility for disaster assistance; and ascertain whether any errors were made. The State agency would have the option of performing these reviews through its Management Evaluation or Quality Control staff, or other State agency staff qualified to conduct these reviews.

The data obtained from these post-disaster reviews would be used to formulate and implement corrective action, if warranted, so that disaster procedures are made more effective and efficient.

In addition, the fact that these audits would be conducted would be publicized by the State agency during disaster operations as a deterrent to abuse. Households would also be notified during the disaster certification interview that these audits would be conducted and that households would be held liable for any overissuances discovered in the course of post-disaster audit activities. In recognition of the fact that some disaster operations may be small and may not justify a post-disaster audit (especially if FNS has knowledge that disaster operations were relatively problem-free), FNS would have the authority to waive the requirement for a post-disaster audit in individual circumstances. Use of this authority by FNS would be limited to small scale disasters where FNS did not believe that an audit would be cost effective.

Other proposed measures to tighten accountability include a requirement that State agencies establish controls to detect and prevent duplicate food stamp disaster issuances, and a requirement that disaster food stamp recipients be issued ID cards with a disaster designation on the card. The ID cards would be used to identify recipients in retail stores and at food stamp issuance points, and would be distinguishable from the ID cards issued under the ongoing Food Stamp Program so that excessive numbers of ID cards would not be in use well after the disaster was past.

For the reason set forth in the preamble, it is proposed that Part 280 of 7 CFR be amended as follows:

1. Part 280, as added elsewhere in this issue, would be revised to read as follows:

### PART 280—EMERGENCY FOOD STAMP ASSISTANCE FOR VICTIMS OF DISASTERS

- Sec.
- 280.1 General purpose.
  - 280.2 Delegation for Administration.
  - 280.3 FNS disaster planning.
  - 280.4 State agency disaster planning.
  - 280.5 Disaster declaration procedures.
  - 280.6 Eligibility for emergency food stamp assistance during disasters.
  - 280.7 Application processing.
  - 280.8 Miscellaneous provisions relating to household eligibility and benefit levels.
  - 280.9 Issuance of emergency food coupons.
  - 280.10 Monitoring post-disaster reviews.

Authority: Pub. L. 95-113, 91 Stat. 958, [7 U.S.C. 2011-2027] Pub. L. 93-288, 88 Stat. 143.

#### § 280.1 General purpose.

This Part implements Section 409 of the Disaster Relief Act of 1974 and the temporary emergency provisions of the Food Stamp Act of 1977 in areas where the Food Stamp Program is in operation. Under the Disaster Relief Act, the President is authorized to declare a "major disaster" when requested to do so by the State or States involved in natural disasters. The Secretary of Agriculture is also authorized to independently evaluate these Presidentially declared disasters, when requested to do so by the State or States involved, to determine if they should also be declared disasters for food stamp purposes, authorizing distribution of emergency food stamps to households who are unable to purchase adequate amounts of food as a result of the disaster. The Secretary of Agriculture also has the authority under the Food Stamp Act of 1977 to authorize emergency food assistance if the affected area has not been declared a major disaster by the President. The Secretary of Agriculture can establish temporary emergency standards of eligibility for the duration of the emergency for victims of a disaster which disrupts commercial channels of food distribution if the households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. In areas where the Food Stamp Program is not in operation, emergency food assistance need in a major disaster will be met as provided in regulations governing the Food Distribution Program, Part 250.

#### § 280.2 Delegation for Administration.

(a) *Delegation to FNS.* By Executive Order 11795, the authority provided the

President under the Disaster Relief Act of 1974 to determine the need for emergency food stamp assistance has been delegated to the Secretary of Agriculture. In addition, the Food Stamp Act of 1977 delegates to the Secretary the authority to establish temporary emergency eligibility standards to use during disasters. Within the Department, such authority is delegated to FNS which shall act on behalf of the Department in the administration of Section 409 of the Disaster Relief Act of 1974 and the temporary emergency provision of the Food Stamp Act of 1977. Except as provided in this Part, the regulations and procedures governing the administration of the Program shall remain effective throughout the period during which temporary emergency food assistance is being made available.

(b) *Delegation to State agencies.* The State agency shall be responsible for the administration of the temporary emergency provisions within the State, as authorized by FNS, including certification of households, issuance of emergency food assistance, control and accountability of coupons, conducting evaluations of disaster operations, and submitting accurate and timely reports of emergency food assistance issuance. Further, the State agency is responsible for developing and maintaining a plan of operation for disaster situations, subject to the standards in § 280.4.

#### § 280.3 FNS disaster planning.

The Food Stamp Act of 1977 directs the Secretary to establish a food stamp disaster task force to assist States in implementing and operating the disaster program. The disaster task force shall be available to go into a disaster area and provide direct assistance to State and local officials.

(a) *National Disaster Task Force.* The FNS National Disaster Task Force shall assist the Regional Disaster Task Force in coordinating overall Food Stamp and Food Distribution Program disaster response activities and expediting approval of disaster designation requests and policy clarifications through the normal channels. FNS Regional offices will provide guidance to and coordinate with Federal and State disaster agencies directly involved in disaster situations. Contact shall be maintained between the National Office of FNS and the National Office of the Federal Emergency Management Agency (FEMA) and the Regional Offices of FEMA and the Regional Offices of FNS. The contact should include apprising FEMA of State agency requests for temporary emergency food stamp assistance, FNS disaster designations, the number of households

assisted, and the food stamp dollar value provided.

(b) *Regional Task Force.* Each Regional Office of FNS shall establish a disaster task force. The Regional Disaster Task Force shall coordinate disaster activities at the State and local level, gather data, evaluate the need for emergency assistance, and provide information and/or recommendations to the National Disaster Task Force. It shall be responsible for: transmitting, with evaluation and request for concurrence, requests for designation of disasters to the National Disaster Task Force; mobilizing field and Regional assistance as needed; assuring accurate reports and monitoring of State agency activities; identifying operational problems and supplying needs; transmitting, with recommendations, requests for extension or close-out of disaster activities; maintaining State contacts and FEMA contacts; maintaining Regional disaster response plans; and working with the National Disaster Task Force on needed policy changes.

#### § 280.4 State agency disaster planning.

(a) *Coordination and Liaison.* The State agency shall establish liaison with the individual in the Governor's Office responsible for disaster assistance coordination and with the corresponding individuals in the Federal Emergency Management Agency, the Department of Housing and Urban Development, Civil Defense, the American National Red Cross, the Salvation Army, and other disaster agencies. These offices can alert the State agency to potential disasters, provide assessment of destruction and the number of victims and their needs, and provide other assistance during disasters. The State agency shall request those disaster assistance agencies that have contact with households potentially eligible for emergency food stamp assistance during disasters to provide information on disaster eligibility standards and refer these households to the disaster food stamp program. If the disaster is limited in nature and does not meet the criteria for disaster designation by FNS, the State agency shall request disaster relief agencies that are providing assistance to affected households to provide information on, and refer potentially eligible households to, the regular Food Stamp Program.

(b) *Disaster Plan.* The State agency shall prepare and submit to the FNS Regional Office for approval, a Disaster Plan which shall be an attachment to the Plan of Operation as provided in § 272.2. The plan shall include:

(1) The identification of Federal and State government officials involved in coordination of disaster relief activities in the State who will function as key contact persons during a disaster, as well as the identification of the principal private disaster relief agencies in the State;

(2) Identification of local project area and State agency responsibilities in the event of a disaster;

(3) The designation of a State agency Disaster Coordinator and alternate;

(4) Procedures to prevent and identify duplicate food stamp issuance during a disaster;

(5) Procedures to conduct post-disaster review activity; and

(6) A certification that the State agency has developed the procedures or plans required by paragraph (c) of this section.

(c) *Other planning activities.* The State agency shall undertake further planning measures to prepare for a possible disaster. The State agency shall develop the following procedures or plans, which shall be subject to review during the annual FNS review of State agency administration and operations as prescribed under § 275.3(a):

(1) Procedures for promptly assessing the geographical limits of the areas in need of disaster food stamp assistance;

(2) Procedures for coordinating with Federal and State disaster relief agencies, local government officials, and private disaster relief organizations;

(3) Procedures for instructing caseworkers in implementing and operating the disaster Food Stamp Program;

(4) Procedures for informing the public during a disaster about the disaster procedures, including how to apply for benefits, household responsibilities, and post-disaster reviews; and

(5) Procedures for issuing food stamps during a disaster.

(d) *Instructions.* The State agency shall issue instructions and provide training to project area offices on the handling of disaster assistance operations to ensure prior understanding of the disaster procedures set forth in this Part and prompt action upon issuance of a disaster declaration. If it is determined that the regular Food Stamp Program can meet the food needs of households affected by a disaster, precluding an emergency disaster declaration by FNS, then applicant households affected by the disaster should be handled in accordance with the procedures found in Parts 273 and 274 of the Food Stamp Program Regulations.

#### § 280.5 Disaster declaration procedures.

(a) *General Authority.* FNS shall determine the need for temporary food assistance for households which are victims of a disaster such as a storm, fire, flood, or other catastrophe when the conditions are severe enough to have both disrupted the commercial channels of food distribution, as defined in paragraph (b) of this section, and have affected a sufficient number of households such that the regular Food Stamp Program cannot respond to their temporary food needs (except that where emergency food stamp assistance is being provided to victims of a major disaster as declared by the President under the Disaster Relief Act of 1974, commercial channels of food distribution need not have been disrupted). Prior to a disaster determination, commercial channels of food distribution must be restored as defined in paragraph (b) of this section. The area authorized by FNS for emergency food coupon issuance may or may not have boundaries congruent with areas designated as a major disaster by the President or with food stamp project areas.

(b) *Commercial Channels of Food Distribution—(1) Disruption.* Any of the following conditions shall be considered a disruption of commercial channels of food distribution for disaster declaration purposes provided that the disaster has caused one or more of such conditions:

(i) Severely hampered community transportation to retail and wholesale food outlets;

(ii) Closing of retail and wholesale food outlets;

(iii) Significantly hampered delivery of commodities to food outlets;

(iv) Significant shortening of normal operating hours of food outlets which significantly restricts households' normal opportunities to purchase food supplies;

(v) Unusually heavy demand on food outlets to the extent that the normal opportunity to purchase food is significantly hampered due to households replacing food supplies damaged or destroyed by the disaster; or

(vi) Power failure which significantly restricts the operation of food outlets.

(2) *Restoration.* Commercial channels of food distribution shall be considered restored when conditions or operations have improved to the extent that households have reasonable access to food outlets.

(c) *Disaster Designation.* Conditions under which a sufficient number of households are affected so as to permit a disaster designation include, but are

not limited to, one or more of the following:

(1) Damage has been caused of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act of 1974;

(2) Federal emergency assistance is needed to supplement State and local efforts to save lives and protect property, public health, and safety;

(3) Alternative certification and/or issuance procedures, physical facilities, and/or sites are needed to provide service on a mass scale that is beyond the capability of normal certification and issuance procedures, physical facilities, and/or sites; or

(4) Additional certification and/or issuance staff are needed to timely handle the volume of applicants.

(d) *Application for FNS Authorization to Conduct Emergency Operations.*

When all or part of a food stamp project area, as defined in 7 CFR 271.2, has been struck by a disaster, there has been a disruption and restoration of commercial channels of food distribution (except that in the event of a Presidentially declared major disaster, commercial channels of food distribution need not have been disrupted), and the ongoing Food Stamp Program cannot respond to the temporary food needs due to the number of affected households, the State agency may apply to FNS for authorization to implement temporary emergency food stamp assistance procedures. This application shall be made as soon as possible, and may be made informally, by telephone or otherwise, to the Regional Disaster Task Force as soon as the need has been established.

However, a written application with substantiating facts must be submitted to FNS as soon after the informal application as possible. This application must include the following items:

(1) The date the disaster began;

(2) A list of the project areas or a description of the geographical limits of parts of project areas in need of assistance;

(3) A determination that distribution of federally donated commodities is or is not necessary in any part of the disaster area;

(4) A determination, with substantiation, that commercial channels of food distribution have been disrupted and restored (except that if the area has been declared a major disaster by the President, only substantiation that commercial channels of food distribution are available need be provided);

(5) A determination, with substantiation, that households residing within the affected parts of a project

area or areas are in need of emergency food stamp assistance;

(6) A determination, with substantiation, that the food needs of these households cannot be met by the ongoing Food Stamp Program;

(7) An estimate of the numbers of eligible households in need of assistance;

(8) An assessment of the availability and accessibility of food stamp certification and issuance sites in the affected area;

(9) A determination that temporary certification and/or issuance arrangement are or are not necessary, and a description of any such proposed arrangements;

(10) An assessment of the availability and accessibility of FNS authorized food outlets in the affected area;

(11) An estimate of how long it will take to accept and process applications from the victims of the disaster (i.e., the estimated length of the authorization period);

(12) A recommendation of how long the benefit period should be, either a half-month or a full month;

(13) Whether or not the State agency plans to reduce disaster food stamp allotments issued to households certified under the regular food stamp program by the amount of the household's regular monthly food stamp allotment, including a description of how the State agency plans to accomplish this or a justification of why it is not administratively practicable;

(14) Information on the use of a disaster relief agency, if any, with which the State agency wants to cooperate in administering emergency food stamp assistance. A disaster relief agency is a public or private agency designated by the State agency and authorized by FNS to perform specified functions in connection with certification for and distribution of emergency food stamps during a disaster. The State agency must specify the functions which it intends to delegate to the disaster relief agency, and the specific geographical areas in which such functions will be performed by the agency; and

(15) If more than one State agency, including an Indian tribal organization administering the Food Stamp Program, have responsibility over the affected disaster area, separate applications for a disaster authorization must be submitted by each agency. However, the State agencies involved should cooperate closely to minimize the possibility of duplicate issuances.

(e) *FNS Authorization—(1) Approval.* If the State agency application for a disaster designation is approved, FNS will authorize the State agency to use

disaster certification and issuance procedures set forth in this Part, specifying the project areas, or parts of project areas, where such procedures are authorized. This authorization will be made in person or by telephone and will be followed by written confirmation.

(2) *Denial.* If the application is denied by FNS, FNS will notify the State agency immediately in person or by telephone, confirming this in writing. The State agency may request FNS to review the decision if additional information is available to substantiate the request for authorization.

(3) *Temporary Certification and Issuance Arrangements.* FNS approval is required of the temporary certification and issuance arrangements, if any, proposed by the State agency in applying for a disaster designation. If there is a need for the assistance of a disaster relief agency in providing temporary food assistance during a disaster, FNS will authorize the disaster relief agency designated by the State agency, specifying the functions which it may perform in connection with certification for and distribution of emergency food stamps.

(4) *Period of Authorization.* (i) FNS will specify the benefit period based on an evaluation of the period requested by the State agency and on the circumstances of the particular disaster. This period shall be for either a half month or one month. Authorization for an initial benefit period shall not exceed one month.

(ii) FNS shall authorize a period of from 3 to 30 days needed by the State agency for processing disaster applications. This period may be of shorter duration than the benefit period defined in paragraph (e)(4)(i) of this section, but it may not exceed the benefit period.

(iii) The State agency may apply to FNS for an extension of either or both of these two periods. Such an extension may be authorized if FNS determines that emergency food stamp assistance is necessary beyond the original period or that additional time is required by the State agency to process disaster applications. This request for an extension may be made informally, by telephone or otherwise, with the Regional Disaster Task Force as soon as the need has been established. However, a written request with substantiating facts for an extension must be submitted to FNS as soon as possible after the informal request for an extension has been submitted.

(f) *Liaison.* In the event of a disaster, whether victims are aided through the ongoing Food Stamp Program or disaster



procedures, State agency liaison with the Federal Emergency Management Agency (FEMA) and disaster assistance agencies is essential to ensure the prompt distribution of food stamps to all eligible disaster victims. If the affected area is declared a major disaster by the President, the State agency shall cooperate with the Federal Coordinating Officer (FCO) of FEMA and the State Coordinating Officer. The FCO shall be contacted by FNS before a determination of the need for temporary emergency food stamp assistance is made in order to coordinate effectively regarding the designation of an area as in need of emergency food stamp assistance and the establishment of food stamp certification and issuance points. Initial planning should include, to the maximum extent practicable, the location of certification and/or issuance services at any FEMA one-step centers that are established.

**§ 200.6 Eligibility for emergency food stamp assistance during disasters.**

(a) To be eligible for emergency food stamp assistance during a disaster, a household must meet all of the following criteria:

(1) At the time the disaster struck, the household shall have been residing within the geographical area authorized for disaster procedures. Such a household may be certified for disaster issuance even though it presently is occupying temporary accommodations outside of the disaster area (although it would need to come to the certification site to be certified for disaster food stamp assistance).

(2) The household will purchase food and prepare meals during the disaster benefit period. A household residing in a temporary shelter which is providing all its meals shall be ineligible.

(3) The household has experienced at least one of the following adverse effects of the disaster: loss or inaccessibility of income; inaccessibility of liquid resources; or disaster related expenses.

(i) Loss or inaccessibility of income involves a reduction or termination of income or a significant delay in receipt of income. This could occur, for example, if a disaster has caused a place of employment to close or reduce its work days, if pay checks or other payments are lost or destroyed or if there is a significant delay in the issuance of paychecks or other payments. It could also occur if the work location is inaccessible due to the disaster.

(ii) Inaccessibility of liquid resources includes situations in which the financial institutions in which the

household has its resources are expected to be closed due to the disaster for most of the disaster benefit period, or the household is otherwise unable to reach its cash resources and is not expected to be able to reach its resources for most of the disaster benefit period.

(iii) Disaster related expenses shall include only those circumstances where the household has paid or is expected to pay during the disaster benefit period for one of the following expenses (and the household does not expect to receive full reimbursement for the entire expense during the disaster benefit period): expenses to repair damage to the household's home or other property essential to the employment or self-employment of a household member; expenses for temporary shelter if the household's home is uninhabitable or the household cannot reach its home; expenses for moving out of an area evacuated due to a disaster; expenses related to protecting property from disaster damage; medical expenses for disaster-related injury to a person who was a household member at the time of the disaster (including funeral and burial expenses in the event of death). Other expenses shall not be considered.

(4) The household's level of take-home pay for the disaster benefit period, when added to its cash resources (cash on hand and accessible funds in checking and savings accounts), and when disaster-related expenses are deducted from this total, is less than or equal to the food stamp maximum income limit (disregarding the earned income deduction) for its household size. The maximum income limit shall be computed by increasing the food stamp net income limit for the appropriate household size, as prescribed by § 273.9(a), by the standard deduction and the maximum shelter/dependent care deduction, for households that do not contain an elderly or disabled member. (The medical deduction for elderly and disabled households, the earned income deduction, and the unlimited shelter/dependent care deduction for elderly and disabled households shall not be used in computing the maximum gross income limit.) FNS shall supply all State agencies with tables showing the maximum gross income limits by household size.

(i) Take-home pay includes the wages a household actually receives after taxes and other payroll withholding is taken out, the assistance payments or other unearned income a household receives, and self-employment income earned after personal income and social

security taxes as well as costs of producing the self-employment income are subtracted.

(ii) Income shall be counted if it has already been received in the benefit period, or if it is reasonably certain to be received during the disaster benefit period.

(iii) All cash resources (cash on hand and all funds in savings and checking accounts) shall be counted unless the State agency determines that such funds will be inaccessible to the household for most of the disaster benefit period.

(iv) Allowable disaster-related expenses are expenses to repair damage to the household's home or other property essential to the employment or self-employment of a household member; expenses for temporary shelter if the household's home is uninhabitable or the household cannot reach its home; expenses from moving out of an area evacuated due to a disaster; expenses related to protecting property from disaster damage; and, expenses due to a disaster-related personal injury (including funeral and burial expenses in the event of a death caused by the disaster). These expenses are identical to the expenses which may be used to satisfy subparagraph (3) of this paragraph.

(v) For an expense to be deductible, the household must have paid or expect to pay for the expense during the disaster benefit period. Incurring the expense does not render it deductible if the household will not pay for it until after the disaster benefit period is over. If the household has received or is reasonably certain to receive a reimbursement for all or part of the expense during the disaster benefit period, then only the net expense to the household shall be deductible. If reimbursement is expected but it is not reasonably certain that it will be provided during the disaster benefit period, then the full amount of the expense shall be deductible.

(vi) Certification periods shall coincide with the disaster benefit period. If the benefit period is one month, then income over this full month period shall be counted, disaster-related expenses that are paid or expected to be paid over this full month period shall be deducted, and the monthly food stamp maximum income limit for the appropriate household size shall equal the disaster eligibility limit. If the disaster benefit period is for one half month, income over the half-month period shall be counted, disaster-related expenses paid or expected to be paid over this period shall be deducted, and the disaster eligibility limit shall be one half of the monthly food stamp

maximum income limit. For example, if FNS declares the disaster benefit period to be from the 3rd of November to the 20th of November, and a household applies for disaster assistance on the 10th of November, the household's certification period shall be from November 3rd to 20th and its circumstances over this period shall be considered. The full amount of cash resources shall be counted regardless of the length of the disaster benefit period.

(vii) Applicant households must provide estimates of total take-home pay, cash resources, and allowable disaster-related expenses. The State agency is not required to request itemization of individual expenses, or of different sources of income or resources.

(b) FNS may, in certain disaster situations where circumstances warrant, establish eligibility standards that differ from those set forth in paragraph (a) of this section. These standards may be established without regard to Section 4(c) of the Food Stamp Act of 1977 or Section 553 of Title 5 of the United States Code.

(c) The regular Program shall continue to operate during the disaster benefit period and shall continue to process applications and make eligibility determinations in the normal manner in accordance with Parts 273 and 274 of the Food Stamp Program Regulations. If an applicant household does not meet the eligibility standards described in paragraph (a) of this section, the household shall be informed of the potential availability of benefits under the regular Program.

#### § 280.7 Application processing.

(a) *Certifying Agency.* The State agency shall determine the eligibility of each applicant household for emergency food stamp assistance during a disaster. State agency certification personnel, as well as volunteers and other State agency personnel designated by the State agency, may determine eligibility of affected households. A disaster relief agency may also determine the eligibility of applicant households. Any such disaster relief agency must be designated by the State agency and approved by FNS. The State agency should be flexible in setting up certification and issuance points and is encouraged to use the disaster relief centers established by the Federal Emergency Management Agency to the greatest extent possible. Other sites may be used, including regular certification and issuance offices, if accessible to the affected population. Alternate issuance sites must provide adequate security for the storage and issuance of coupons.

(b) *General standards.* (1) To apply for food stamps under this part, a household shall complete and submit a short form application, be interviewed, and provide limited verification as specified in paragraph (g) of this section. The State agency may use group sessions to initially screen applicant households under the eligibility criteria referenced in § 280.6, explain household rights and responsibilities, and explain how to complete an application.

(2) The State agency shall act promptly on all applications. The State agency shall provide eligible households that complete the emergency assistance application process an opportunity to obtain benefits the same day unless restrictions such as curfews make it impossible for the State agency to meet this standard. In these situations, households determined eligible shall be provided an opportunity to obtain benefits no later than the day following the date the application was filed.

(c) *Application Form for Emergency Assistance.* (1) State agencies may either use an application form designed by FNS or their own forms (with prior FNS approval). The application for temporary emergency assistance shall, at a minimum, include:

(i) The name of the head of the household and the members of the household, and the permanent and temporary address of the household;

(ii) The total take-home pay of all household members which has been received in the disaster benefit period or which, for households whose income flow has not been significantly interrupted by the disaster, is reasonably certain to be received during the benefit period;

(iii) A statement as to whether or not the household has experienced at least one of the following: expenses to repair damage to its home or other property essential to the household's employment or self-employment; expenses due to a disaster-related personal injury or death; expenses for temporary shelter if the household's house is uninhabitable or the household cannot reach its home; expenses from moving out of an area evacuated due to a disaster, expenses in protecting property from disaster damage; loss or inaccessibility of income; or inaccessibility of cash resources that is expected to continue for most of the disaster benefit period;

(iv) A statement as to whether or not the household purchases and prepares its own meals;

(v) A statement as to whether or not the household's identity and residency can be verified;

(vi) The total actual or estimated disaster-related expenses, provided the

expense has been paid or is expected to be paid during the disaster benefit period and is not covered by a reimbursement which has been received or is expected to be received during the disaster benefit period;

(vii) The total amount of cash resources (cash on hand and funds in checking and savings accounts);

(viii) A statement as to whether the household is currently receiving benefits under the Food Stamp Program and, if so, the monthly amount of such benefits.

(ix) A description in understandable terms and in prominent and boldface lettering of the civil and criminal provisions and penalties for violations of the Food Stamp Act, including information concerning post-disaster reviews which will determine the correctness of disaster certifications;

(x) The signature of a responsible member of the household or authorized representative attesting to the fact that the information on the application form is correct and that the information may be verified further in a post-disaster review. If a person wishes to act as an authorized representative, he or she shall be designated in writing by the head of household, spouse, or another responsible member of the household to act on behalf of the household in making application for emergency assistance or in obtaining or using food stamps; and

(xi) An authorization section for State agency use showing the disposition of the application. If approved, the application shall indicate the amount of the allotment to be issued.

(2) The State agency shall ensure that either a supply of application forms or a copy suitable for duplication is available in each project area at all times.

(d) *Filing an Application.* To file an application for emergency food stamp assistance, a household must submit a completed form to a certification site in person or through an authorized representative. The State agency shall document the date the application was received. In order to be processed under disaster procedures, the household must file the application during the period in which the State agency has been authorized by FNS to accept applications for disaster food stamp assistance. Households wishing to apply outside of this period shall be processed according to the procedures in Parts 273 and 274.

(e) *Household Cooperation.* To determine eligibility, the application must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified as required in paragraph (g) of this section. If the

household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. Refusal to cooperate shall be as defined in § 273.2(d).

(f) *Interviews.* (1) All applicants shall have interviews. The State agency is encouraged to use screening techniques prior to the interview to identify those households which do not meet required eligibility criteria such as having been adversely affected by the disaster. The interview shall be conducted as an official discussion of household circumstances. However, it shall be designed to quickly process the application and not impede disaster operations. The interview may be conducted by State agency certification workers, as well as by volunteers, and other non-State agency personnel (such as representatives of an authorized disaster relief agency) designated by the State agency. The individual interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative. The household may be accompanied to the interview by anyone of its choice. The interviewer shall review the information that appears on the application and resolve unclear or incomplete information with the household.

(2) The interviewer shall advise the household either orally or in writing of the disposition of its application, its rights and responsibilities, when its certification period for emergency assistance ends, and of the ongoing Food Stamp Program. In addition, the interviewer shall orally advise the household of the civil and criminal provisions and penalties for violations of the Food Stamp Act and of the fact that the household may be subject to a post-disaster review. If the household also wishes to file an application for the ongoing Program, the interviewer shall advise the household either orally or in writing of the address and telephone number of the appropriate office. The State agency shall inform each household certified as eligible for emergency food stamps of the proper use of food stamps.

(g) *Verification.* To expedite the certification for emergency assistance, the State agency shall waive the verification required by § 273.2(f) and use the procedures specified in this paragraph. The applicant's identity and residence at the time of the disaster shall be verified. Examples of acceptable verification which the household may provide include, but are not limited to, a driver's license, work or school ID, voter registration card or

birth certificate. In addition, residence in the disaster area may be verified by rent receipts and utility bills. Since these documents can be destroyed or inaccessible during a disaster, residency may also be verified, when necessary, through sources such as telephone books or city directories. The State agency is encouraged to utilize maps and transparent overlays with disaster boundaries marked to determine if a household's residence falls within the prescribed boundaries. The State agency may use a collateral contact as a source of verification if the household's identity and residency cannot be verified through documentary evidence or if the use of a collateral contact would expedite the household's certification. In some unusual situations (such as in the case of a household that arrived in the area just prior to the disaster), verification of residency may not be possible. If in such situations residency cannot readily be verified despite the efforts of the State agency and the household, the household shall not be denied for this reason.

#### § 280.8 Miscellaneous Provisions Relating to Household Eligibility and Benefit Levels.

(a) *Benefit Calculation.* Households meeting the eligibility criteria in § 280.6 shall receive the full coupon allotment for their household size as authorized by the basis of coupon issuance tables. Coupon allotments shall be a half-month or full monthly allotment, whichever coincides with the disaster benefit period.

(b) *Period for Processing Applications.* No emergency food coupon allotments shall be authorized after the expiration of the period for which the State agency was authorized to process and approve applications for emergency food stamp issuance. However, if an authorization period is extended by FNS beyond the original designation, and the extension goes beyond the end of the original disaster benefit period, FNS may authorize the State agency to permit certified households who have already received emergency coupon allotments to apply for recertification and receive additional coupon allotments for an additional benefit period if they still meet the disaster eligibility criteria. A household applying for recertification must again submit an application and be interviewed. At recertification, the State agency does not need to re-verify identity and residency unless it believes these items to be questionable. If an extension is granted, the State agency shall issue a press release notifying households that the disaster authorization period has been extended.

If FNS has authorized households who received emergency coupon allotments to be recertified, the press release shall advise households of where they may apply for additional emergency benefits and the date by which a household must file an application to receive extended benefits. The State agency may also directly notify currently certified households of the continued assistance.

(c) *Certification Notices.* The State agency shall advise applicant households of the disposition of their applications. If an application is approved, the household shall be advised of the amount of the allotment and the period the benefits are intended to cover. If the application is denied, the State agency shall explain the basis for the denial. However, the written notification requirements in § 273.10(g) shall be waived. The notifications State agencies are required to give to applicant households may be given orally or in writing at the State agency's discretion.

(d) *Fair Hearings.* Households denied disaster benefits may request fair hearings in accordance with § 273.15. Households requesting fair hearings shall be offered immediate supervisory reviews of their cases due to the time that is likely to pass before a fair hearing decision can be rendered. The supervisory review shall be in addition to the fair hearing and shall not replace the fair hearing.

(e) *Transition to the Regular Food Stamp Program.* Households which are issued emergency food stamps and which are subsequently determined eligible as new participants in the ongoing Food Stamp Program shall have their emergency food stamp benefits applied against their benefits under the regular Program if the disaster certification period and the certification period for ongoing benefits overlap. The State agency shall calculate the benefits to be issued under the regular Program as follows:

(1) The number of days which overlap the disaster certification period and the certification period for ongoing benefits shall be determined.

(2) Disaster benefits shall be pro-rated over the number of days in the disaster period to determine disaster benefits issued on a daily basis.

(3) The amount of the coupon allotment to be issued under the regular Program shall be offset against the amount of overlapping disaster benefits determined in (2) above. For example, a household which has been certified for emergency assistance from May 5th through June 4th and is certified as a newly participating household in the regular food stamp program for June

would have the disaster benefits for the overlapping days (June 1 through 4) subtracted from its regular June allotment prior to actual issuance.

(f) *Treatment of Households Certified Under the Ongoing Food Stamp Program.* (1) Household currently certified for the ongoing Food Stamp Program under Part 273 of the Food Stamp Program Regulations may also be eligible for temporary emergency food stamp assistance during disasters. These households shall be allowed to apply for disaster food stamp assistance and their eligibility shall be determined in the same manner as would be done for any other disaster victim, in accordance with § 280.6. The State agency shall, to the extent practicable, reduce the disaster coupon allotment issued to households that are currently certified for the ongoing Program by the amount of regular food stamp benefits issued to the same household under the ongoing Program for any part of the disaster benefit period, except that if the household's food has been damaged by the disaster and the household must replace the food, then the disaster coupon allotment shall not be reduced by the amount of benefits issued under the ongoing Program. To the extent that it is not practicable to determine, verify or otherwise take into account ongoing Program benefits, the State agency may with the approval of FNS, issue full disaster coupon allotments to households eligible for disaster assistance who are certified under the ongoing Program without doing so.

(2) A household which requests a replacement for an ATP or coupons that it had received under the ongoing Program but which were subsequently destroyed in the disaster, or for food destroyed in the disaster that was purchased with coupons issued under the ongoing Program, shall be referred to the certification office which has responsibility for the ongoing Program, and shall be handled by the ongoing Program in accordance with §§ 273.11(g) and 274.2(g). However, households shall not be given replacements if they have received or will receive disaster food stamp assistance for the same period.

(3) Households certified under the regular Program procedures who report changes as required in § 273.12(a) during the application process for emergency assistance shall be referred to the ongoing Program. The household is responsible for reporting the required information directly to the office which handles its regular case.

(g) *Controls to Minimize Duplicate Participation During Disasters.* The State agency shall develop a system to detect duplicate applications for

disaster food stamp benefits. The method developed by the State agency may include an exchange of case index cards or lists of certified disaster households between the appropriate certification and issuance sites utilized in the disaster operation. The State agency may also, to the extent practicable, employ computer checks, address checks, and telephone calls to prevent households from receiving duplicate disaster food stamp benefits.

(h) *Identification.* The State agency shall issue an identification card (ID) marked with the word "disaster" or some similar designation to households certified for disaster food stamp issuance. The ID card will serve to identify the household at the issuance point or in a retail food store as a legitimate food stamp participant.

#### § 280.9 Issuance of Emergency Food Coupons.

(a) *Issuance Arrangements.* Emergency food coupon allotments may be issued by the normal procedure in effect in a project area if the opportunity-to-participate standards in § 280.7(b) can be met. Such issuance arrangements may not be practical because of the effects of the disaster, and the State agency, with FNS approval, is encouraged to make temporary arrangements during the emergency period to facilitate issuance to disaster victims. Over-the-counter issuance may be the only issuance method which may be able to handle the volume of applicants and provide same day issuance. Any assignment of issuance functions shall clearly delineate the responsibilities of the State agency and issuance agent. The State agency remains responsible for ensuring that assigned duties are carried out in accordance with the issuance requirements in Part 274. This includes the establishment of controls and security procedures to safeguard coupons during disaster issuance operations. As with normal issuance procedures, arrangements for issuance of emergency food coupons must permit the timely issuance of coupons while affording a reasonable degree of coupon security. Such temporary arrangements shall in no way affect the accountability and liability of the State agency for coupons as provided for in Parts 274 and 276. The State agency shall keep records of such emergency participation separate from the regular issuance documents except for the preparation and verification of Form FNS-250, Food Coupon Accountability Report, and Form FNS-256, Monthly Report of Participation and Coupon Issuance.

(b) *Reporting.* (1) In every State where emergency food stamp assistance is authorized, emergency food coupons allotments shall be reported and accounted for, in the same manner as other authorized issuances on Form FNS-250. Participation and coupon issuances shall be reported on Form-256. Further, the State agency shall report on Form-292, Report of Coupon Issuance for Disaster Relief, the total amount of such allotments and the number of persons certified for emergency food stamp assistance. Form FNS-292 shall be submitted to FNS by the FNS by the State agency as soon as possible but no later than the 45th day following the close of the designated disaster period.

(2) The Federal Coordinating Officer of the Federal Emergency Management Agency shall be provided a report, on as needed basis, which includes the estimated program cost, project approvals for temporary emergency assistance, number of applications received, number of applications approved and the food stamp dollar value provided.

(3) Additional information on emergency coupon issuances and participation shall be provided to the FNS Regional Office upon request.

#### § 280.10 Monitoring post-disaster reviews.

(a) *State Agency Responsibility.* (1) The State agency shall implement and maintain proper controls over the certification of disaster victims for emergency food stamp assistance while disaster operations are in effect.

(i) Household information shall be maintained in an orderly fashion, clearly documenting the certification and issuance actions by the State agency.

(ii) Supervisory personnel shall closely monitor the disaster program, identifying problem areas for immediate corrective action. These include, but are not limited to, problems with crowd control, work flow, physical facilities, media information, and prevention of multiple issuances.

(2) The State agency shall conduct a post-disaster review of disaster certification activities, selecting and reviewing a sample of cases certified for disaster issuances. FNS will determine the number of cases to be reviewed on an operation by operation basis. The State agency may elect to review additional cases. The review of certified cases shall include a case record review; an interview with the participant; verification of information; a determination of eligibility for disaster assistance; and an analysis of error. The State agency may choose to perform the required reviews through the use of

Management Evaluation or Quality Control Staff, or other State agency personnel qualified to conduct these reviews. FNS may exempt a State agency from the requirement to conduct post-disaster reviews in a particular area or areas if, due to such factors as the limited volume of disaster issuances in the area, FNS believes that reviews are not warranted.

(3) The State agency shall utilize the case review information to formulate and implement corrective action to improve disaster certification procedures. State agencies shall establish claims in accordance with § 273.18 against any household that received more disaster assistance than it was entitled to receive. The State agency shall restore lost benefits to households which were caused by an error of the State agency as required by § 273.17.

(b) *FNS Responsibility.* The Regional Disaster Task Force shall establish procedures for monitoring and evaluating disaster operations conducted by the State agency. FNS will review on-site operations during the period authorized for processing applications and shall examine the case review information and corrective action formulated by the State agency.

(Catalog of Federal Domestic Assistance Program, No. 10.551 Food Stamps)

Dated: January 9, 1981.

Robert Greenstein,  
Administrator.

[FR Doc. 81-2650 Filed 1-26-81; 8:45 am]  
BILLING CODE 3410-30-M

## 7 CFR Parts 272, 273, and 274

[Amdt. No. 190]

### Replacement of Lost or Stolen Food Stamp Authorizations, and Replacement of Nondelivered, Stolen or Destroyed Coupons

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

**SUMMARY:** This rulemaking establishes procedures under authority of the Food Stamp Act 1977, as amended, (Pub. L. 95-113) which would modify current Food Stamp Program regulations regarding the replacement of lost or stolen food stamp authorizations (ATP's) and nondelivered, stolen, or destroyed food coupons. The proposed amendments also incorporate new provisions allowing the replacement of certain food losses through the issuance of supplemental benefits. These modifications are proposed to reduce

losses resulting from fraudulent or erroneous ATP or coupon replacements.

**DATE:** Comments must be received on or before March 30, 1981, in order to be assured of consideration. After reviewing all comments, the Department will publish final regulations.

**ADDRESS:** Comments should be submitted to Alberta Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C., 20250. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at 500 12th Street, SW., Washington, D.C. Room 698.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Carnes, Chief, Regulations and Policy Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250; (202) 447-9075.

The Draft Impact Analysis is available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed under USDA procedure established in Secretary's Executive Order 12044, and has been classified as "not significant".

The proposal has been reviewed with regard to the requirements of Pub. L. 96-354. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that this proposal does not have a significant economic impact on a substantial number of small entities. The provisions control the issuance of replacement authorization cards and food stamp coupons where authorization cards and food stamps are reported stolen, lost, or destroyed. Requirements are not placed on small businesses or small organizations. There are requirements proposed on State agencies, and to the extent that county governments operate the Food Stamp Program, some requirements would be placed on them. However, the requirements, such as limitations on the numbers of replacements and the circumstances under which replacements can be issued, do not have a significant economic impact on local governments.

#### Introduction

The Department is concerned with minimizing possibilities for fraud and error in the Food Stamp Program. With this in mind, the Department has re-examined procedures for the replacement of ATP's and coupons which are lost, stolen or destroyed. Given the number and value of

replacement issuances, and indications that abuse has occurred in some areas, the Department has decided to propose substantial changes in procedures governing replacements.

The Department proposes to authorize the replacement of lost, stolen, or destroyed ATP's or coupons within limits that restrict opportunities for fraud and abuse. This proposed rulemaking addresses those restrictions by establishing revised policy regarding the conditions under which ATP's and coupons may be replaced.

In developing this proposed rule, the Department focused both on ways in which replacement issuances could be controlled and the development of procedures that are responsive to instances of true participant need and feasible for State agencies.

#### Replacement of Lost or Stolen Food Stamp Authorizations (ATP's)

##### Background

As a result of the increased Federal involvement in the issuance process (since 1974 USDA has paid half of the States' issuance costs) the Food and Nutrition Service published Instruction 734-2: Machine Issuance and Authorization to Purchase (ATP) System Procedures and Controls. This instruction included guidelines for State and local agencies to follow when issuing over-the-counter ATP's as replacements for ATP's reported lost, stolen, or undelivered in the mail. The instruction mandated that determinations be made that sufficient time had elapsed for a normal mail delivery to be completed and that the household was certified. A signed affidavit stating that the original ATP would be returned if recovered by the household was also required. Finally, certification workers were warned to be alert for households requesting repeated ATP replacement. Consideration was to be given to other means of coupon delivery after two consecutive reports of nondelivery. Regulations issued pursuant to the Food Stamp Act of 1977 did not drastically alter the provisions of Instruction 734-2. In addition to those noted above, regulations specified that the definition of "sufficient time for ATP delivery" would not exceed 5 days.

In recent years the number of replacement requests has grown in some metropolitan areas. While the intent of the regulations regarding replacements was to permit participants to get prompt assistance, it can be difficult to both guarantee immediate replacement and provide adequate safeguards to prevent duplicate issuance in urban areas with massive caseloads. In order to lessen

the opportunity for fraud and theft in these areas, the Department believes that additional safeguards must be built into the ATP replacement system. Therefore, this proposal would modify the regulations as they relate to ATP replacement in order to reduce the number of stolen and fraudulently redeemed ATP's.

The proposed regulations would establish three limitations on the issuance of replacement ATP's reported as lost or stolen prior to receipt: (1) A specific timeframe for requesting replacements; (2) A specific time period for making replacement issuances; and (3) A limitation on the number of times replacements could be requested by a given household prior to initiation of an alternate issuance system. The proposal also addresses State actions in instances where there is documentation of fraud. Each of these limitations is discussed in greater detail below.

FNS is currently involved in two different alternate ATP issuance projects in New York and Pennsylvania (Philadelphia and Pittsburgh). In New York City, which had a serious ATP replacement problem prior to implementation of the alternative system, a "Rapid Access System" is being tested that provides prompt data for use in determining whether a participant's request for ATP replacement is legitimate. In Pennsylvania, the State and the Department are testing a project involving the direct delivery of ATP's to issuance outlets where they will be picked up and transacted by participants. In the first month of operation, there were no replacements at all issued in the Pennsylvania test districts. In New York City, the number of replacements has dropped sharply and fraudulent duplicate issuance has been severely curtailed. These test projects may suggest additional approaches to handling replacement ATP's.

#### Timeframe for Claiming Nonreceipt

Limitations established in current regulations provide, among other conditions, that an ATP replacement will only be issued if the original ATP loss is reported in the period for which the ATP was intended to be used.

The Department plans to retain this requirement. Language is being added to clarify that households which are scheduled to receive their ATP's on the 25th of the month or later will have 20 days to request replacements. This 20 day period coincides with the 20 day validity period given to ATP's issued after the 25th and is considered sufficient to allow a participant

household to realize the loss and request a replacement.

#### Timeframe for Replacement Issuance

Current regulations do not specifically mandate a definite timeframe for the replacement of an ATP reported lost or stolen. Aside from the reference to ensuring that sufficient time has elapsed for delivery, no requirement is stipulated. The regulations do state, however, that "sufficient time" shall not exceed 5 days. In some areas, replacement is now granted immediately, and often without investigation as to whether the participant has already transacted the original ATP. This lack of confirmation makes it difficult to detect replacement requests that are fraudulent.

To correct this problem, the Department proposes that State agencies have up to 10 days to issue replacements after a request is made by the household. The 10 day period would allow the participant in need of replacement to receive such replacement without undue delay, while enhancing the ability of States and/or project areas with appropriate systems to detect fraudulent and/or erroneous duplicate issuance of ATP's by ascertaining whether the original ATP has been transacted. Ten days should give many States or project areas without sophisticated systems enough time to check whether the original ATP has been transacted.

#### Initiation of an Alternate Issuance System

Some households have reported that they did not receive their ATP several times, requesting replacement ATP's on each occasion. To forestall the possibility of continued loss, whether it stems from repeated theft of the household's ATP or from fraud, the Department is proposing that an alternate ATP delivery system be employed for a particular household after a second replacement request is made within a 6 month period by that household. This would allow participants an opportunity to obtain replacements when the need arises, yet control duplicate issuances through the use of an alternate issuance system such as direct pickup or certified mail. A single loss could result from an isolated incident, but two losses in this 6 month period would indicate the need for an alternate ATP delivery system. The State agency would keep the household on the alternate issuance system for the length of time the State agency determines to be necessary. The State agency could return the household to the regular issuance system when it found

that the circumstances leading to the losses had changed and the risk of loss had lessened.

#### Replacement of ATP's

As noted above it is a goal of this rulemaking to initiate new provisions for building additional safeguards into the ATP replacement system. ATP replacement is addressed in two categories, i.e., ATP replacement for losses occurring prior to receipt and replacement for ATP's which are stolen or destroyed after receipt. The Department recognizes that households have little control over the nondelivery of mail and that nonreceipt of an ATP or coupons creates hardships.

The Department believes losses of ATP's after receipt by the household through theft or destruction are subject to greater control by the household and should be infrequent. Accordingly, these rules propose specific limits on the number of times ATP's or coupons may be replaced when they have been stolen or destroyed after receipt. The Department proposes that a household be entitled to receive only one replacement in any 6 month period for either ATP's or coupons destroyed or stolen subsequent to receipt. In this proposal the Department has limited the opportunity for overissuances while providing relief to certain participants who suffer actual losses. The rules also propose that there be no replacement for ATP's or coupons misplaced or lost after receipt. The Department believes it is the responsibility of each household to avoid simply misplacing or losing ATP's or coupons. Current rules are silent on the issue of ATP's misplaced or lost after receipt. The Department is especially interested in comment on this matter.

#### Action in Instances Where There Is Documentation Indicating Fraud

The Department is proposing new procedures to be used by State agencies in those instances of reported loss where fraud is suspected. The first procedure would require States to withhold a replacement ATP when the State has documentation indicating that the replacement request is invalid. This approach is dependent on a "front end" capability to detect fraud such as the ability to verify that the original ATP has been transacted by the household rather than stolen or lost in the mail. For States without this capability, replacement ATP's would be issued upon request if the household signs a statement attesting to the loss. The statement would warn the household of the legal consequences of intentionally misstating the facts. States would

continue to be required to determine the cause of overissuances and to seek to recoup or otherwise recover losses resulting from fraud on the part of the household. This approach requires reliance on post-issuance activities currently in effect including reconciliation, fraud hearings systems, and claims processing systems.

#### Replacement of Nondelivered, Stolen or Destroyed Coupons

For purposes of replacement, coupon losses have generally been divided into two categories. The first category covers those coupons which are lost in the mail prior to household receipt. Such coupons have generally been replaced on request, with the household stating that it would return the original issuance should it be received. The regulations implementing the 1977 Act attempted to tighten up this replacement policy by requiring States to use an alternative delivery system for those households reporting two consecutive mail issuance losses.

The second category covers those lost subsequent to household receipt. Prior to the 1977 Act such coupon losses were regarded as an individual disaster or casualty loss. In determining the basis of issuance for the replacement allotment, the previous purchase requirement was considered a hardship or "unusual expense" deduction from household income.

The Department expanded this rule in the Food Stamp Certification Handbook (FNS-732-1) to cover food coupons or foods purchased with coupons which were lost, stolen, or destroyed in an individual disaster. The household could request a second allotment of coupons during the month in which the mishap occurred. After verification of the reported loss, the eligibility worker could process the replacement.

The October 17, 1978, rulemaking (43 FR 47864) which promulgated provisions of the Food Stamp Act of 1977 tightened these procedures by requiring a police report to verify the theft of coupons, by allowing replacement only for stolen or destroyed coupons, by not replacing coupons lost or misplaced by the household, and by removing the provision related to food replacement.

Nevertheless, the Department is concerned over continued coupon losses and believes further restrictions are necessary to reduce mail theft losses and to reduce the potential for fraudulent replacement requests. The proposed rulemaking, therefore, would limit those circumstances and conditions under which replacement coupon issuances can be obtained.

The basic limitations related to the time period for requesting a replacement based on nonreceipt, the timeframe for replacement issuance, and the use of an alternate issuance system which are proposed for ATP replacements are also proposed for coupons lost in the mail prior to receipt. Additionally, this proposed rulemaking contains new safeguards regarding requests for replacement of coupons reported stolen or destroyed subsequent to receipt.

Replacement issuance procedures are proposed to provide some relief regarding personal disasters, such as a fire loss, which eliminate a household's food supply. Each of these provisions is discussed in detail below.

#### Coupons Lost in the Mail Prior to Receipt

The proposed rules would establish procedures for coupons lost in the mail prior to receipt that parallel those proposed for ATP's lost or stolen prior to receipt. The State agency would have up to 10 days after the report of nonreceipt to replace the coupons, although the State would be required to replace coupons more promptly if it had determined that sufficient time had elapsed for delivery and it had also completed the other required actions to check, to the extent possible, on the validity of the replacement request. In addition, if a household reported nonreceipt twice in a 6 month period, the State agency would be required to institute an alternate issuance system for that household, such as the use of certified mail. Households would be required to report the nonreceipt in the month in which the coupons were intended to be used.

#### Coupons Stolen or Destroyed After Receipt

The proposed rules contain additional safeguards to protect against households inaccurately reporting that their coupons have been stolen. These safeguards parallel those proposed when households report the theft of an ATP after receipt.

The Department is proposing that replacements of either coupons or ATP's reported as stolen after receipt be made only once during a 6 month period. The Department believes this limitation strikes an equitable balance between attempting to discourage households from making frequent, unwarranted requests for such replacement and the need to serve households experiencing actual losses. Coupons lost or misplaced after delivery would not be replaced as the Department believes it is the responsibility of each household to avoid misplacing coupons and a matter

over which the household has complete control. Moreover, the replacement of coupons based solely on a statement by a household that its original allotment has been lost or misplaced leaves the program particularly vulnerable to abuse because no effective method exists to detect whether the household has used the original allotments.

One exception to this policy has been proposed. To compensate households experiencing an individual household disaster (e.g., fire, not theft) which can be verified, additional replacement allotments could be issued. This approach is adopted because the household disasters are capable of verification. Also, the number of instances in which additional replacements are needed for recurrent disasters affecting the same household are expected to be minimal.

Additionally, the proposed rules require that a household requesting a replacement of coupons or of an ATP due to either theft or destruction after receipt must make the request within 10 days after the loss. A household should know immediately that it has suffered such a coupon or ATP loss. This is different from coupons or ATP's lost in the mail prior to receipt. Mail deliveries can be delayed, and a household may not know for some time that its ATP or coupons have been lost or stolen in the mail. The 10 day limit on requests for coupons and ATP's stolen or destroyed after receipt increases the likelihood that the replacement requests are legitimate.

A final issue concerns the current requirement for verification, prior to issuing a replacement for coupons stolen after receipt, that a police report has been filed by the victim. The Department has learned of instances where the police have refused to release such reports. While the proposed rules do not alter this requirement, the Department solicits comments and recommendations for possible alternate verification criteria of such reported thefts.

#### Replacement of Food Losses

As discussed briefly above, Federal guidelines under the 1964 Act provided for the replacement of foods which were bought with coupons where the food was lost, stolen or destroyed. This provision was deleted from regulations implementing the 1977 Act to minimize administrative burdens. Since that decision, the Department has received numerous requests from State agencies and individuals to again provide replacement food stamp allotment for lost food. These proposed regulations provide for a limited reinstatement of

such a policy. To reduce the potential for fraud and abuse, the replacement provision is restricted to food losses resulting from a disaster affecting the household.

The Department is proposing that replacement must be requested within 10 days of the disaster, that the State agency have 10 days to make replacement and that the replacement not exceed the household's current monthly allotment. Verification of the disaster must be provided. While no new verification requirements are stated, comments are invited concerning the degree of verification that should be required and specific types of verification which may be of value in such situations.

The Department believes that there is a need for this type of replacement provision to take into consideration individual household disasters as well as natural disasters affecting more than one household. However, in cases where FNS has issued a disaster declaration and the household is otherwise eligible for emergency food stamp benefits under Part 280 of the regulations, this provision for replacement of food losses would not apply.

#### Implementation

The Department proposes that State agencies implement the procedures relating to replacement of lost or stolen food stamp authorizations and replacement of nondelivered, stolen or destroyed coupons no later than the first of the month 120 days following the date the final regulations are published. States would be permitted, however, to implement these rules earlier.

Therefore, the Department proposes that 7 CFR Parts 272, 273, and 274 be amended as follows:

#### PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, subparagraph (29) is being added to paragraph (g) in numerical order to read as follows:

##### § 272.1 General terms and conditions.

##### (g) Implementation . . .

(29) Amendment 190. State agencies shall implement these regulations no later than the first of the month 120 days following publication of final regulations.

#### PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.11, paragraph (g)(1) is revised and a new subparagraph (3) is

added to (g). The revision and addition read as follows:

##### § 273.11 Action on households with special circumstances.

(g) Households requesting replacement allotments or ATP's—(1) Coupons or ATP's that have been stolen or destroyed after receipt. A household may request replacement for that portion of its allotment, not to exceed one month's food stamp allotment or for an ATP, which it had received but which was subsequently destroyed in a household disaster such as a fire or flood, or which was subsequently stolen. Replacements of coupons or ATP's lost or stolen in the mail prior to receipt are handled under § 274.2(h) and § 274.3(c).

(i) To qualify for a replacement the household shall report the theft or destruction to the local food stamp office within 10 days of the incident and sign a statement at the food stamp office (a) attesting to the theft or destruction of the household's food stamps or ATP, (B) stating that the original ATP or coupons will be returned to the State agency if recovered by the household, and (C) stating that the household is aware of the penalties for intentional misrepresentation of the facts. The statement shall be retained in the casefile. In the case of theft of coupons, the household shall also report the theft to the local police department and provide to the State agency a copy of the police report or sufficient information to allow the State agency to verify that the theft was reported to the police.

(ii) Upon receiving a request for replacement of coupons or an ATP reported as stolen or destroyed in an individual household disaster, the State agency shall verify the theft or disaster and issue replacement coupons or a replacement ATP, if warranted, within 10 days of receipt of the request. The State agency shall indicate in the casefile that a replacement has been provided. The State agency shall examine the casefile for notation of previous requests by the household for replacement of coupons or an ATP reported stolen subsequent to receipt. Replacement of coupons or an ATP reported as stolen subsequent to receipt shall be made only once in a 6 month period. If, in the previous 5 months, the household has been issued a replacement for either coupons or an ATP reported as stolen subsequent to receipt, then replacement shall be denied. This limit does not apply to replacement issuances of coupons or ATP's when a household has requested replacement of coupons reported as

destroyed due to a verified household disaster.

(iii) The State agency shall authorize the issuance of a replacement ATP only if the ATP was valid when issued and if it has been reported lost or stolen in the period of its intended use (for ATP's issued after the 25th of the month, the period intended for their use is 20 days from their issuance). The State agency shall also determine, to the maximum extent practicable, the legitimacy of the request for replacement of the lost or stolen ATP (through such means as determining whether the original ATP has been transacted, and, if so, whether the signature on the original ATP matches that on the request for replacement). The State agency has 10 days to establish these facts, as the replacement, if warranted, must be issued within 10 days.

(iv) In cases in which an ATP replacement is requested, but documentation exists substantiating that the request for replacement is fraudulent, replacement of the ATP shall be denied or delayed. However, in that event the household shall be informed of its right to a fair hearing to contest the denial or delay of the ATP. The denial or delay of the replacement ATP shall remain in effect pending the hearing decision. The State agency may combine the fair hearing with a fraud hearing in accordance with § 273.16(d)(1). To deny or delay a replacement, the State agency must have documentation substantiating fraud, such as a match between the signature on the original ATP that had been transacted and the signature on the replacement request. Fraud could also be indicated where the issuing agent has noted the recipient's correct food stamp identification number (unless the household reports that its ID was stolen) on an original ATP that has been transacted.

(v) Replacement ATP's or replacement coupons which are stolen shall not be replaced.

(vi) The State agency shall not issue a replacement allotment or replacement ATP to a household which reports that its coupons or ATP were lost or misplaced after being received.

(vii) Except as provided for in Part 280, where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits, the household shall not receive both the disaster allotment and a replacement allotment under this provision.

(3) Replacement of food destroyed in a disaster. In cases in which food purchased with food stamps is destroyed in a disaster affecting a



participating household, that household may be eligible for replacement of the actual value of loss, not to exceed one month's food stamp allotment, if the loss is reported within 10 days and the household can provide verification of the loss. The State agency shall provide an allotment replacement, or an opportunity to obtain an allotment replacement, within 10 days of the reported loss. This provision shall apply in cases of an individual household disaster as well as in natural disasters affecting more than one household. However, in cases where FNS has issued a disaster declaration and the household is otherwise eligible for emergency food stamp benefits under Part 280, the household shall not receive both the disaster allotment and a replacement allotment under this provision.

#### PART 274—ISSUANCE AND USE OF FOOD COUPONS

##### 3. In § 274.2:

(a) Paragraphs (e)(5) and (g)(1) are revised.

(b) paragraph (g)(3) is removed.

(c) paragraph (g)(4) is redesignated (g)(3), and

(d) paragraph (h) is designated as paragraph (i) and a new paragraph (h) is added. The changes read as follows:

##### § 274.2 Issuance systems.

###### (e) ATP Issuance \* \* \*

(5) The State agency shall mail the ATP to the household in a first class nonforwarding envelope, except when the ATP is handled as specified in paragraphs (g) or (h) of this section. The State agency may also use certified mail for ATP delivery, and shall use an alternate method of ATP delivery for households which report two losses of ATP's through the mail within a 6 month period:

(g) *Expedited Service.* (1) The State agency shall manually prepare and issue ATP's at the local level if necessary to provide an opportunity to participate to households certified on an expedited service basis in accordance with § 273.2(i), to comply with the processing standards for initial and recertification and for action on reported changes. To minimize the possibility of misuse of manually prepared ATP's, the State agency shall:

(h) *Replacement of an ATP lost or stolen in the mail prior to receipt.* (1) The State agency shall issue an emergency replacement ATP only if the ATP is reported lost or stolen in the

period of its intended use. For ATP's issued after the 25th of the month, the period intended for their use is 20 days from their issuance. Replacements of ATP's stolen or destroyed after receipt are handled under § 273.11(g)(1).

(i) The State agency shall authorize the issuance of a replacement ATP only if the ATP was valid when issued and if it has been reported lost or stolen in the period of its intended use. The State agency shall also determine, to the maximum extent practicable, the legitimacy of the request for replacement of the lost or stolen ATP (through such means as determining whether the original ATP has been transacted, and if so, whether the signature on the original ATP matches that on the replacement). The State agency has 10 days to establish these facts and issue the replacement.

(ii) To obtain a replacement ATP the participant must sign a statement stating that the original ATP will be returned to the State agency if recovered by the household and that the household is aware of the penalties for intentional misrepresentation of the facts. The statement shall be filed in the casefile.

(iii) Replacement ATP's which are stolen shall not be replaced.

(iv) After two requests for replacement of ATP's reported as nondelivered in a 6 month period, the State agency shall issue benefits to that household under an alternate issuance system. The State agency shall keep the household on the alternate issuance system for the length of time the State agency determines to be necessary. The State agency may return the household to the regular issuance system if the State agency finds that the circumstances leading to the loss have changed and the risk of loss has lessened.

(v) On at least a monthly basis the State agency shall provide a list of all ATP's reported as lost or stolen from the mail to the appropriate Postal Inspection Service. The State agency should assist the Postal service during the investigation and shall, upon request, supply the Service with a facsimile of the original and replacement ATP's and a copy of the nonreceipt statement. The State agency shall advise the Service if the original ATP is transacted.

(2) In cases in which documentation exists that the request for replacement is fraudulent, replacement of the ATP shall be denied or delayed. However, the household shall be informed of its right to a fair hearing to contest the denial or delay of the ATP. The denial or delay of the replacement ATP shall remain in effect pending the hearing decision. The State agency may combine the fair

hearing with a fraud hearing, in accordance with § 273.16(d)(1). To deny or delay a replacement, the State agency must have documentation substantiating fraud, such as a match between the signature on the original ATP that has been transacted and the signature on the replacement request, or the notation (by the issuing agent) on an original ATP that has been transacted of the recipient's correct food stamp identification number (unless the household reports that its ID was stolen).

4. In § 274.3 paragraphs (c)(1), (c)(2), and (c)(4) are revised to read as follows:

##### § 274.3 Issuance of coupons through the mail.

(c) *Coupons lost in the mail prior to receipt.* (1) Coupons are "in the mail" when deposited with the Postal Service. Replacements for coupons stolen or destroyed after receipt are handled under § 273.11(g)(1). When a household reports the nondelivery of an allotment or partial allotment of coupons issued through the mail the State agency shall:

(i) Determine if the coupons were actually mailed or, if a delivery of a partial allotment is reported, determine the value of the coupons not delivered.

(ii) Review the mail issuance log for the return of undelivered coupons.

(iii) Authorize a replacement issuance only if the coupons were validly issued, if they were reported lost or stolen in the period of their intended use, and if sufficient time has elapsed for delivery.

(iv) Provide the replacement in no more than 10 days after the report of nondelivery has been received. The period of intended use of the coupons is the month for which coupons are issued, except that where coupons are issued after the 25th of the month, the nondelivery must be reported within 20 days of the date of expected receipt.

(v) Prepare and have the participant sign a statement that the coupons will be returned to the State agency if recovered by the household and that the household is aware of the penalties for intentionally misrepresenting the facts. The statement shall be retained in the casefile.

(vi) Record the report of nondelivery and the date in the issuance log; and

(vii) Report all losses to the postal authorities. State agencies shall, in cooperation with the Postal Service, attempt to determine the cause of each nondelivery and take appropriate corrective action. States shall also report to the postal authorities all patterns of losses in particular project areas or neighborhoods.

(viii) Take other action warranted by the reported nondelivery.

(2) After two reports by a household of nondelivery in a 6 month period the State agency shall utilize other issuance methods for that household. The State agency shall keep the household on the alternate issuance system for the length of time that the State agency determines to be necessary. The State agency may return the household to the regular issuance system if the State agency finds that the circumstances leading to the loss have changed and the risk of loss has lessened. Alternate issuance methods include:

(i) Using certified mail;

(ii) Arranging for the household to pick up its coupon allotment at a specified location; or

(iii) Moving the household from a mail issuance system to a regular over-the-counter system.

\* \* \* \* \*

(4) Replacement coupons which are stolen shall not be replaced.

\* \* \* \* \*

91 Stat. 958 (7 U.S.C. 2011-2027)  
(Catalog of Federal Domestic Assistance  
Program No. 10551, Food Stamps)

Dated: January 16, 1981.

Robert Greenstein,  
*Administrator.*

[FR Doc. 81-2651 Filed 1-26-81; 8:45 am]

BILLING CODE 3410-30-M

# **federal register**

---

Tuesday  
January 27, 1981

---

## **Part IX**

### **Health and Human Services Department**

---

**Food and Drug Administration**

---

**Protection of Human Subjects; Informed  
Consent; Standards for Institutional  
Review Boards for Clinical Investigations;  
and Clinical Investigations Which May Be  
Reviewed Through Expedited Review  
Procedure**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

21 CFR Parts 50, 71, 171, 180, 310, 312, 314, 320, 330, 361, 430, 431, 601, 630, 812, 813, 1003, 1010

[Docket No. 78N-0400]

### Protection of Human Subjects; Informed Consent

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing regulations to provide protection for human subjects of clinical investigations conducted pursuant to requirements for prior submission to FDA or conducted in support of applications for permission to conduct further research or to market regulated products. The regulations clarify existing FDA requirements governing informed consent and provide protection of the rights and welfare of human subjects involved in research activities that fall within FDA's jurisdiction.

**EFFECTIVE DATE:** July 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** John C. Petricciani, Office of the Commissioner (HFB-4), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-9320.

#### SUPPLEMENTARY INFORMATION:

In the Federal Register of August 14, 1979 (44 FR 47713), the Commissioner of Food and Drugs proposed regulations concerning standards of informed consent. FDA believed that a complete revision of its requirements relating to informed consent is needed because (1) current regulations had not been comprehensively reviewed in 12 years; (2) actions by the Department of Health and Human Services (HHS) and the Congress suggested the need for, and desirability of, strengthening and clarifying informed consent requirements as they apply to research that involves human subjects and is intended for submission to FDA; (3) wherever possible, informed consent requirements adopted by FDA should be identical to, or compatible with, HHS regulations; (4) the General Accounting Office (GAO) has recommended changes in current FDA regulations; (5) Congress, in enacting the Medical Device Amendments of 1976 (Pub. L. 94-295, 90 Stat. 539-583), required that informed consent be obtained before an investigational device is used on a human subject; (6) FDA's Bioresearch Monitoring Program could be conducted

more efficiently and effectively with uniform, agency-wide requirements for informed consent; and (7) FDA regulations should take into account the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (National Commission) regarding institutional review boards (IRB's) and informed consent, published in the Federal Register of November 30, 1978 (43 FR 56174).

FDA allowed 90 days for comment on the proposal of August 14, 1979 (44 FR 47713). In addition, FDA held three open hearings to give the public an opportunity to comment on both the informed consent proposal and the IRB proposal that was repropounded in the same issue of the Federal Register (44 FR 47699). The hearings were held in Bethesda, MD, on September 18, 1979, San Francisco, CA, on October 2, 1979, and Houston, TX, on October 16, 1979. The comments received at the hearings and the hearing transcripts were made a part of the record of this regulation and are on file in the Dockets Management Branch (formerly the Hearing Clerk's office) along with the written comments received in response to the proposal. Comments were received from clinical investigators, institutional review boards, trade associations, professional societies, drug companies, and private citizens. The substantive comments received and FDA's conclusions about them are discussed below.

#### General Comments

1. Many comments suggested that FDA's informed consent requirements should be identical to the informed consent requirements adopted by HHS.

FDA agrees that uniformity of requirements is desirable and that uniform requirements would be less confusing to investigators who frequently may conduct both research funded by HHS and research involving FDA-regulated products. The substance of the informed consent requirements of the two regulations, with minor differences, therefore, is identical. The minor differences in wording reflect that (1) Part 50 is an interlocking but separate part of FDA's bioresearch monitoring regulations (2) purely behavioral research is not regulated by FDA, and (3) HHS has promulgated its IRB and informed consent requirements together in one subpart which was published in the January 26, 1981 issue of the Federal Register. FDA's bioresearch monitoring regulations when complete will contain separate requirements for and clarify the responsibilities of IRB's, clinical investigators, sponsors and monitors,

and nonclinical testing laboratories. FDA does not anticipate that clinical investigators will find the informed consent requirements contained in 21 CFR Part 50 confusing in relationship to the informed consent requirements contained in 45 CFR Part 46.

2. The preamble to the FDA proposal of August 14, 1979 (44 FR 47713) contains an extensive discussion of the history and evolution of the concept of informed consent. FDA pointed out in that discussion that the informed consent provisions for investigational drugs and antibiotics contained in sections 505(i) and 507(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i) and 357(d)(3)) (the act) differed from the provisions for investigational devices contained in section 520(g)(3)(D) of the act (21 U.S.C. 360(g)(3)(D)).

The majority of comments received in response to FDA's proposal to establish uniform requirements patterned upon section 520(g)(3)(d) of the act were in favor of uniformity. In fact, most comments favored uniform requirements not only for FDA-regulated research but for all research subject to the regulations of either FDA or HHS. One comment, however, questioned FDA's legal authority to conform the statutory requirements of sections 505, 507, and 520 of the act, but commended it, stating that the application of a uniform set of standards for informed consent for all clinical investigations would eliminate some of the confusion which has resulted from the promulgation of varying and sometimes inconsistent policies. Another comment stated that absent a single set of regulations, regulatory chaos would result, unintentional noncompliance would be likely, and the aims of subject protection would be defeated. Two comments argued that because the act established standards for investigations involving drugs that differ from the standards established for investigations involving devices, FDA should perpetuate the different standards in its informed consent regulation. Neither of these comments argued that the concept of informed consent had not changed since the Drug Amendments were enacted in 1962, and neither comment offered any particular investigational situation in which they thought an investigator might reasonably determine, as provided in sections 505(i) and 507(d) of the act, that obtaining informed consent would not be "feasible" or "in an investigator's professional judgment, [would be] contrary to [a subject's] best interests."

Only one of the comments objecting to the promulgation of a single standard

offered any extensive rationale for the objection raised. This comment argued that FDA should perpetuate in its informed consent regulation, the "therapeutic privilege" exemption provided by Congress when it enacted the 1962 Drug Amendments. This comment stated that in choosing to disregard the "therapeutic privilege" exemption, FDA was intruding into both the realm of congressional prerogative and the practice of medicine.

According to this comment, the circumstances in which the "therapeutic privilege" ought to apply, were as follows:

\*\*\* A departure from the absolute requirement of informed consent is necessitated when "patient psychology" is such that a physician must be free to use a new therapeutic measure, without obtaining the patient's informed consent, if in his judgment it offers help of saving life, re-establishing health, or alleviating suffering. When a drug is being used in a clinical investigation primarily for treatment, the circumstances call for the standards pertinent to the traditional physician-patient relationship, instead of those applicable to pure research. (Emphasis added.)

Basically, this comment assumes that a clinical investigation which involves an investigational article used primarily for treatment is not really an "investigation" at all, but is simply "the practice of medicine," and the basic objection expressed seems to be that obtaining informed consent could unjustifiably frighten patients away from participation in an investigational study that might provide significant benefits for that individual and/or society as a whole, while presenting little or no risk to the individual participant.

FDA has considered the objections raised by these comments, has conducted an extensive review of the current legal requirements for informed consent in the treatment as opposed to the investigational/experimental setting, and finds, for the reasons discussed below, that the uniform approach proposed is justified.

The "therapeutic privilege" in the context of experimentation has been subject to increased criticism in recent years. In a paper on the Law of Informed Consent prepared for the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (Ref. 1), the authors concluded that nondisclosure based upon a physician's judgment that it is not in the patient's best interest to know, should never be allowed in the experimental setting.

The authors of this report, who surveyed international, Federal, and

local standards of informed consent, concluded that because the purpose of the "therapeutic privilege" doctrine was to make sure that patients get treatment that physicians believe they need, it could have no application to nontherapeutic experimentation where no treatment is involved. The authors also concluded that,

\*\*\* Because of the great potential for abuse, e.g., the withholding of information for convenience or to assure the patient will not reject the treatment, and because the probability of success with an experimental treatment is either not known or very low, this exception should also not be permitted in the case of therapeutic experimentation. Indeed, as has been noted by a number of commentators, in this situation the physician-experimenter may have much more ability to obtain consent for an experiment than he would have from a normal volunteer who neither has an established dependency relation with him nor expects that the proposed experiment might be personally beneficial to him. As Professor Alexander Capron has observed: The "normal volunteer" solicited for an experiment is in a good position to consider the physical, psychological, and monetary risks and benefits to him when he consents to participate. How much harder that is for the patient to whom an experimental technique is offered during a course of treatment! The man proposing the experiment is one to whom the patient may be deeply indebted for past care (emotionally as well as financially) and on whom he is probably dependent for his future well-being. The procedure may be offered, despite unknown risks, because more conventional methods have proved ineffective. Even when a successful but slow recovery is being made, patients offered new therapy often have eyes only for its novelty and not for the risks.

In order to protect self-determination and promote rational decision-making, more, not less, information should probably be required to be disclosed in the experimental therapy situation than in the purely experimental setting with a normal volunteer (Ref. 1).

FDA agrees with the findings contained in the special report on the Law of Informed Consent. The standard of practice regarding informed consent promulgated by Congress in the Drug Amendments of 1962 was the standard that prevailed at that time. It is not the standard of practice today. FDA is concerned that research subjects be adequately protected from abuses of the kind that have taken place in the past (44 FR 47713-17); and is convinced that one way to protect research subjects against abuse is to ensure that they have the opportunity to be adequately informed before they consent to participate.

FDA does not believe that promulgating a single standard that reflects both current congressional thinking and current standards

regarding the practice of medicine represents an unreasonable encroachment upon the prerogatives of either Congress or the medical community. Congress expressly recognized at the time the Medical Device Amendments of 1976 were passed that, in view of changing social policy and advancing biomedical technology, the informed consent provisions of the Medical Device Amendments should be implemented through regulations based upon the recommendations to be made by the National Commission (Ref. 2). Indeed, the very purpose for which Congress established the National Commission was to assure a thorough review of the basic ethical principles underlying the conduct of biomedical and behavioral research (44 FR 47716).

FDA believes that the regulation does not encroach upon the prerogatives of the medical community because a review of court decisions which have involved informed consent casts doubt on whether the so-called "therapeutic privilege" to dispense with informed consent has any continued viability even in the standard practice of medicine. With increasing frequency, courts have held that when a patient is harmed by a treatment to which he or she might not have consented had he or she been adequately informed of the risks involved in that treatment, the doctor's failure to obtain informed consent may result in a finding of liability for negligence. In *Cobbs v. Grant*, 8 Cal. 3d 229, 502 P.2d 1 (1972), the California Supreme Court discussed at length the thesis that medical doctors are invested with discretion to withhold information from their patients and found that discretion to be extremely limited, stating that, "it is the prerogative of the patient, not the physician, to determine for himself the direction in which he believes his interests lie. To enable the patient to chart his course knowledgeably, reasonable familiarity with the therapeutic alternatives and their hazards becomes essential." *Cobbs, supra*, at 242-243. The California Court held that a duty of reasonable disclosure of the available choices with respect to proposed therapy and of the dangers inherently and potentially involved in each choice was an "integral part of the physician's overall obligation to the patient." *Cobbs, supra*, at 243. Under the *Cobbs* rationale, a patient's informed consent is an absolute requirement except in an emergency situation or in a situation in which the patient is a child or incompetent, in which case consent is either implied or sought from a legal

guardian. Thus, in *Cobbs*, the California Court found that consent of the quality required by this regulation should have been obtained from the patient and that it was the patient's prerogative to make the treatment decision based upon adequate information, not the physician's prerogative to limit the patient's choices by limiting the information provided. See generally, *Pharmaceutical Manufacturers v. Food Drug Administration*, 484 F. Supp. 1179, 1188 (D. Del. 1980).

The subject of negligence and informed consent is also discussed at length in *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir. 1972), cert. denied, 409 U.S. 1064 (1972), an action involving, among other things, the sufficiency of the information provided to a patient. Beginning with the fundamental premise that, "every human being of adult years and sound mind has a right to determine what shall be done with his own body," the *Canterbury* court defines "true consent" as the informed exercise of a choice that, in turn, entails an opportunity to evaluate knowledgeably the options available and the risks attendant upon each. *Canterbury, supra*, at 780. The *Canterbury* court flatly rejected the suggestion that disclosure of risk be discretionary with the physician, stating that any definition of the scope of disclosure purely in terms of a "professional standard" would be "at odds with the patient's prerogative to decide on projected therapy himself." *Canterbury, supra*, at 786. The *Canterbury* court discussed two exceptions to the general rule of disclosure—(1) when the patient is unconscious or otherwise incapable of consenting and (2) when risk-disclosure would be so detrimental as to be unfeasible from a medical point of view. The latter exception, according to the court, must be carefully circumscribed, "for otherwise it might devour the disclosure rule itself. The privilege does not accept the paternalistic notion that the physician may remain silent simply because divulgence might prompt the patient to forego therapy the physician feels the patient really needs." *Canterbury, supra*, at 789. The court did not further elucidate the second exception to disclosure other than to limit it to situations in which the patient's reaction to risk information is "menacing." *Id.* What, precisely, the court meant by "menacing" is not clear. A Massachusetts Court, however, has found that although disclosure of the potential side-effects of a medication might be "frightening" to a mental patient, that fact alone would not justify

a failure to inform. See *Rogers v. Okin*, 478 F. Supp. 1342, 1387 (D. Mass. 1979).

Both *Cobbs* and *Canterbury* were decided in 1972. Since 1972 it has become increasingly clear that a lack of informed consent will result in actionable negligence where injury results, and that the physician's duty to inform includes a duty to impart information sufficient to enable a patient to make an informed decision. The courts recognize that standard of informed consent has evolved and that the standard now requires full disclosure in all but the exceptional case. See *Dessi v. United States*, 489 F. Supp. 722 (E.D. Va. 1980); *Rogers v. Okin*, 478 F. Supp. 1342 (D. Mass. 1979).

It is not for the medical profession to establish a criterion for the dissemination of information to the patient based upon what doctors feel the patient should be told. See *Lambert v. Park*, 597 F.2d 236, 239 n.7 (10th Cir. 1979). According to *Lambert*, a standard that requires all material risks to be divulged,

\*\*\* Insures the important social policy underlying informed consent, that is, a physician should be required to disclose to his patients all material risks of a proposed procedure even if other doctors in the community or specialty would not have made so full a disclosure. This is simply an application of the well-known tort doctrine that proof of compliance with the applicable "industry" standard will not insulate a defendant from liability when the standard itself is inadequate. *Id.* at 238-239.

It seems clear that the current standard of care as defined by case law requires disclosure in the ordinary case of exactly the kind required by this regulation. If such full disclosure is required for nonexperimental treatment, it can hardly be argued that it can be dispensed with when the treatment is experimental. See *Ahern v. Veterans Administration*, 537 F. 2d 1098 (10th Cir. 1976). The agency, therefore, reaffirms its proposal of a uniform standard governing informed consent.

3. Several comments questioned the applicability of these regulations to studies conducted outside the United States. A few comments stated that standards of protection for human subjects may vary from country to country, and that the United States should not impose its standards on other countries when the human subjects come from those foreign countries in which the studies are being conducted.

FDA agrees with the comments, and notes that its policy regarding investigational studies involving drugs and biological products is set out in § 312.20 *Clinical data generated outside the United States and not subject to a*

*"Notice of Claimed Investigational Exemption for a New Drug"* (21 CFR 312.20). The policy regarding foreign studies and the background to § 312.20 was set out in detail in the preambles to the proposed and final regulation. See 38 FR 24220; September 6, 1973, and 40 FR 16053; April 9, 1975. The agency's policy regarding studies of investigational devices conducted outside the United States is similar to that for drugs and biological products and is discussed in the preamble to the recent proposal to establish procedures for the premarket approval of medical devices (PMA), published in the Federal Register of December 12, 1980 (45 FR 81769). Proposed § 814.15 of the PMA proposal states the agency policy concerning devices.

#### *The Proposed Regulation*

Part 50 will apply to all clinical investigations regulated by the Food and Drug Administration under sections 505(i), 507(d), and 520(g) of the act, as well as to clinical investigations that support applications for research or marketing permits for products regulated by FDA. These provisions are contained in § 50.1 (21 CFR 50.1) which was promulgated with Subpart C—Protections Pertaining to Clinical Investigations Involving Prisoners as Subjects published in the Federal Register of May 30, 1980 (45 FR 36386). When complete, Part 50 will contain all of FDA's regulations concerning the Protection of Human Subjects.

The August 14, 1979 proposal contains all of the definitions applicable to Part 50. The definition of "application for research or marketing permit" (21 CFR 50.3(b)) was made final at the same time as Subpart C—Protections Pertaining to Clinical Investigations Involving Prisoners as Subjects (45 FR 36396), and therefore, is not included here. The definition of that term also may be found as part of Part 56 on Institutional Review Boards (IRB's) which is published elsewhere in this issue of the Federal Register. The definitions made final here are congruent with those made final with Part 56, and many of the comments received in response to the IRB proposals were similar to the comments received in response to the Informed Consent proposal. A discussion of the definitions other than "application for research and marketing permit," and comments received in response to this and to the prisoner research proposal follow:

4. Several comments suggested that the proposed definition of clinical investigator in § 50.3(c) was too broad and should be limited through the explicit exclusion of particular kinds of

research such as that involving minimal risk.

FDA disagrees. The National Commission stated that even in no-risk or low-risk studies, respect for the rights and dignity of human subjects would require informed consent before participation in any clinical investigation. Informed consent is, as stated in § 50.20, required in all research subject to these regulations.

5. Two comments suggested that the proposed wording of § 50.3(d) defining "investigator" should be amended to include the primary investigator who might not be the person who actually conducts the investigation or gives immediate direction to those administering or dispensing the test article.

The agency agrees that an investigation may be conducted by several investigators and has modified the language of § 50.3(d) to define the term more broadly. Added to the definition is the language " \* \* \* in the event of an investigation conducted by a team of individuals, is the responsible leader of that team."

6. On its own initiative, FDA has deleted proposed § 50.3(e) defining "person" because the only time that it is used in these regulations is to refer to a living individual. Although additional definitions for the term are applicable to other FDA regulations, they are not applicable to informed consent.

7. One comment stated that proposed § 50.3(h) defining "subject" could be interpreted to deny the administration of a placebo or other control to an unhealthy human.

The agency did not intend the definition of subject to be ambiguous and § 50.3(g) has been slightly modified in this final rule. The definition now clearly states that a subject participates in a clinical investigation either as a recipient of the test article or as a control.

8. Section 50.3(h) defining "institution" replaces § 50.3(i) from the proposed regulations. The revised definition is consistent with the HHS definition and includes any entity including manufacturers, hospitals, and nursing homes.

9. The proposed definition of "institutionalized subject" has been deleted from the final regulations. Because the scope of coverage extends to human subjects, whether or not institutionalized, there is no need for a separate definition for institutionalized subjects at this time.

10. One comment questioned inclusion of cosmetics in proposed § 50.3(k) because cosmetics are not subject to premarket approval and therefore

should not be included in the definition of "test article."

The agency agrees and has deleted the term from § 50.3(k) of the final rule, defining "test article." Because cosmetic studies are not submitted to FDA in support of an application for research or marketing permit, they are not subject to Part 50.

11. One comment suggested that FDA adopt the HHS definition of "minimal risk."

FDA agrees with the comment, and has revised the definition in § 50.3(l) accordingly. This definition takes into account the fact that the risks in the daily life of a patient are not the same as those of a healthy individual, and uses the risks in daily life as the standards for minimal risk.

12. Section 50.3(m) defining "legally authorized representative" has been revised slightly from the definition proposed by FDA so that it is identical to the HHS definition.

13. One comment on proposed § 50.20 suggested that incomprehensible consent forms would be useless to human subjects and that FDA should require that information be communicated to subjects in language they can understand.

FDA agrees that information given to human subjects should be in language they can understand, and notes that the National Commission also made this recommendation. Section 50.20 has been reworded to require that information given to the subject or the subject's legally authorized representative be in language that is understandable to the subject or the representative.

14. One comment suggested that all minimal risk studies be exempted from the requirements for informed consent.

The agency does not agree. Both the HHS regulations and the FDA regulations reflect the belief that even minimal risk studies require the informed consent of human subjects before they may participate in a research study. Informed consent is, therefore, a uniform requirement for all investigational studies, no matter how low risk an investigator may believe them to be.

15. One comment suggested that the IRB should determine when informed consent would be necessary. Another comment suggested that low-risk and no-risk studies be exempted from the requirement of informed consent.

FDA disagrees and rejects the comments. Sections 505(i), 507(d) and 520(g) of the act (21 U.S.C. 355(i), 357(d) and 360(j)) require that FDA promulgate regulations for the exemption of drugs and devices for investigational use. These sections of

the act direct FDA to promulgate regulations that will ensure that informed consent will be obtained from each subject or each subject's legally authorized representative as a condition to the issuance of the exemption. The National Commission stated that even in no-risk or low-risk studies, respect for the rights and dignity of human subjects would require informed consent before participation in any clinical investigation. FDA agrees with this position and requires that informed consent be obtained from each subject or representative before a subject may participate in a clinical investigation. The only exception from the requirement which applies to individual situations and not to categories of studies as a whole, is the provision in § 50.23 for emergency use of a test article.

16. One comment stated that FDA lacked the authority to reject a study if the requirement for informed consent were not followed. The comment further stated that in order for FDA to reject a study, the noncompliance with the regulatory requirements must affect the scientific validity of the data generated.

FDA disagrees with the comment. The Federal Food, Drug, and Cosmetic Act also requires that these regulations have due regard for the interests of patients (21 U.S.C. 355(j)(1) and 21 U.S.C. 357(g)(1)) or be consistent with ethical standards (21 U.S.C. 360(j)(1)). Therefore, FDA believes it possesses the necessary statutory authority to reject studies where informed consent has not been obtained even though the scientific validity of the data generated may not have been affected, and it reserves the right to do so where circumstances so warrant.

17. Several comments argued that the proposed requirements of § 50.21 concerning the effective date of the regulations were too complicated, too burdensome, and not really necessary for the great number of studies. These comments suggested that the revised informed consent requirements apply only to individuals entering a clinical investigation after the effective date of the regulation.

The agency has considered these comments and agrees that only prospective application of the new uniform informed consent provisions will be required. The requirements of both Part 50 and Part 58 will become effective at the same time, that is, July 27, 1981, and will be applicable only to clinical investigations that begin on or after this date.

In determining that the requirements need apply only prospectively, the agency has taken a number of factors

into account. It has balanced the cost of compliance against the possible added protections to be gained by research subjects, and has determined that the potential cost of imposing the requirements retroactively outweighs the potential gain. The informed consent regulations that will continue to be in effect until the effective date of Part 50 have assured that at least minimum standards of informed consent have been met in studies initiated before the effective date of this regulation. In addition, the agency believes that where an inspection reveals deficiencies in the informed consent obtained in a particular ongoing study, correction can be obtained administratively. Further, at the time an IRB performs its continuing review, the IRB may require correction of deficiencies if, in its judgment, such correction is required. The agency believes, therefore, that prospective application will be sufficient.

18. One comment on proposed § 50.23(a)(2), the exception provided for situations in which communication with the subject is not possible, stated that, as written, the section could apply when a subject spoke only a foreign language.

The agency does not agree. For the exception to apply, all four requirements of the subsection must be met. Inability to communicate in the context of § 50.23(a) clearly means that the subject is in a coma or unconscious. The exception is to be invoked only in emergency situations.

19. One comment stated that the exception requirements of proposed § 50.23 were too restrictive and should be modified to allow an investigator to proceed without consent in a nonlife-threatening but "serious" emergency.

The agency does not agree. The requirements of § 50.23 are based on section 520(g)(3)(D) of the act. Those requirements are quite explicit and allow that consent be dispensed with only if the emergency situation is "life threatening." The comment is rejected.

#### Elements of Informed Consent

Many comments were received on the eleven basic and five additional items proposed in § 50.25 as the elements of informed consent. Many of these comments suggested that there were too many elements proposed, that they were duplicative, and that they would simply confuse research subjects. Other comments suggested that the elements proposed were too few and suggested the addition of other items of information to the list of elements proposed. The individual comments are discussed below.

20. Several comments said that the statement that an IRB had approved the

solicitation of subjects to participate in the research, required by proposed § 50.25(a)(1), could mislead human subjects into thinking that because the study had been approved by an IRB there was no need for them to evaluate for themselves whether or not they should participate in the study.

FDA agrees with these comments and has deleted this requirement from the final regulations. Proposed § 50.25(a)(1) and (2) have been combined.

21. Several comments stated that the proposed requirements contained in § 50.25(a)(2), regarding the scope and aims of the research would require explanations that were both too complex and too lengthy to be meaningful to subjects. Another comment asserted that the word "scope" was too vague as to be meaningless while "aims" was synonymous with "purposes." All of these comments suggested that § 50.25(a)(2) should be simplified so that subjects receive only meaningful information.

The agency agrees with the comments and has rewritten the section for clarity. The requirement now reads: "an explanation of the purpose of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of those procedures which are experimental."

22. Several comments on proposed § 50.25(a)(3) (renumbered as § 50.25(a)(2) in the final rule) objected to including a statement of the likely results if an experimental treatment should prove ineffective. A few comments pointed out that in some studies involving cancer chemotherapies, it would be unkind to include such a statement in the informed consent document because the likely result of ineffective treatment would be death. Other comments pointed out that an explanation of the likely results of an ineffective treatment would not be applicable in a study of normal, healthy volunteers because there would be no difference to them if the treatment failed.

FDA agrees with the comments and has deleted the specific language regarding ineffective treatment from the regulation. The agency points out, however, that if an ineffective treatment would result in either a foreseeable risk or discomfort it would have to be described in any case under § 50.25(a)(2).

23. One comment on proposed § 50.25(a)(3), (4), and (5) suggested that investigators should be required, where possible, to give test subjects quantified comparative estimates of risks and

benefits of experimental and alternative treatments.

FDA agrees that, were it always possible to quantify the risks, benefits, and comparative treatments for purposes of estimation, such quantification would be required. The basis elements represented by § 50.25(a)(2), (3), and (4), do require that human subjects be given a description of any reasonably foreseeable risks or discomforts, benefits, and a disclosure of appropriate alternative procedures or courses of treatment. FDA believes that where such descriptions or disclosures can contain quantified comparative estimates of risks and benefits, they should do so. Where such well-defined estimates are not possible, however, the agency believes that the information required to be disclosed will be sufficient. The agency does not believe that imposing such a strict requirement for every case would be realistic or appropriate.

24. One comment stated that FDA's preliminary assessments of an experimental drug's therapeutic significance should routinely be made available to subjects of drug testing and that this should be included as a basic element of informed consent.

FDA does not agree. FDA's preliminary assessment of the therapeutic significance of an experimental drug or device is based on the same data that are available to an IRB at the time of its initial or continuing review. To the extent that an IRB believes that preliminary data assessment is appropriate to include in a consent form, it may so require.

25. One comment on proposed § 50.25(a)(4) (§ 50.25(a)(3) in the final rule) urged the agency to add a specific requirement that a subject be told if it is reasonably anticipated that the study will neither improve nor relieve his or her condition.

The agency does not agree that such specific language need be added. Adequate disclosure of risks (§ 50.25(a)(2)), benefits (§ 50.25(a)(3)), and appropriate alternative treatments (§ 50.25(a)(4)) will provide sufficient information to a subject to enable the subject to decide whether or not to participate. When use of a test article clearly will not benefit a particular condition, that fact should be made known as a reasonably foreseeable risk.

26. One comment stated that the requirement that benefits be described would be meaningless to normal, healthy volunteers because they would receive no benefit, and therefore, suggested that this requirement be deleted from § 50.25(a) and included in



§ 50.25(b). *Additional elements of informed consent.*

FDA rejects the comment. The agency believes that even if subjects receive no personal benefit from the study, others may receive some benefit, and, where it may reasonably be expected that others may benefit, that information should be disclosed.

27. One comment on proposed § 50.25(a)(5) (§ 50.25(a)(4) in the final rule) stated that a mere disclosure of appropriate alternative treatments would not be sufficient, and suggested that an investigator should have to describe the risks and benefits of such alternatives.

The agency believes that the requirement, as worded, is sufficient. Any explanation of "appropriate alternative treatments" that did not contain some explanation of the risks and benefits of the alternatives would not be a true "disclosure." The agency believes that the full description sought by the comment is required by the element as written.

28. Another comment on proposed § 50.25(a)(5) suggested that the consent form should merely state that alternative treatments are available.

FDA disagrees and rejects the comment because it is important for a human subject to have specific information about alternative treatments in order to evaluate the risks and benefits of experimental treatment. Therefore, except for being renumbered, § 50.25(a)(4) remains unchanged in the final regulation.

29. Several comments on proposed § 50.25(a)(6) suggested that a statement that "new information" developed during the course of the research be provided to the subject, would not be appropriate in every study. In particular, these comments stated that such a statement would be irrelevant to either a single-dose clinical study or a study of extremely short duration.

FDA agrees that the statement should not be required in every case and has, therefore, made this provision an "additional" element to be required when appropriate and is issuing it as § 50.25(b)(5) in the final rule. When appropriate, in this case, will mean in every study of sufficient duration, which the agency believes can be decided by the IRB.

30. Several comments on proposed § 50.25(a)(6) stated that the term "new information" is too all-encompassing and would be extremely difficult to interpret. A few comments suggested that "significant new findings" would be an appropriate substitute for "new information."

FDA agrees with the comments and has substituted "significant new findings" for "new information." Thus, only relevant substantive information that might affect a subject's willingness to continue participation in the study need be communicated.

31. One comment stated that proposed § 50.25(a)(6) was unnecessary because it is implicit in every clinical investigation that an ethical and conscientious researcher would inform subjects if new risks or side effects were noted. One comment suggested that the requirement was unnecessary because other regulations require prompt notification and withdrawal of treatment following the occurrence of serious adverse reactions.

FDA disagrees with these comments. FDA believes that an investigator should be required to advise subjects of new risks or adverse reactions that may affect the subject's willing and continued participation in the study. Therefore, even though an ethical investigator would notify subjects of newly determined risks or adverse reactions, and other regulations require prompt reporting to the IRB and FDA of these findings, FDA believes that the investigator should be explicitly required to tell subjects of significant new findings, when necessary and appropriate. The comments are rejected.

32. A number of comments objected to the requirement, contained in proposed § 50.25(a)(7) (§ 50.25(a)(5) in the final rule), that research subjects be informed in advance of their participation in an investigation that FDA may inspect the subject's records. Several of these comments asserted that if subjects were so informed they would refuse to participate in FDA-related investigations.

The agency does not believe that telling subjects that their records might be inspected by FDA will be a serious deterrent to subject participation. Medical records are frequently subject to third party review (e.g., insurance companies) and, although it may be true that informing potential subjects that study records may be inspected by FDA may deter some subjects from participation, that fact can scarcely be cited as a reason not to inform. Indeed, it is particularly important that any subject who feels strongly that his or her study records ought not be seen by anyone other than the clinical investigator be told ahead of time that an expectation of total privacy is not realistic in the context of clinical research being conducted for submission to FDA.

As discussed in the preamble to the proposal, FDA believes in the protection

of subject privacy, and FDA does not routinely inspect subject records. However, the agency must inspect such records when it has reason to believe that the consent of the subjects was not obtained or when there is reason to believe that the study records do not represent actual studies or do not represent actual results obtained. Where an individually identifiable medical record is copied and reviewed by the agency, the record is properly safeguarded within FDA and is used or disseminated under conditions that protect the privacy of the individual to the fullest possible extent consistent with laws relating to public disclosure of information (e.g., Freedom of Information Act and Privacy Act) and the law enforcement responsibilities of the agency. Clinical studies are submitted to FDA to obtain an approval to market a regulated product, and the agency must be able to verify the basis for an approval whenever either a question of validity of results or subject rights arises. Moreover, not all raw data produced in the course of a clinical investigation involves "patient records" of the kind envisioned by many of the comments. Many clinical investigations are short-term and involve subjects who may or may not be patients. There may or may not be a doctor-patient relationship between the clinical investigator and the subject and there may or may not be an expectation on the part of the subject that the records of his or her participation in the investigation will be treated as confidential. Subjects who participate in clinical investigations are frequently paid to participate, and, in such cases, the relationship between the investigator and the subject will be a contractual one. For example, in those cases in which a sponsor or monitor will review the subjects' records, the subjects should be so informed. It is particularly important that any subject who has an expectation of privacy regarding the subject's records of participation in FDA-regulated research be informed about the extent to which these records will be kept confidential so that any subject who feels strongly about the records may refuse to participate. The agency believes that providing this information to a subject is both fair and necessary. The motivation of subjects who participate in clinical research varies widely, and the agency does not believe that providing this information will prevent vast numbers of subjects from agreeing to participate. The comments do not require any change in § 50.25(a)(5).

33. Several of the comments on proposed § 50.25(a)(7) objected that the requirement of a notice in the consent document that FDA might inspect subject records constituted a request that subjects waive their legal rights to privacy as a condition to giving their informed consent. One comment stated that proposed § 50.20 prohibits inclusion in informed consent documents of exculpatory language that waives or appears to waive a subject's legal rights. As an alternative to proposed § 50.25(a)(7), several comments suggested that the regulation be revised to provide that FDA would seek permission from individual patients to inspect or copy their records if the need arose.

The agency rejects all of these comments. The basis of FDA's right to inspect subject records was discussed both in the preamble to the proposal (44 FR 47721) and in the response to comment 32 in this preamble. The agency is not requiring any subject to "waive" a legal right. Rather, the agency is requiring that subjects be informed that the "legal right" to privacy that they might expect in other contexts does not apply in the context of regulated research. FDA need not "seek permission" when the need to inspect such records arises because to do so would, in essence, delegate improperly an authority vested in the agency by Congress.

34. Two comments noted that because FDA states in the preamble to the proposal that it has the right to copy medical records containing the names of research subjects when there is reason to believe that consent was not obtained, or there is doubt that the records represent actual studies or actual results obtained, proposed § 50.25(a)(7) should provide that the consent form also inform the research subject that identifying information may be inspected and copied by FDA.

FDA believes that the required statement, as phrased, is sufficient. The language, therefore, as issued in § 50.25(a)(5) of this final rule is unchanged.

35. One comment stated that many institutions would not wish to include the notice required by § 50.25(a)(5) on all their consent forms. Therefore, there would have to be a separate consent form for FDA-regulated research. This comment suggested that this requirement be deleted.

FDA rejects the suggestion. While it may be true that some institutions do not wish to have the notice of possible FDA inspection of subject records on all of their consent forms, the agency believes it is important that human

subjects included in FDA-regulated research be aware that FDA might need to see their records. FDA believes that consent forms should be individualized for each study in any case, because standardized consent forms could not possibly take into account all the elements necessary to obtain adequate informed consent for every clinical investigation.

36. Several comments on proposed § 50.25(a)(9) (§ 50.25(a)(6) in the final rule) stated that because of the possibility of unanticipated injuries, it would be impossible to describe in advance the nature of any compensation and medical treatment for injury that might occur as a result of the study. Several comments stated that it would be difficult, if not impossible, to distinguish between those injuries that are compensable and those that are not.

These comments misunderstand the requirement. All that is required is a statement that compensation or medical treatment are or are not available if unanticipated injuries occur and of what they consist. Such a statement will be adequate if it merely states that medical care will or will not be provided in the event of injury and describes the extent of available compensation, if any. Compensation for injury may vary with the extent of the injury or may be limited. A description so stating will be adequate.

37. One comment suggested that because proposed § 50.25(a)(10) was merely an extension of § 50.25(a)(8), they should be combined.

The agency agrees. Proposed § 50.25(a)(8) required an offer to answer any questions the subject or the subject's representative might have about the research, the subject's rights, or related matters. Proposed § 50.25(a)(10) required that the subject be told whom he or she should contact if harm occurred or if there were questions. These two requirements have been combined and published in this final rule as § 50.25(a)(7). This provision requires that subjects be given an explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of a research-related injury to the subject.

38. One comment on proposed § 50.25(a)(8) stated that although the clinical investigator could respond to questions concerning the research, the clinical investigator was not necessarily the appropriate person to answer questions about the subject's rights.

While the comment may be true, the final regulation issued as § 50.25(a)(7) does not require that one particular person answer all questions raised by

the subject. Rather, the regulation requires that a subject be told whom to contact regarding particular problems. Where one person cannot respond to all the questions, more may and should be designated. The agency believes that the final regulation clarifies this provision.

39. One comment suggested that the information regarding whom to contact was merely a procedural item and that it should, therefore, not be a "basic" element of § 50.25(a) but should be made an "additional" element of proposed § 50.25(b).

FDA disagrees. The items of information required to be disclosed under "additional elements," § 50.25(b)(1) through (6), are those items that are either irrelevant to some categories of research (i.e., single-dose studies) or items that are discretionary and that may be required by the IRB. The information regarding whom to contact is equally important in all studies, should be required to be provided in every case, and therefore is retained in § 50.25(a)(7) of this final rule.

40. Two comments suggested that proposed § 50.25(a)(11) (§ 50.25(a)(8) in the final rule), as worded, might be interpreted to mean that a subject who was being paid to participate in a clinical investigation could receive full payment even if he or she dropped out. These comments suggested that the provision be revised to state that a subject could discontinue participation "without loss of already earned benefit."

The agency does not agree that the provision should be revised. In any study in which a subject is paid, the contractual agreement may specify the basis of compensation and, therefore, the degree of "entitlement." If, in such a case, full payment requires completion of the study, and a subject fails to complete the study, he or she will not be "entitled" to full compensation. All that is required is that a full explanation be provided. The agency does not find that the wording of § 50.25(a)(8) is ambiguous on this point and the comments are rejected.

41. One comment on proposed § 50.25(b) stated that the regulations could allow IRB's and investigators to deny human subjects information necessary for informed consent because that information was listed under "Additional elements."

FDA disagrees with this interpretation. The elements of informed consent listed as "additional" are not needed in every clinical investigation. However, when any of those additional elements would be appropriate, § 50.25(b) requires that the additional information be provided to the subject.

42. Several comments suggested that the "Additional elements" of proposed § 50.25(b) be required as basic because they are all material to informed consent.

FDA disagrees with the suggestion. The elements listed as "additional" are not material to every clinical investigation. For example, the requirement of § 50.25(b)(5) in the final rule that significant new findings be communicated to the subject if those findings might affect the patient's willingness to continue participation in the study, is not relevant to single-dose studies.

43. One comment on proposed § 50.25(b)(1) suggested that this "additional" element as written was overbroad.

The agency does not agree that the element is overbroad. However, for clarity, § 50.25(b)(1) has been revised and has been shortened by deleting the second sentence.

44. Two comments suggested that proposed § 50.25(b)(2) be deleted. The comments argued that the required disclosure of foreseeable risks or discomforts and that providing information about foreseeable circumstances under which a subject's participation may be terminated would be impractical because such possible circumstances were "infinite."

The agency disagrees. Not every hypothetical circumstance in which a subject's participation might be terminated need be disclosed. The regulation requires only a discussion of anticipated circumstances. It might well be sufficient to state that a subject's participation might be terminated when, in the judgment of the clinical investigator, it is in the subject's best interests although in such a case some illustrative situations should be provided. For clarity, the word "anticipated" has been substituted for the word "foreseeable" as used in the proposed regulation to describe circumstances.

45. One comment on proposed § 50.25(b)(3) suggested that the requirement that information on possible additional costs "to others" besides the subject be provided was unclear, would have infrequent application, and could be misleading because it might refer to additional costs to the investigator or the sponsor.

The agency agrees and has deleted the words "to others." Section 50.25(b)(3) now requires that information be provided only on possible resulting additional costs to the subject.

46. One comment on proposed § 50.25(b)(5) (§ 50.25(b)(4) in the final

rule) stated that providing information on the consequences of a decision to withdraw from a study was unnecessary because the information would duplicate the requirements of other sections of the informed consent regulations.

The agency does not agree. There may be studies in which specific information on the consequences of a decision to withdraw will be of particular importance. The information need only be provided in those cases. IRB review should help identify those studies in which the information would be appropriate.

47. As discussed in responses to comments 29 through 31, the proposed requirement of § 50.25(a)(6) to provide to all subjects in any investigation, a statement regarding new "information" has been determined to be more appropriately an additional element of consent and included in the final rule as § 50.25(b)(5).

48. A number of comments on proposed § 50.25(b)(4) (§ 50.25(b)(6) in the final rule) stated that disclosing the name of the sponsor, the responsible institution, and who was funding the study would add nothing to the quality of a subject's consent because none of the items of information were likely to be important to a subject's decision to participate in research.

The agency agrees that, for the most part, the items of information proposed need not be specifically provided and has, therefore, deleted the language regarding funding, responsible institution, and sponsor. Because the approximate number of subjects participating may have a bearing on a subject's decision to participate, however, that requirement is retained in § 50.25(b)(6). Where multi-institutional studies are involved, an indication of the number of institutions and the approximate number of subjects will be sufficient.

49. On the agency's own initiative, two new paragraphs have been added to § 50.25. Section 50.25(c), which states that the requirements of these regulations are not intended to preempt any applicable Federal, state, or local laws which require additional information to be disclosed, is added to make the policy clear and to conform to the HHS language. Section 50.25(d), which states that these regulations are not intended to limit the authority of a physician to provide emergency medical care to the extent permitted under other applicable statutes, was initially proposed as § 50.23(d). It has been finalized without change and moved to conform to the HHS placement.

50. Section 50.27 requiring an investigator to document informed consent has been revised and shortened. The language of the section conforms to the language of the HHS regulation.

51. Several comments stated that to require a long, detailed consent form would be confusing and would detract from the intended purpose of the regulation that relevant information about a study be conveyed to the human subject.

The agency, as noted in responses to comments on proposed § 50.25, has simplified the informational requirements of the regulation and has required that the information given to a subject be in understandable language. FDA recognizes that the documentation of informed consent represents only one part of the entire consent process. The consent form itself is merely an aid to assure that a required minimum of information is provided to the subject and that the subject consents. The entire informed consent process involves giving the subject all the information concerning the study that the subject would reasonably want to know; assuring that the subject has comprehended this information; and finally, obtaining the subject's consent to participate. The process, to be meaningful, should involve an opportunity for both parties, the investigator and the subject, to exchange information and ask questions. The consent form, thus, should not be viewed as an end point. Rather, it is the beginning. The agency concludes that the comments do not justify any specific changes to § 50.27, although, as stated in comment 50, the regulation has for other reasons been revised and shortened.

52. One comment stated that the documentation of informed consent by a short form will not ensure that subjects understand the oral explanations. The comment further stated that subjects would have to rely solely on the interpretation given to them by the investigator.

FDA disagrees with the comment. The same quantum and quality of information, i.e., that information required by § 50.25, must be provided to a subject whether a long form, a short form, or no form is used (see also § 56.109(c)). The fact that a short form is used to document informed consent does not mean that the subject will get less information than if handed a long, detailed written document. When a "short form" is used, the IRB must first approve a written summary of what is to be said, and a witness must be present to attest to the adequacy of the consent process and to the voluntariness of the

subject's consent. Section 50.27(b)(2) also requires that a copy of that summary be given to the subject. FDA believes that in many cases an oral presentation and written summary will be an effective method of disclosing necessary information. All the "form" provides, in either case, is evidence that the information required by § 50.25 has been provided to a prospective subject. The "form" itself cannot substitute for the communicative process that it represents and, as noted in response to comment 51, it is not intended to.

53. The agency received no comments on the proposed conforming amendments and except for combining the proposed amendments relating to Parts 50 and 56, they are issued as proposed.

54. On its own initiative, the agency is revising 21 CFR 312.20(b)(1)(iv) by replacing the 1964 Declaration of Helsinki with the revised version adopted by the World Medical Assembly in 1975. The Declaration, first adopted by the World Medical Assembly in 1964 (see 44 FR 47715), was revised by that group, and the revision adopted at the 29th World Medical Assembly held in Tokyo, in October 1975. The revision includes a number of new requirements, among them the requirement that a research protocol be reviewed by a specially appointed independent committee.

55. On its own initiative, the agency is also adopting amendments to the Investigational Device Exemptions (IDE) regulations (21 CFR Part 812) to conform them to Part 50. The IDE regulations were promulgated by FDA on January 18, 1980 (45 FR 3732) after the August 14, 1979 proposal of these regulations.

#### References

The following material has been placed on file in the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Annas, G. J., "The Law of Informed Consent to Human Experimentation: An Introduction with Specific Reference to the Hospital Patient and the Normal Volunteer," prepared for the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, NIH Contract No. NO1-HU-6-2120, June 1976.

2. H.R. Rept. No. 94-1090, 94th Cong., 2d Sess. (1976).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 406, 408, 409, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 701(a), 706, and 8901, 52 Stat. 1049-1053 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 52

Stat. 463 as amended, 68 Stat. 511-517 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-560, 562-574 (21 U.S.C. 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371(a), 376, and 381)) and the Public Health Service Act (secs. 215, 301, 351, 354-360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 241, 262, 263b-263n)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

#### SUBCHAPTER A—GENERAL

#### PART 50—PROTECTION OF HUMAN SUBJECTS

##### 1. In Part 50:

a. In § 50.3 by adding paragraphs (a) and (c) through (m), to read as follows:

##### § 50.3 Definitions.

(a) "Act" means the Federal Food, Drug, and Cosmetic Act, as amended (secs. 201-902, 52 Stat. 1040 et seq. as amended (21 U.S.C. 321-392)).

(c) "Clinical investigation" means any experiment that involves a test article and one or more human subjects and that either is subject to requirements for prior submission to the Food and Drug Administration under section 505(i), 507(d), or 520(g) of the act, or is not subject to requirements for prior submission to the Food and Drug Administration under these sections of the act, but the results of which are intended to be submitted later to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The term does not include experiments that are subject to the provisions of Part 58 of this chapter, regarding nonclinical laboratory studies.

(d) "Investigator" means an individual who actually conducts a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject, or, in the event of an investigation conducted by a team of individuals, is the responsible leader of that team.

(e) "Sponsor" means a person who initiates a clinical investigation, but who does not actually conduct the investigation, i.e., the test article is administered or dispensed to or used involving, a subject under the immediate direction of another individual. A person other than an individual (e.g., corporation or agency) that uses one or

more of its own employees to conduct a clinical investigation it has initiated is considered to be a sponsor (not a sponsor-investigator), and the employees are considered to be investigators.

(f) "Sponsor-investigator" means an individual who both initiates and actually conducts, alone or with others, a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject. The term does not include any person other than an individual, e.g., corporation or agency.

(g) "Human subject" means an individual who is or becomes a participant in research, either as a recipient of the test article or as a control. A subject may be either a healthy human or a patient.

(h) "Institution" means any public or private entity or agency (including Federal, State, and other agencies). The word "facility" as used in section 520(g) of the act is deemed to be synonymous with the term "institution" for purposes of this part.

(i) "Institutional review board" (IRB) means any board, committee, or other group formally designated by an institution to review biomedical research involving humans as subjects, to approve the initiation of and conduct periodic review of such research. The term has the same meaning as the phrase "institutional review committee" as used in section 520(g) of the act.

(j) "Prisoner" means any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures that provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.

(k) "Test article" means any drug (including a biological product for human use), medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the act or under sections 351 and 354-360F of the Public Health Service Act (42 U.S.C. 262 and 263b-263n).

(l) "Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(m) "Legally authorized representative" means an individual or

judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

b. By adding new Subpart B to read as follows:

**Subpart B—Informed Consent of Human Subjects**

- Sec.  
50.20 General requirements for informed consent.  
50.21 Effective date.  
50.23 Exception from general requirements.  
50.25 Elements of informed consent.  
50.27 Documentation of informed consent.

**Subpart B—Informed Consent of Human Subjects**

**§ 50.20 General requirements for informed consent.**

Except as provided in § 50.23, no investigator may involve a human being as a subject in research covered by these regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

**§ 50.21 Effective date.**

The requirements for informed consent set out in this part apply to all human subjects entering a clinical investigation that commences on or after July 27, 1981.

**§ 50.23 Exception from general requirements.**

(a) The obtaining of informed consent shall be deemed feasible unless, before use of the test article (except as provided in paragraph (b) of this section), both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following:

(1) The human subject is confronted by a life-threatening situation necessitating the use of the test article.

(2) Informed consent cannot be obtained from the subject because of an inability to communicate with, or obtain legally effective consent from, the subject.

(3) Time is not sufficient to obtain consent from the subject's legal representative.

(4) There is available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject.

(b) If immediate use of the test article is, in the investigator's opinion, required to preserve the life of the subject, and time is not sufficient to obtain the independent determination required in paragraph (a) of this section in advance of using the test article, the determinations of the clinical investigator shall be made and, within 5 working days after the use of the article, be reviewed and evaluated in writing by a physician who is not participating in the clinical investigation.

(c) The documentation required in paragraph (a) or (b) of this section shall be submitted to the IRB within 5 working days after the use of the test article.

**§ 50.25 Elements of informed consent.**

(a) *Basic elements of informed consent.* In seeking informed consent, the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(2) A description of any reasonably foreseeable risks or discomforts to the subject.

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that the Food and Drug Administration may inspect the records.

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject.

(8) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) *Additional elements of informed consent.* When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(3) Any additional costs to the subject that may result from participation in the research.

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(6) The approximate number of subjects involved in the study.

(c) The informed consent requirements in these regulations are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

(d) Nothing in these regulations is intended to limit the authority of a physician to provide emergency medical care to the extent the physician is permitted to do so under applicable Federal, State, or local law.

**§ 50.27 Documentation of informed consent.**

(a) Except as provided in § 56.109(c), informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in § 56.109(c), the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by § 50.25. This form may be read to the subject or the subject's legally authorized representative, but, in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed.

(2) A "short form" written consent document stating that the elements of informed consent required by § 50.25 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining the consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative in addition to a copy of the short form.

#### PART 71—COLOR ADDITIVE PETITIONS

2. Part 71 is amended:

a. In § 71.1 by adding new paragraph (i) to read as follows:

##### § 71.1 Petitions

(i) If clinical investigations involving human subjects are involved, petitions filed with the Commissioner under section 706(b) of the act shall include statements regarding each such clinical investigation contained in the petition that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

b. In § 71.6 by adding a new sentence at the end of paragraph (b) to read as follows:

§ 71.6 Extension of time for studying petitions; substantive amendments; withdrawal of petitions without prejudice.

(b) \* \* \* If clinical investigations involving human subjects are involved, additional information or data submitted in support of filed petitions shall include statements regarding each such clinical investigation from which the information or data are derived, that it either was conducted in compliance

with the requirements for institutional review set forth in Part 56 of this chapter, or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

#### SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

##### PART 171—FOOD ADDITIVE PETITIONS

3. Part 171 is amended:

a. In § 171.1 by adding new paragraph (m) to read as follows:

##### § 171.1 Petitions.

(m) If clinical investigations involving human subjects are involved, petitions filed with the Commissioner under section 409(b) of the act shall include statements regarding each such clinical investigation relied upon in the petition that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

b. In § 171.6 by adding a new sentence at the end of the paragraph to read as follows:

##### § 171.6 Amendment of petition.

\* \* \* If clinical investigations involving human subjects are involved, additional information and data submitted in support of filed petitions shall include statements regarding each clinical investigation from which the information or data are derived, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

##### PART 180—FOOD ADDITIVES PERMITTED IN FOOD ON AN INTERIM BASIS OR IN CONTACT WITH FOOD PENDING ADDITIONAL STUDY

4. Part 180 is amended in § 180.1 by adding new paragraph (c)(6) to read as follows:

##### § 180.1 General.

(c) \* \* \*

(6) If clinical investigations involving human subjects are involved, such investigations filed with the Commissioner shall include, with respect to each investigation, statement that the investigation either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it has been or will be conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

#### SUBCHAPTER D—DRUGS FOR HUMAN USE

##### PART 310—NEW DRUGS

##### § 310.3 [Amended]

5. Part 310 is amended in § 310.3 *Definitions and interpretations*, by removing and reserving paragraph (i).

##### § 310.102 [Removed]

6. Part 310 is amended by removing § 310.102 *Consent for use of investigational new drugs (IND) on humans: statement of policy*.

##### PART 312—NEW DRUGS FOR INVESTIGATIONAL USE

7. Part 312 is amended:

a. In § 312.1 by revising paragraph (a)(2) item c of Form FD-1571, item 3 of Form FD-1572, and item 2a of Form FD-1573, and redesignating paragraph (d)(11) and (12) as (d)(12) and (13), respectively, and adding new paragraph (d)(11) to read as follows:

##### § 312.1 Conditions for exemption of new drugs for investigational use.

(a) \* \* \*

(2) \* \* \*

c. *Institutional review board (IRB)*. The sponsor must give assurance that an IRB that complies with the requirements set forth in Part 56 of this chapter will be responsible for the initial and continuing review and approval of the proposed clinical study. The sponsor must also provide assurance that the investigators will report to the IRB all changes in the research activity and all unanticipated problems involving risks to human subjects or others, and that the investigators will not make any changes in the research without IRB approval, except where necessary to eliminate apparent immediate hazard to the human subjects. FDA will regard the signing of the Form FD-1571 as providing the necessary assurances above.

(The notice of claimed investigational exemption may be limited to any one or more phases, provided the outline of the

additional phase or phases is submitted before such additional phases begin. A limitation on an exemption does not preclude continuing a subject on the drug from phase 2 to phase 3 without interruption while the plan for phase 3 is being developed.)

Ordinarily, a plan for clinical trial will not be regarded as reasonable unless, among other things, it provides for more than one independent competent investigator to maintain adequate case histories of an adequate number of subjects, designed to record observations and permit evaluation of any and all discernible effects attributable to the drug in each individual treated, and comparable records on any individuals employed as controls. These records shall be individual records maintained for each subject to include adequate information pertaining to each, including age, sex, conditions treated, dosage, frequency of administration of the drug, results of all relevant clinical observations and laboratory examinations made, adequate information concerning any other treatment given, and a full statement of any adverse effects and useful results observed, together with an opinion as to whether such effects or results are attributable to the drug under investigation.

3. The investigator assures that an IRB that complies with the requirements set forth in Part 56 of this chapter will be responsible for the initial and continuing review and approval of the proposed clinical study. The investigator also assures that he/she will report to the IRB all changes in the research activity and all unanticipated problems involving risks to human subjects or others, and that he/she will not make any changes in the research that would increase the risks to human subjects without IRB approval. FDA will regard the signing of the Form FD-1572 as providing the necessary assurances stated above.

2a. The investigator assures that an IRB that complies with the requirements set forth in Part 56 of this chapter will be responsible for the initial and continuing review and approval of the proposed clinical study. The investigator also assures that he/she will report to the IRB all changes in the research activity and all unanticipated problems involving risks to human subjects or others, and that he/she will not make any changes in the research that would increase the risks to human subjects without IRB approval. FDA will regard the signing of the Form FD-1573 as

providing the necessary assurances stated above.

(d) \* \* \*

(11) The clinical investigations are not being conducted in compliance with the requirements regarding institutional review set forth in this part or in Part 56 of this chapter, or informed consent set forth in Part 50 of this chapter; or

b. In § 312.20(b)(1)(iv) by replacing the 1964 "Declaration of Helsinki" with the revised version to read as follows:

**§ 312.20 Clinical data generated outside the United States and not subject to a "Notice of Claimed Investigational Exemption for a New Drug."**

(b) \* \* \*

(1) \* \* \*

(iv) \* \* \*

**Recommendations Guiding Medical Doctors in Biomedical Research Involving Human Subjects**

*I. Basic Principles*

1. Biomedical research involving human subjects must conform to generally accepted scientific principles and should be based on adequately performed laboratory and animal experimentation and on a thorough knowledge of the scientific literature.

2. The design and performance of each experimental procedure involving human subjects should be clearly formulated in an experimental protocol which should be transmitted to a specially appointed independent committee for consideration, comment and guidance.

3. Biomedical research involving human subjects should be conducted only by scientifically qualified persons and under the supervision of a clinically competent medical person. The responsibility for the human subject must always rest with a medically qualified person and never rest on the subject of the research, even though the subject has given his or her consent.

4. Biomedical research involving human subjects cannot legitimately be carried out unless the importance of the objective is in proportion to the inherent risk to the subject.

5. Every biomedical research project involving human subjects should be preceded by careful assessment of predictable risks in comparison with foreseeable benefits to the subject or to others. Concern for the interests of the subject must always prevail over the interests of science and society.

6. The right of the research subject to safeguard his or her integrity must always be respected. Every precaution should be taken to respect the privacy of the subject and to minimize the impact of the study on the subject's physical and mental integrity and on the personality of the subject.

7. Doctors should abstain from engaging in research projects involving human subjects unless they are satisfied that the hazards involved are believed to be predictable. Doctors should cease any investigation if the

hazards are found to outweigh the potential benefits.

8. In publication of the results of his or her research, the doctor is obliged to preserve the accuracy of the results. Reports of experimentation not in accordance with the principles laid down in this Declaration should not be accepted for publication.

9. In any research on human beings, each potential subject must be adequately informed of the aims, methods, anticipated benefits and potential hazards of the study and the discomfort it may entail. He or she should be informed that he or she is at liberty to abstain from participation in the study and that he or she is free to withdraw his or her consent to participation at any time. The doctor should then obtain the subject's given informed consent, preferably in writing.

10. When obtaining informed consent for the research project the doctor should be particularly cautious if the subject is in a dependent relationship to him or her or may consent under duress. In that case the informed consent should be obtained by a doctor who is not engaged in the investigation and who is completely independent of this official relationship.

11. In case of legal incompetence, informed consent should be obtained from the legal guardian in accordance with national legislation. Where physical or mental incapacity makes it impossible to obtain informed consent, or when the subject is a minor, permission from the responsible relative replaces that of the subject in accordance with national legislation.

12. The research protocol should always contain a statement of the ethical considerations involved and should indicate that the principles enunciated in the present Declaration are complied with.

*II. Medical Research Combined With Professional Care (Clinical Research)*

1. In the treatment of the sick person, the doctor must be free to use a new diagnostic and therapeutic measure, if in his or her judgment it offers hope of saving life, reestablishing health or alleviating suffering.

2. The potential benefits, hazards and discomfort of a new method should be weighed against the advantages of the best current diagnostic and therapeutic methods.

3. In any medical study, every patient—including those of a control group, if any—should be assured of the best proven diagnostic and therapeutic methods.

4. The refusal of the patient to participate in a study must never interfere with the doctor-patient relationship.

5. If the doctor considers it essential not to obtain informed consent, the specific reasons for this proposal should be stated in the experimental protocol for transmission to the independent committee (1, 2).

6. The doctor can combine medical research with professional care, the objective being the acquisition of new medical knowledge, only to the extent that medical research is justified by its potential diagnostic or therapeutic value for the patient.

*III. Non-Therapeutic Biomedical Research Involving Human Subjects (Non-Clinical Biomedical Research)*

1. In the purely scientific application of medical research carried out on a human being, it is the duty of the doctor to remain the protector of the life and health of that person on whom biomedical research is being carried out.

2. The subjects should be volunteers—either healthy persons or patients for whom the experimental design is not related to the patient's illness.

3. The investigator or the investigating team should discontinue the research if in his/her or their judgment it may, if continued, be harmful to the individual.

4. In research on man, the interest of science and society should never take precedence over considerations related to the well-being of the subject.

**PART 314—NEW DRUG APPLICATIONS**

8. Part 314 is amended:

a. In § 314.1 by adding new item 17 to Form FD-356H in paragraph (c)(2) and by redesignating paragraph (f)(7) and (8) as (f)(8) and (9), and adding new paragraph (f)(7) to read as follows:

**§ 314.1 Applications.**

(c) \* \* \*

(2) \* \* \*

Form FD-356H—Rev. 1974:

17. *Conduct of clinical investigations.* Statements contained in the application regarding each clinical investigation involving human subjects, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, areas not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

(f) \* \* \*

(7) Statements contained in the application regarding each clinical investigation involving human subjects, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, areas not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

b. In § 314.8 by adding new paragraph (n) to read as follows:

**§ 314.8 Supplemental applications.**

(n) A supplemental application that contains clinical investigations involving human subjects shall include statements by the applicant regarding each such investigation, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, areas not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

c. In § 314.9 by adding new paragraph (e) to read as follows:

**§ 314.9 Insufficient information in application.**

(e) The information contained in an application shall be considered insufficient to determine whether a drug is safe and effective for use unless the application includes statements regarding each clinical investigation involving human subjects contained in the application, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, areas not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

d. In § 314.12 by adding new paragraph (e) to read as follows:

**§ 314.12 Untrue statements in application.**

(e) Any clinical investigation involving human subjects contained in the application subject to the requirements for informed consent set forth in Part 50 of this chapter either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, areas not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was not conducted in compliance with such requirements.

e. In § 314.110 by adding new paragraph (a)(11) to read as follows:

**§ 314.110 Reasons for refusing to file applications.**

(a) \* \* \*

(11) The applicant fails to include in the application statements regarding each clinical investigation involving human subjects contained in the application, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56

of this chapter, areas not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

f. In § 314.111 by adding new paragraph (a)(11) to read as follows:

**§ 314.111 Refusal to approve the application.**

(a) \* \* \*

(11) Any clinical investigation involving human subjects contained in the application subject to the requirements for institutional review set forth in Part 56 of this chapter, or informed consent set forth in Part 50 of this chapter was not conducted in compliance with such requirements.

g. In § 314.115 by adding new paragraph (c)(7) to read as follows:

**§ 314.115 Withdrawal of approval of an application.**

(c) \* \* \*

(7) That any clinical investigation involving human subjects contained in the application subject to the requirements for institutional review set forth in Part 56 of this chapter, or informed consent set forth in Part 50 of this chapter was not conducted in compliance with such requirements.

**PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS**

g. Part 320 is amended:

a. In § 320.31 by adding new paragraph (f) to read as follows:

**§ 320.31 Applicability of requirements regarding a "Notice of Claimed Investigational Exemption for a New Drug."**

(f) An in vivo bioavailability study in humans shall be conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, and informed consent set forth in Part 50 of this chapter, regardless of whether the study is conducted under a "Notice of Claimed Investigational Exemption for a New Drug."

b. In § 320.57 by adding new paragraph (e) to read as follows:

**§ 320.57 Requirements of the conduct of in vivo bioequivalence testing in humans.**

(e) If a bioequivalence requirement provides for in vivo testing in humans, any person conducting such testing shall



comply with the requirements of § 320.31.

**PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED**

10. Part 330 is amended in § 330.10 by adding new paragraph (e) to read as follows:

§ 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

(e) *Institutional review and informed consent.* Information and data submitted under this section after (July 27, 1981) shall include statements regarding each clinical investigation involving human subjects, from which the information and data are derived, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, areas not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

**PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH**

11. Part 361 is amended in § 361.1 by revising paragraph (d)(5) to read as follows:

§ 361.1 Radioactive drugs for certain research uses.

(d) \* \* \*

(5) *Human research subjects.* Each investigator shall select appropriate human subjects and shall obtain the review and approval of an institutional review board that conforms to the requirements of Part 56 of this chapter, and shall obtain the consent of the subjects or their legal representatives in accordance with Part 50 of this chapter. The research subjects shall be at least 18 years of age and legally competent. Exceptions are permitted only in those special situations when it can be demonstrated to the committee that the study presents a unique opportunity to gain information not currently available, requires the use of research subjects less than 18 years of age, and is without significant risk to the subject. Studies involving minors shall be supported with review by qualified pediatric consultants to the Radioactive Drug

Research Committee. Each female research subject of childbearing potential shall state in writing that she is not pregnant, or, on the basis of a pregnancy test be confirmed as not pregnant, before she may participate in any study.

**PART 430—ANTIBIOTIC DRUGS; GENERAL**

12. Part 430 is amended in § 430.20 by adding new paragraph (g) to read as follows:

§ 430.20 Procedure for the issuance, amendment, or repeal of regulations.

(g) No regulation providing for the certification of an antibiotic drug for human use shall be issued or amended unless each clinical investigation involving human subjects on which the issuance or amendment of the regulation is based was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and for informed consent set forth in Part 50 of this chapter.

**PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS**

13. Part 431 is amended in § 431.17 by adding new paragraph (l) to read as follows:

§ 431.17 New antibiotic and antibiotic-containing products.

(l) Statements regarding each clinical investigation involving human subjects contained in the request, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and for informed consent set forth in Part 50 of this chapter.

**SUBCHAPTER F—BIOLOGICS**

**PART 601—LICENSING**

14. Part 601 is amended:

a. In § 601.2 by revising paragraph (a) to read as follows:

§ 601.2 Applications for establishment and product licenses; procedures for filing.

(a) *General.* To obtain a license for any establishment or product, the manufacturer shall make application to the Director, Bureau of Biologics, on forms prescribed for such purposes, and in the case of an application for a product license, shall submit data derived from nonclinical laboratory and

clinical studies which demonstrate that the manufactured product meets prescribed standards of safety, purity, and potency; with respect to each nonclinical laboratory study, either a statement that the study was conducted in compliance with the requirements set forth in Part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a statement that describes in detail all differences between the practices used in the study and those required in the regulations; statements regarding each clinical investigation involving human subjects contained in the application, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and was conducted in compliance with requirements for informed consent set forth in Part 50 of this chapter, a full description of manufacturing methods; data establishing stability of the product through the dating period; sample(s) representative of the product to be sold, bartered, or exchanged or offered, sent, carried or brought for sale, barter, or exchange; summaries of results of tests performed on the lot(s) represented by the submitted sample(s); and specimens of the labels, enclosures and containers proposed to be used for the product. An application for license shall not be considered as filed until all pertinent information and data have been received from the manufacturer by the Bureau of Biologics. In lieu of the procedures described in this paragraph, applications for radioactive biological products shall be handled as set forth in paragraph (b) of this section.

b. In § 601.25 by revising paragraph (h)(1) and adding new paragraph (1) to read as follows:

§ 601.25 Review procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use.

(h) *Additional studies.* (1) Within 30 days following publication of the final order, each licensee for a biological product designed as requiring further study to justify continued marketing on an interim basis, under paragraph (f)(3) of this section, shall satisfy the Commissioner of Food and Drugs in writing that studies adequate and appropriate to resolve the questions raised about the product have been undertaken, or the Federal government may undertake these studies. Any study involving a clinical investigation that

involves human subjects shall be conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, unless it is not subject to such requirements in accordance with §§ 56.104 or 56.105, and for informed consent set forth in Part 50 of this chapter. The Commissioner may extend this 30-day period if necessary, either to review and act on proposed protocols or upon indication from the licensee that the studies will commence at a specified reasonable time. If no such commitment is made, or adequate and appropriate studies are not undertaken, the product licenses shall be revoked.

(1) *Institutional review and informed consent.* Information and data submitted under this section after July 27, 1981 shall include statements regarding each clinical investigation involving human subjects, that it either was conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, or was not subject to such requirements in accordance with §§ 56.104 or 56.105, and that it was conducted in compliance with the requirements for informed consent set forth in Part 50 of this chapter.

c. By revising § 601.30 to read as follows:

**§ 601.30 Licenses required; products for controlled investigation only.**

Any biological or trivalent organic arsenical manufactured in any foreign country and intended for sale, barter, or exchange shall be refused entry by collectors of customs unless manufactured in an establishment holding an unsuspended and unrevoked establishment license and license for the product. Unlicensed products that are not imported for sale, barter, or exchange and that are intended solely for purposes of controlled investigation are admissible only if the investigation is conducted in accordance with section 505 of the Federal Food, Drug, and Cosmetic Act and the requirements set forth in Parts 50, 56 unless exempted under § 56.104 as granted a waiver under § 56.105, 58, and 312 of this chapter.

**PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES**

15. Part 630 is amended:  
a. In § 630.11 by revising the first sentence to read as follows:

**§ 630.11 Clinical trials to qualify for license.**

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design conducted in compliance with Part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with Part 50 of this chapter. \* \* \*

b. In § 630.31 by adding a new sentence at the end of the section to read as follows:

**§ 630.31 Clinical trials to qualify for license.**

\* \* \* Such clinical trials shall be conducted in compliance with Part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with the requirements for informed consent set forth in Part 50 of this chapter.

c. By revising § 630.51 to read as follows:

**§ 630.51 Clinical trials to qualify for license.**

To qualify for license, the antigenicity of Mumps Virus Vaccine, Live; shall be determined by clinical trials, conducted in compliance with Part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with Part 50 of this chapter, that follow the procedures prescribed in § 630.31, except that the immunogenic effect shall be demonstrated by establishing that a protective antibody response has occurred in at least 90 percent of each of the five groups of mumps-susceptible individuals, each having received the parenteral administration of a virus vaccine dose not greater than that demonstrated to be safe in field studies (§ 630.50(b)) when used under comparable conditions.

d. By revising § 630.61 to read as follows:

**§ 630.61 Clinical trials to qualify for license.**

To qualify for license, the antigenicity of Rubella Virus Vaccine, Live, shall be determined by clinical trials, conducted in compliance with Part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with Part 50 of this chapter, that follow the procedures prescribed in § 630.31, except that the immunogenic effect shall be demonstrated by establishing that a protective antibody response has occurred in at least 90 percent of each of the five groups of rubella-susceptible individuals, each having received the parenteral administration of a virus vaccine dose not greater than that demonstrated to be safe in field studies

when used under comparable conditions.

e. In § 630.81 by revising the first sentence to read as follows:

**§ 630.81 Clinical trials to qualify for license.**

In addition to demonstrating that the measles component meet the requirements of § 630.31, the measles and smallpox antigenicity of the final product shall be determined by clinical trials of adequate statistical design conducted in compliance with Part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with Part 50 of this chapter and with three consecutive lots of final vaccine manufactured by the same methods and administered as recommended by the manufacturer. \* \* \*

**PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS**

16. Part 812 is amended:

a. In § 812.2 by revising paragraph (b)(1)(iii) to read as follows:

**§ 812.21 Applicability.**

(b) \* \* \*  
(1) \* \* \*

(iii) Ensures that each investigator participating in an investigation of the device obtains from each subject under the investigator's care, informed consent under Part 50 and documents it, unless documentation is waived by an IRB under § 56.109(c).

b. In § 812.3 by revising paragraph (f) to read as follows:

**§ 812.3 Definitions.**

(f) "Institutional review board" (IRB) means any board, committee, or other group formally designated by an institution to review biomedical research involving subjects and established, operated, and functioning in conformance with Part 56. The term has the same meaning as "institutional review committee" in section 520(g) of the act.

c. In § 812.20 by removing paragraph (a)(2), and by redesignating (a)(3) as (a)(2) and revising it, and by redesignating (a)(4) as (a)(3) as follows:

**§ 812.20 Application.**

(a) \* \* \*

(2) A sponsor shall not begin an investigation for which FDA's approval of an application is required until FDA has approved the application.

d. In § 812.35 by revising paragraphs (a) and (b) to read as follows:

**§ 812.35 Supplemental applications.**

(a) *Changes in investigational plan.* A sponsor shall: (1) Submit to FDA a supplemental application if the sponsor or an investigator proposes a change in the investigational plan and (2) obtain IRB approval (see § 56.110(b)) and FDA approval of the change before implementation.

(b) *IRB approval.* A sponsor shall submit to FDA, in a supplemental application, the certification of any IRB approval of an investigation or a part of an investigation not included in the IDE application.

e. By adding new § 812.42 to read as follows:

**§ 812.42 FDA and IRB approval.**

A sponsor shall not begin an investigation or part of an investigation until an IRB and FDA have both approved the application or supplemental application relating to the investigation or part of an investigation.

f. By revising the heading of Subpart D to read as follows:

**Subpart D—IRB Review and Approval**

g. By revising § 812.60 to read as follows:

**§ 812.60 IRB composition, duties, and functions.**

An IRB reviewing and approving investigations under this part shall comply with the requirements of Part 56 in all respects, including its composition, duties, and functions.

h. In § 812.62 by revising the section heading and the section to read as follows:

**§ 812.62 IRB approval.**

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all investigations covered by this part.

(b) If no IRB exists or if FDA finds that an IRB's review is inadequate, a sponsor may submit an application to FDA.

i. By adding new § 812.64 to read as follows:

**§ 812.64 IRB's continuing review.**

The IRB shall conduct its continuing review of an investigation in accordance with Part 56.

j. By adding new § 812.66 to read as follows:

**§ 812.66 Significant risk device determinations.**

If an IRB determines that an investigation, presented for approval under § 812.2(b)(1)(ii), involves a significant risk device, it shall so notify

the investigator and, where appropriate, the sponsor. A sponsor may not begin the investigation except as provided in § 812.30(a).

k. In § 812.100 by revising the second sentence to read as follows:

**§ 812.100 General responsibilities of investigators.**

\* \* \* An investigator also is responsible for ensuring that informed consent is obtained in accordance with Part 50 of this chapter. \* \* \*

**Subpart F [Removed]**

l. Part 812 is amended by removing Subpart F—*Informed Consent* and marking it "Reserved."

m. In § 812.140 by revising paragraphs (c), (d), and (e) to read as follows:

**§ 812.140 Records**

(c) *IRB records.* An IRB shall maintain records in accordance with Part 56 of this chapter.

(d) *Retention period.* An investigator or sponsor shall maintain the records required by this subpart during the investigation and for a period of 2 years after the latter of the following two dates: The date on which the investigation is terminated or completed, or the date that the records are no longer required for purposes of supporting a premarket approval application or a notice of completion of a product development protocol.

(e) *Records custody.* An investigator or sponsor may withdraw from the responsibility to maintain records for the period required in paragraph (d) of this section and transfer custody of the records to any other person who will accept responsibility for them under this part, including the requirements of § 812.145. Notice of a transfer shall be given to FDA not later than 10 working days after transfer occurs.

n. In § 812.150 by revising paragraph (a)(4) to read as follows:

**§ 812.150 Reports.**

(a) \* \* \*  
(4) *Deviations from the investigational plan.* An investigator shall notify the sponsor and the reviewing IRB (see § 56.108(a)(3) and (4) of any deviation from the investigational plan. In the case of an emergency to protect the life or physical well being of a subject, the investigator shall notify the reviewing IRB within 48 hours. Prior approval by the sponsor is required for changes in, or deviations from, a plan. FDA approval under § 812.35(a) is also required.

**PART 813—INVESTIGATIONAL EXEMPTIONS FOR INTRAOCULAR LENSES****Subpart F [Removed]**

17. Part 813 is amended by removing Subpart F—*Informed Consent of Human Subjects* and marking it "Reserved."

**SUBCHAPTER J—RADIOLOGICAL HEALTH****PART 1003—NOTIFICATION OF DEFECTS OR FAILURE TO COMPLY**

18. Part 1003 is amended in § 1003.31 by revising paragraph (b) to read as follows:

**§ 1003.31 Granting the exemption.**

(b) Such views and evidence shall be confined to matters relevant to whether the defect in the product or its failure to comply with an applicable Federal standard would create a significant risk to injury, including generic injury, to any person and shall be presented in writing unless the Secretary determines that an oral presentation is desirable. When such evidence includes clinical investigations involving human subjects, the data submitted shall include, with respect to each clinical investigation either a statement that each investigation was conducted in compliance with the requirements set forth in Part 56 of this chapter, or a statement that the investigation is not subject to such requirements in accordance with §§ 56.104 or 56.105, and a statement that each investigations was conducted in compliance with the requirements set forth in Part 50 of this chapter.

**PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS; GENERAL**

19. Part 1010 is amended:  
a. In § 1010.4 by adding new paragraph (b)(1)(xi) to read as follows:

**§ 1010.4 Variances.**

(b) \* \* \*  
(1) \* \* \*  
(xi) If the electronic product is used in a clinical investigation involving human subjects, is subject to the requirements for institutional review set forth in Part 56 of this chapter, and is subject to the requirements for informed consent set forth in Part 50 of this chapter, the investigation shall be conducted in compliance with such requirements.

b. In § 1010.5 by revising paragraph (c)(12) to read as follows:

§ 1010.5 Exemptions for products intended for United States Government use.

(c) \*\*\*

(12) Such other information required by regulation or by the Director, Bureau of Radiological Health, to evaluate and act on the application. Where such information includes nonclinical laboratory studies, the information shall include, with respect to each nonclinical study, either a statement that each study was conducted in compliance with the requirements set forth in Part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a statement that describes in detail all differences between the practices used in the study and those required in the regulations. When such information includes clinical investigations involving human subjects, the information shall include, with respect to each clinical investigation, either a statement that each investigation was conducted in compliance with the requirements set forth in Part 56 of this chapter, or a statement that the investigation is not subject to such requirements in accordance with §§ 56.104 or 56.105 and a statement that each investigation was conducted in compliance with the requirements set forth in Part 50 of this chapter.

*Effective date.* This regulation shall become effective July 27, 1981.

(Secs. 406, 406, 409, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 701(a), 706, and 801, 52 Stat. 1049-1053 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511-517 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-560, 562-574 (21 U.S.C. 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371(a), 376, and 381); secs. 215, 301, 351, 354-360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 241, 262, 263b-263n))

Dated: January 19, 1981.

Jere E. Goyan,

Commissioner of Food and Drugs.

(FR Doc. 81-2567 Filed 1-21-81; 8:45 am)

BILLING CODE 4110-03-M

21 CFR Parts 16 and 56

[Docket No. 77N-0350]

Protection of Human Subjects; Standards for Institutional Review Boards for Clinical Investigations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or agency) is establishing standards governing the composition, operation, and responsibility of institutional review boards (IRBs) that review clinical investigations, involving human subjects, conducted pursuant to requirements for prior submission to FDA or conducted in support of applications for permission to conduct further research or to market regulated products. These regulations and the protection of human research subjects regulations adopted by the Department of Health and Human Services (HHS or Department) published in the January 26, 1981 issue of the *Federal Register*, establish a common framework for the operation of IRBs that review research funded by HHS and research conducted under FDA regulatory requirements. Compliance with these regulations is intended to provide protection of the rights and welfare of human subjects involved in clinical investigations.

**EFFECTIVE DATE:** July 27, 1981.

**FOR FURTHER INFORMATION CONTACT:** John C. Petricciani, Office of the Commissioner (HFB-4), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-9320.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of August 8, 1978 (43 FR 35186), FDA published proposed standards for IRBs for clinical investigations. Interested persons were given until December 6, 1978 to submit written comments on the proposal. By notice in the *Federal Register* of December 15, 1978 (43 FR 58574), FDA extended the comment period to June 6, 1979. During the comment period, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (National Commission) submitted its report and recommendations on IRBs and informed consent, and that document was published in the *Federal Register* of November 30, 1978 (43 FR 56174). In its report, the National Commission recommended revision of the current HHS IRB regulations (45 CFR Part 46). On August 14, 1979 (44 FR 46799), FDA withdrew the August 8, 1978 proposal and published a revised proposal that it had developed in conjunction with HHS in response to the recommendations made by the National Commission.

In addition, the agency held three hearings under § 15.1(a) (21 CFR 15.1(a)) of the administrative practices and procedures regulations in: (1) Bethesda, Maryland, on September 18, 1979; (2) San Francisco, California, on October 2, 1979; and (3) Houston, Texas, on October 16, 1979. These hearings were

intended to provide an open forum to present views on the regulations and to foster greater consideration of the proposal among the scientific community, regulated industry, and the public. (Transcripts of these hearings are on file with the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), FDA.)

For the reasons set forth in paragraph 1, the sections of the regulation have been reorganized and renumbered to be parallel with the Department's regulations. The following table correlates the new sections with those proposed.

New section	Old section
56.101	56.1
56.102	56.3
56.103	56.5
56.104	No corresponding section.
56.105	56.6
56.107	56.21, 56.25, 56.26, and 56.34.
56.108	56.80, 56.81, and 56.87.
56.109	56.82 and 56.87.
56.110	56.83.
56.111	56.88.
56.112	56.8, 56.9, 56.87, and 56.90.
56.113	56.90.
56.114	56.9.
56.115	56.15, 56.21, 56.25, 56.185, and 56.195.
56.120	No corresponding section.
56.121	56.202, 56.206, and 56.210.
56.122	56.213.
56.123	56.219.
56.124	56.215.

FDA will seek Office of Management and Budget (OMB) clearance of the reporting and recordkeeping requirements contained in these regulations prior to the effective date. If OMB does not approve the reporting and recordkeeping requirements without change, the agency will revise the regulations to comply with OMB's recommendations.

The agency received 145 comments on the original proposal and 179 comments on the reproposal. In addition, approximately 100 people appeared at the three public hearings. Following is a summary of the significant comments received and FDA's response to them:

**General Comments**

1. One of the overriding themes in the comments was that the agency should adopt the same final regulations as the Department.

FDA agrees that the Department's and the agency's regulations should be as consistent as possible, and it recognizes that if such consistency is achieved, IRBs that deal with both FDA and other HHS components will be able to follow a uniform standard. Therefore, FDA participated with other components of the Public Health Service in an intra-departmental task force whose goal was to achieve the maximum degree of

consistency possible in the Department's and the agency's IRB and informed consent regulations. Drawing heavily on the comments received by both HHS and FDA, the task force made substantial progress toward achieving its goal.

As a result, the structural and functional requirements for IRBs in FDA's regulations are identical to those in the Department's regulation. FDA and HHS have adopted the same definitions for "institution" (§ 56.102(d)) and "minimal risk" (§ 56.102(h)), and identical provisions relating to IRB membership (§ 56.107), IRB functions and operations (§ 56.108), IRB review of research (§ 56.109), expedited review (§ 56.110), criteria for IRB approval of research (§ 56.111), review by an institution (§ 56.112), suspension or termination of IRB approval of research (§ 56.113), cooperative research (§ 56.114), and records (§ 56.115). In addition, the organization of the two sets of IRB regulations is now consistent.

While exact congruity between the Department's and the agency's regulations is not possible because of differences in statutory authority and scope of activity, FDA believes that these regulations are as identical as possible with the regulations that are being adopted by HHS for the protection of human subjects who participate in research funded by the Department.

2. Several comments suggested that FDA adopt the assurance mechanism that is contained in the Department's regulations.

FDA has decided not to adopt this mechanism. Although consistency with the Department's regulations is important, the agency finds that other factors make adoption of the assurance mechanism inappropriate. FDA has determined that the benefits of the entrance into the assurance process of the IRBs that are subject to FDA jurisdiction, but not otherwise to HHS jurisdiction, do not justify the increased administrative burdens that would be placed on institution by requiring them to submit assurance materials to the Department's Office of Protection from Research Risks (OPRR), or the increased burden on the Government of processing those assurance submissions. FDA will rely instead on the dissemination of these regulations and on appropriate educational efforts, together with inspections of IRBs, to assure compliance by IRBs with these regulations.

3. One comment stated that while there should be an organized group to establish guidelines, standards, procedures, and educational activities

that assure the high quality and performance of IRBs, that group should not come from within the Government. The comment stated that institutions themselves, or other interested parties independent of the Federal Government, would organize for these purposes.

While FDA would welcome such an organization, the agency points out that none presently exists. As discussed in paragraph 8 of this preamble, FDA has been charged by Congress with the responsibility of protecting the rights and welfare of human subjects who participate in research that comes within the agency's jurisdiction. Therefore, it is necessary for the agency to publish these regulations to fulfill that responsibility.

4. Three comments stated that FDA does not have legal authority to adopt these regulations. Two comments stated that section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)) cannot be used as a grant of authority to regulate any subject the agency selects. The comments argued that the subject matter of regulations must be within the substantive authority of the agency, and that there is no mention anywhere in the act that the agency can require that clinical investigations be reviewed by an IRB. Two comments suggested that the proposed regulations should therefore be republished as guidelines.

FDA rejects these comments. The agency presented a thorough discussion of its authority to require IRB review in the preamble to the August 8, 1978 proposal at 43 FR 35197. As the agency pointed out in that preamble, its authority to adopt these regulations is derived from several sections of the act.

In section 520(g)(3)(A)(i) of the act (21 U.S.C. 360(j)(3)(A)(i)), congress directed the agency to include in its investigational device exemption (IDE) regulations (21 CFR Part 812) a requirement that an applicant for an IDE submit the plan for research to the local "institutional review committee" that " \* \* \* has been established in accordance with regulations of the [Commissioner] \* \* \* ." Under § 56.102(e) of these regulations, "institutional review committee" is synonymous with "institutional review board."

Although there are no corresponding explicit provisions with regard to the other clinical investigations covered by these regulations, the Supreme Court has recognized in *Weinberger v. Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973), that FDA has authority that "is implicit in the regulatory scheme, not spelled out in *haec verba*" in the statute.

As stated in *Morrow v. Clayton*, 326 F.2d 36, 44 (10th Cir. 1963):

However, it is a fundamental principle of administrative law that the powers of an administrative agency are not limited to those expressly granted by the statutes, but include, also, all of the powers that may be fairly implied therefrom.

See *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356 (1973); see also *National Petroleum Refiners Association v. FTC*, 482 F.2d 672 (D.C. Cir. 1973).

Sections 505(i), 507(d), and 520(g) of the act (21 U.S.C. 355(i), 357(d), and 360(j)(g)) require that the agency issue regulations that establish the conditions under which drugs and devices will be available for investigational use. Those sections of the act direct the agency to issue regulations to protect the public health in those investigations. FDA has determined (43 FR 35197) that a requirement of IRB review of an investigation is essential to safeguard the rights and welfare, and consequently, the health, of the human subjects involved in the study.

In addition, sections 505(j)(1) and 507(e) of the act require that the regulations adopted under sections 505(i) and 507(d) reflect due regard for the ethics of the medical profession and the interests of patients. There is a similar requirement in section 520(g)(1) of the act that the investigations conducted under that section be consistent with ethical standards. Because IRB review is intended to focus on the ethical acceptability of studies and on the protection of human subjects, FDA believes that the requirement of IRB review will ensure that there is due regard for the ethics of the medical profession and for the interests of patients in the investigations covered by these regulations.

Finally, under section 701(a) of the act, the agency is empowered to issue regulations for the efficient enforcement of the act. In assessing the validity of regulations issued under section 701(a), the basic question is whether the statutory scheme as a whole justifies promulgation of the regulation. *National Confectioners Association v. Califano*, 569 F.2d 690, 693 (D.C. Cir. 1978). As explained in the preamble to the August 8, 1978 proposal, IRB review is very important in helping FDA to assure that the rights and welfare of human subjects are protected in clinical investigations regulated by the agency because IRBs require modifications in or disapproval of those clinical investigations that present unreasonable risk in relation to the benefits and knowledge to be gained. See also 43 FR 35197. Therefore,

the agency has determined that these regulations are essential to enforcement of the agency's responsibilities under sections 406, 409, 501, 502, 505, 506, 507, 510, 513, 514, 515, 516, 518, 519, 520, 706, and 801 of the act, as well as the responsibilities of FDA under sections 301, 351 and 354-360F of the Public Health Service Act.

5. Several comments questioned how the regulations would affect the interaction in clinical investigations of IRBs, sponsors, monitors, and investigators. One comment stated that these regulations may make an IRB feel liable for tasks that are the responsibility of a sponsor.

The IRB regulation is one of five regulatory elements in FDA's Bioresearch Monitoring Program. That program is designed to assure the quality and integrity of the research that is subject to the agency's jurisdiction. In addition to the two FDA regulations published in this issue, the Bioresearch Monitoring Program includes proposed regulations to establish obligations of clinical investigators (proposed August 8, 1978 (43 FR 35210)), obligations of sponsors and monitors of clinical investigations (proposed September 27, 1977 (42 FR 49612)), and good laboratory practice regulations (21 CFR Part 58).

The agency has attempted to include in each bioresearch monitoring regulation only the specific obligations of the entity that the regulation covers. Although the IRB regulations obviously include matters of interest to both sponsors and clinical investigators, an IRB should have no problem determining the boundaries of its obligations.

The agency recognizes, however, that the bioresearch monitoring entities are intimately related and interdependent, and that there are certain well-established relationships among IRBs, clinical investigators, and sponsors of clinical investigations. Consequently, the agency believes that it should not impose any unnecessary requirements that would disrupt those relationships. For example, because IRBs usually do not have any direct contact with sponsors, FDA has eliminated from these regulations any requirement that an IRB contact a sponsor. The clinical investigator has the responsibility of keeping the sponsor informed of IRB actions.

6. Several comments claimed that the proposed regulations contained unnecessary, irrelevant, and repetitive rules which would serve as a deterrent to research.

These regulations are intended to establish the basic framework for IRBs and their parent institutions. They differ from those proposed in 1978 and 1979 in

that FDA has included in the final regulations only the essential organizational and procedural requirements for IRBs and has not specified in detail how those requirements are to be met. Because of the great diversity in institutions, research activities, and organizational structures covered by these regulations, FDA has decided that there must be sufficient flexibility in the regulations to allow IRBs and their parent institutions to meet these requirements in a manner that best suits their organizational needs. As a result of this approach, FDA has accepted the thrust of the comments and, as detailed in responses to comments regarding specific sections of the proposal, has deleted a number of the proposed provisions from these final regulations.

7. Several comments suggested that the proposed regulations be withdrawn because they offer no real protection to anyone.

FDA rejects this suggestion. These rules provide minimum standards for review of clinical investigations by IRBs to ensure that the rights and welfare of human subjects will be protected in the investigation. Once these regulations are adopted, if institutions select reasonable and appropriate individuals for the IRBs, the IRB review process will provide a significant safeguard for human subjects in research.

8. Other comments suggested that the objectives of these regulations could be achieved through existing common law and State regulations.

FDA disagrees with these comments. Congress has charged the agency with the responsibility of protecting the rights and welfare of human subjects who participate in research that comes within FDA's jurisdiction. Consequently, the agency cannot rely on existing common law or State regulations. The only way the agency can assure that adequate protections exist nationally is by adopting regulations that define what protections are necessary and that require that those protections be extended to all human subjects in research within the agency's jurisdiction. FDA is adopting these regulations because only through properly constituted and well-functioning IRBs can the agency be assured that the rights and welfare of human subjects are being protected before a study starts, and that the study is ethically acceptable.

9. One comment stated that Congressional and FDA investigations have amply demonstrated that some IRBs, if left free from systematic oversight, will not adequately carry out their obligations. Several other

comments stated that what is needed is an open and trusting relationship between FDA and IRBs.

FDA believes that these regulations, when coupled with FDA's inspection program, strike the appropriate balance between the conflicting approaches to the regulation of IRBs presented by these contrasting comments. The Federal Government cannot bear alone the burden of protecting the rights and welfare of human subjects. Investigators, institutions, and sponsors must share in this responsibility. If IRBs follow these regulations, they will protect human subjects. However, if the agency finds serious deficiencies in the IRB review process at a particular institution, the agency will take appropriate action, as provided for in these regulations.

10. A few comments raised questions about the costs of IRB review. The comments pointed out that there are administrative costs associated with an IRB, and they raised questions about who would pay those costs. One comment stated that a sponsor should be able to provide compensation to IRBs, provided that it does not participate in the selection of IRB members.

FDA recognizes that there are administrative costs associated with IRB review. Because, under these regulations, there is no single administrative model, for example, a single institution may have multiple IRBs, or a single IRB may review studies for several institutions, FDA believes that it is inappropriate for it to prescribe a method for reimbursement for administrative costs, and that the parties themselves should resolve this matter. FDA's statement in the preamble to the August 8, 1978 proposal regarding proposed § 56.26(a) that IRB members should not be compensated for services did not mean that administrative costs such as consultation fees, travel expenses, typing services, paper and supplies, meeting rooms, etc., could not be paid by the sponsor or institution.

11. One comment suggested that institutional review would significantly increase the costs of clinical investigations.

The agency rejects this comment. FDA estimates the cost of IRB review of a clinical investigation to be approximately \$100. Consequently, compared to the total costs of a clinical investigation, the costs of IRB review are insignificant.

12. One comment criticized the absence of data in the Economic Impact Assessment (EIA) of the proposed regulation, but did not dispute the

agency's conclusion that the regulation would not cause a major impact.

The EIA stated that the IRB regulation would "provide for extension of an IRB concept to areas where it has not previously been used" (i.e., to studies involving noninstitutionalized subjects) and increase some of the review group's administrative activities, but that these additional costs would not approach the \$100 million cost threshold for a major impact. The data underlying that conclusion follow.

The agency estimates that 2,000 IRBs are reviewing or have reviewed studies submitted for FDA approval. Approximately 500 of these IRBs have submitted a *General Assurance* to HHS that they are in compliance with departmental regulations. An agency study (Office of Planning and Evaluation Study 47, "Results of the Institutional Review Board's Pilot Compliance Program," April 1978) found that these IRBs review an average of 11 studies per month, amounting to a total of 66,000 reviews annually. The study also found that IRBs that had not submitted a *General Assurance* to HHS review an average of five studies per month, amounting to a total of 90,000 reviews annually, and that more than 50 percent of these IRBs were already in compliance with the administrative and procedural requirements.

Institutional Review boards will incur some additional costs, in part for more thorough review and followup of investigations and in part because there will be additional studies subject to IRB review. FDA estimates that the incremental costs will be \$7.5 million. This estimate was derived by assuming that the expansion of IRB review to studies using noninstitutionalized subjects will add one-third, or \$52,000, more reviews. According to one estimate, a review by an IRB with a *General Assurance* now costs about \$100 (William A. Check, "Protecting and Informing Human Research Subjects," *JAMA*, 243 (1980), 1985-1993.) Thus, the costs of the added reviews are \$5.2 million. If we further assume that the average IRB without a *General Assurance* now spends \$75 per review, the added cost to bring their reviews into compliance with agency regulations is \$2.3 million. This \$75 average cost derives from the assumption that the IRBs already in compliance (50%) spend \$100 per review and the generous assumption that the remaining IRBs (50%) will double their present review costs to come into compliance.

The EIA also attributed potential agency compliance costs to the regulation. However, there will be little,

if any, incremental costs to the agency, given present budgetary constraints.

13. One comment requested that these regulations grant IRB members limited liability in the case of malpractice suits.

FDA lacks the authority to grant limited liability to IRB's or their members. That authority resides in Congress and in the State legislatures. Although it is impossible to limit liability or to ensure against law suits, the agency believes that the chances for a successful suit against an IRB or its members are greatly diminished if the IRB has complied with these regulations and any applicable State law in reviewing the proposed research. See, e.g., *Davis v. Marathon Oil Co.*, 64 Ill. 2d 380, 356 W.E. 2d 93 (1976).

14. Several comments questioned the applicability of these regulations to studies conducted outside the United States. A few comments stated that standards of protection for human subjects may and do vary from country to country, and that the United States should not impose its standards on other countries when the human subjects come from those foreign countries in which the studies are being conducted.

FDA agrees with the comments and notes that its policy regarding investigational studies involving drugs and biological products is set forth in § 312.20 *Clinical data generated outside the United States and not subject to a "Notice of Claimed Investigational exemption for a New Drug"* (21 CFR 312.20). The policy regarding foreign studies and the background to § 312.20 was set forth in detail in the preambles to the proposed and final regulations. See 38 FR 24220 (September 6, 1973) and 40 FR 16053 (April 9, 1975). The agency's policy regarding studies of investigational devices conducted outside the United States is similar to that for drugs and biological products and is discussed in the preamble to the recent proposal entitled "Proposed Procedures for the Premarket Approval of Medical Devices," published in the *Federal Register* of December 12, 1980 (45 FR 81769). Section 814.15 of that proposal states the agency's policy concerning devices.

#### The Proposed Regulation

15. Numerous comments objected to the statement in proposed § 56.1 *Scope* (§ 56.101 in the final regulations) that compliance with these regulations would help to assure the quality and integrity of data submitted to FDA. These comments argued that it is neither the responsibility nor within the competence of an IRB to assure the quality and integrity of data. The comments stated that the primary

functions of an IRB are to assure the ethical acceptability of a particular study and to assure that human subjects are adequately protected. One comment argued that IRBs would be converted into consultants for sponsors if they were required to review the quality and integrity of data. A number of comments asserted that review of the validity and integrity of data on an ongoing basis would be an undue burden on IRBs. A number of comments objected on similar grounds to including review of research methods among the criteria for approval of a clinical investigation. The comments argued that the IRB should focus on its primary task of risk assessment, and that the scientific evaluation, validation, and justification necessary for a study should be the obligation of the clinical investigator responsible for the study and of the sponsor.

During the process of reviewing the comments and developing IRB regulations with other components of the Department, FDA became convinced that a number of IRB obligations included in the 1978 and 1979 proposals were inconsistent with the generally accepted view of the scope of IRB review. Consequently, the agency decided to reconsider whether to impose those obligations. One of the obligations most difficult to delineate was the extent to which an IRB must consider the scientific aspects of a research proposal. FDA acknowledges that the primary responsibilities of an IRB are to assure that human subjects are adequately protected, are not exposed to unnecessary risks, and are provided with enough information about a study so that they can give effective informed consent. However, the agency believes that it is impossible to divorce completely considerations of science from those of ethical acceptability and of protection of human subjects. Some type of scientific review is necessary to determine whether the risk to which subjects are exposed is reasonable.

Thus, FDA has decided to delete from § 56.101 all references to any responsibility on the part of IRBs to assure the validity and reliability of data, because the agency is concerned that reference to such an obligation could be interpreted as imposing on IRBs the obligation to exercise primary scientific review responsibilities for clinical studies. IRBs have no such obligation. However, FDA believes that the IRB, the institution, and the clinical investigator share an obligation to assure that a review of the scientific merits of a proposal is conducted. FDA believes that an IRB cannot reasonably

review a study or make a valid risk assessment, unless there has been a positive assessment of the scientific merits of the research.

16. Numerous comments objected that proposed § 56.1 did not limit the scope of IRB review of clinical investigations to exclude those that are conducted outside of an institution. These comments suggested that the other elements of FDA's Bioresearch Monitoring Program provide sufficient protection for human subjects who are not institutionalized.

FDA rejects these comments and declines to change § 56.101 in response to them. Human subjects, whether institutionalized or not, are entitled to the protections that these regulations offer. The agency agrees that the other elements of the Bioresearch Monitoring Program provide important protections to human subjects. However, as the agency pointed out in paragraph 5, the elements of that program are closely related and interdependent. IRB review is necessary to ensure that the rights and welfare of human subjects are protected, and that the subjects are adequately informed prior to the start of a study.

17. One comment questioned whether these regulations would require physicians practicing in their offices to obtain IRB review of their proposed clinical investigations. Another comment suggested that physicians practicing in their offices should have a centrally located IRB available for their use.

Physicians who practice in their offices and who wish to conduct clinical investigations for a sponsor or as sponsor-investigators are required to comply with these regulations to obtain a research permit. The agency recognizes, however, that in some instances such physicians (and other health professionals who would otherwise qualify for a research permit) may not be affiliated with an institution or have direct access to an IRB. In those instances, FDA advises that several options are available to the physician. A sponsor-investigator who is unaffiliated with an institution with an IRB can comply with this requirement by obtaining review at an institution whose IRB conforms with these regulations or by submitting the research proposal to an IRB created under the auspices of a local or State government health agency, a community hospital, a private or public medical school, a county or State medical society, the State medical licensing board, an independent nonprofit group such as a foundation or society interested in a particular health concern, e.g., kidney disease or family

planning, or an organization involved in intergroup communications, e.g., the American Arbitration Association. A private physician who wants to conduct clinical research for a sponsor, in addition to these options, may use an IRB created by the sponsor.

18. One comment suggested that optometrists in private practice be exempted from the requirements of these regulations.

FDA rejects this suggestion. The agency believes that human subjects involved in any clinical investigation subject to FDA jurisdiction (except for those specifically exempted) need the protections that these regulations afford, regardless of whether the study is being conducted by optometrists, medical doctors, dentists, or other health professionals.

19. Several comments objected to the inclusion of cosmetic studies within the scope of these regulations. These comments pointed out that cosmetic studies are not subject to submission to the agency for premarket approval and therefore should not be subject to a requirement of IRB review.

FDA agrees with the comments and has modified § 56.101 to exclude cosmetic studies from the scope of the IRB regulations.

20. Several comments urged that FDA not include over-the-counter (OTC) drugs in the scope of Part 56.

In the preamble to the 1978 proposal at 43 FR 35189, FDA announced:

The Commissioner believes the purposes and processes of IRB review are now so widely accepted, and its value so generally recognized, that all clinical investigations should undergo such review unless circumstances clearly make it unnecessary, or infeasible, or contrary to the patient's interest.

Consistent with that determination, FDA has decided to require IRB review of all clinical investigations (except those exempted under § 56.104 or for which a waiver has been obtained under § 56.105) of test articles that are intended to be submitted to the agency in support of an initial or supplemental research or marketing permit. However, because the agency recognizes the lower risk associated with studies of marketed OTC drugs, and because the agency wishes to minimize the administrative burden created by these regulations, FDA has decided to include studies with marketed OTC drugs, and other drug or biologic studies for which an IND is not required (e.g., bioavailability studies with a marketed drug), on the list of procedures that can receive expedited review.

21. One comment argued that FDA has no authority to require IRB review of

OTC drugs because OTC drugs are not unapproved new drugs within the meaning of section 505(i) of the act.

That an OTC drug is being reviewed under the procedures established in 21 CFR Part 330 does not mean that the drug is not an unapproved new drug under section 505 of the act. One of the purposes of establishing the OTC review was to make certain scientific and legal determinations with regard to a drug's status under section 505 of the act. In making those determinations, under OTC review procedures, the agency will consider data on a drug ingredient that interested persons may submit. To develop these data, investigators may conduct tests for submission to the agency that may present risks to human subjects. These tests should therefore be subject to review by IRB's. As discussed in paragraph 4 of this preamble, the agency has authority under section 701(a) of the act to promulgate regulations to implement section 505 (as well as other sections of the act) that requires such review of these studies. Therefore, it is within the legal authority of the agency to include investigations of drugs under consideration in the OTC review within these regulations.

22. A few comments objected to the inclusion of low risk or no risk studies within the scope of these regulations. The comments suggested that because risk is so low in these studies, and because FDA has rules governing informed consent, no IRB review is needed. A few comments argued that IRB review would not add any protections for human subjects in low risk studies.

FDA believes IRBs should review studies even when there is minimal risk, to assure that (1) there is, in fact, only minimal risk; (2) adequate information is given to the subject or a legally authorized representative, so that effective informed consent can be given; (3) the study is ethically acceptable; and (4) the study complies with the requirements in these regulations. FDA also points out that it has modified these regulations to provide for expedited review of certain studies involving minimal risk (§ 56.109). A notice listing the eligible categories of studies is published elsewhere in this issue of the *Federal Register*.

23. One comment suggested that use of an investigational drug in an emergency situation should be exempted from IRB review.

The agency recognizes that there is a practical need to provide a mechanism for the emergency use of a test article in a single patient. After examining various options, FDA has elected to exempt the emergency use of test articles from the



IRB review requirement and so provides in new § 56.104(c). The agency advises, however, that it views emergency use of a test article as being an uncommon occurrence, and that it will examine the circumstances of emergency use on a case-by-case basis to assure that emergency procedures are not being used to circumvent IRB review. FDA also points out that it has conditioned this exemption on a report of the emergency use to the IRB within 5 working days of its occurrence. FDA would expect that the IRB that receives the report by a clinical investigator on an emergency use, as required by § 56.104(c) and § 50.23(c), will examine each case to assure itself and the institution that the emergency use of the test article was justified. FDA also advises that while it has exempted emergency use of test articles from the requirement of prospective IRB review, this exemption does not release the clinical investigator from any other obligation imposed by other regulations or by the institution in which the emergency use is undertaken. Finally, the agency advises that a "subsequent use," as referred to in the regulation, would be any use of the test article that occurs more than 5 days after its initial emergency use.

24. On its own initiative, FDA has eliminated proposed § 56.3(f) defining "institutionalized subject" because that term does not appear anywhere in Part 56. FDA has eliminated the definition of "person" in proposed § 56.3(i) because that term is used in these regulations only to denote an individual.

25. Several comments stated that the proposed definition of "clinical investigation" in proposed § 56.3(c) (now § 56.102(c)) is too broad and confusing.

FDA disagrees. The definition was drafted to include all studies within FDA's jurisdiction that are subject to the requirements of prior submission to the agency or that may be submitted to the agency in support of a research or marketing permit. The comments are rejected.

26. One comment stated that proposed § 56.3(c) should clearly state that a clinical investigation is always medical in nature and always involves human subjects.

FDA has attempted, whenever possible, to make the IRB regulations identical with those of the Department. To facilitate this goal, FDA has not defined "clinical investigation" to include only those studies that are medical in nature. As a result, this term is interchangeable with the term "research" as that term is defined by HHS. Because these terms are

interchangeable, the same wording can be used in provisions in both FDA's and the Department's regulations. Section 56.102(c) in the final regulations is revised to clarify this fact and to conform with the HHS regulations.

FDA points out that § 56.102(c) already states that human subjects must be involved in a "clinical investigation."

27. Two comments stated that proposed § 56.3(d) defining "institution" was too broad.

As stated in paragraph 1 of this preamble, FDA has revised § 56.102(d) to conform its definition of "institution" with that of the Department. "Institution" is now defined as any public or private entity. Although this definition is perhaps even broader than the proposed definition, the definition itself does not define the scope of those regulations. That scope is clearly set out in § 56.101. IRB review will now be required for all clinical investigations that support applications for research or marketing permits for products regulated by FDA. As noted in the 1978 proposal, it may no longer be strictly appropriate to call the process "institutional review" because the process is no longer tied to "institutions" as they were previously defined (43 FR 35188). Because the concept of institutional review is well understood by the research community, and because no better terminology has been suggested, the terminology has been retained.

28. One comment suggested that contract laboratories should be added to the proposed definition of "institution."

The revised definition of "institution" in § 56.102(d) includes any entity. A contract laboratory clearly would come within the purview of the regulations.

29. Two comments expressed concern about including manufacturers in the definition of "institution." One comment stated that the definition would include manufacturers who use their employees as subjects in the course of routine product testing, even though the manufacturers did not intend to use the data from that testing in support of a research or marketing permit.

The intent of these regulations is to protect human subjects in clinical investigations that are subject to FDA jurisdiction. Therefore, the definition of "institution" must be broad enough to include manufacturers who use employees as test subjects in such research. However, only clinical investigations that are regulated by FDA under sections 505(i), 507(d), and 520(g) of the act or that are intended to support applications for research or marketing permits for products regulated by FDA are within FDA jurisdiction. Therefore, routine product testing, in which the

data are not intended to be used in support of a research or marketing permit or to support the safety and effectiveness of a regulated article, would not be subject to these regulations.

30. On its own initiative, FDA has modified the definition of "institutional review board" in proposed § 56.3(e) (now § 56.102(g)) to clarify that the primary purpose of an IRB is to assure the protection of the rights and welfare of human subjects.

31. One comment stated that HHS and FDA should have a common suitable definition of "institutional review board."

FDA points out that HHS has chosen not to include a definition of "institutional review board" in its regulations. FDA believes, however, that the agency's definition is compatible with the traditional use of the term by HHS and the biomedical community. FDA concludes that its definition of "institutional review board" in § 56.102(g) is suitable.

32. One comment suggested that FDA and HHS should collaborate on common terminology and definitions for the terms "subject" and "human subject."

The scope of research supported by the Department includes behavioral research that FDA does not regulate. At the same time, the scope of research regulated by FDA includes veterinary research that HHS, other than FDA, does not regulate and that, for obvious reasons, are not subject to these regulations. Therefore, it is appropriate for FDA to use the term "human subject" to clarify the scope of the regulation, and to define the scope of the term "human subject" as in § 56.102(e) more narrowly than has HHS. Section 56.102(e) has been revised to relate specifically to the types of research that are subject to FDA jurisdiction.

33. One comment stated that proposed § 56.3(l) could be read to require that there must be a therapeutic benefit for all subjects who participate in an investigation and thus to eliminate all Phase I studies. The comment asked that this confusion be clarified.

The revised definition of "human subject" § 56.102(e) establishes that no therapeutic benefit for the participant from the research is required. The revision clarifies that these regulations do not eliminate Phase I studies.

34. One comment suggested that the proposed definition of "subject" be used in all regulations and guidelines dealing with clinical investigations.

Whenever possible, FDA has tried to use consistent definitions in each of its bioresearch monitoring regulations.

35. One comment stated that a definition of "informed consent" is needed in Part 56. FDA does not believe that the concept of informed consent can be adequately defined in a single "definition." Because the concept of informed consent is complex and should apply to any clinical investigation, FDA is publishing its provisions concerning informed consent separately in Part 50 to apply to all aspects of biomedical research in human subjects.

36. Several comments pointed out that an investigator may not always conduct an investigation or provide immediate direction under which a test article is administered, even though the investigator does exercise a supervisory role. These comments suggested a number of modifications in the proposed definition of "investigator" in § 56.3(g) (now § 56.102(h)).

FDA recognizes that a single investigator does not always immediately direct the administration of the test article. Therefore, FDA has revised § 56.102(h) to reflect more accurately the functions of investigators.

37. Several comments stated that the proposed definition of "minimal risk" in § 56.3(h) (now § 56.102(i)) should be the same as the HHS definition. One comment stated that the proposed FDA definition was too narrow.

FDA agrees with the comments and has rewritten § 56.102(i) to match the revised HHS definition. The definition in these final regulations takes into account the fact that risks encountered in the daily lives of healthy individuals may not be the same as risks encountered in the daily lives of others, and that "minimal" risk should mean that no risk in addition to that already encountered in the daily life of the individual will arise from the study.

FDA points out to those IRB's and investigators involved with medical devices that the term "minimal risk" used in Part 56 is different from the term "non significant risk" that is used in the IDE regulations. "Non significant risk" is used to describe a medical device. "Minimal risk" is used to describe an investigation and involves different criteria from the ones used to determine that a device poses a "non significant risk." Thus, IRB's and investigators cannot assume that an investigation with a "non significant risk" device poses only a "minimal risk" for the purpose of Part 56.

38. One comment stated that cosmetics should not be included in proposed § 56.3(n), which defined "test article."

As stated in paragraph 19 of this preamble, cosmetics are excluded from the scope of the IRB regulations. The

word "cosmetic" is deleted from § 56.102(1).

39. One comment stated that a definition of "substantial risk" is needed in the IRB regulations.

FDA disagrees with this comment. Having defined "minimal risk," there is no need to demarcate the levels of risk any further. All studies with greater than minimal risk are treated the same under these regulations.

40. Many comments on proposed § 56.5 (now § 56.103) objected to the requirement of IRB review of clinical investigations that are conducted outside of an institution.

Most of these comments overlap with or are identical to comments on § 56.101 Scope. The agency responded to these comments in paragraphs 15 through 18 of this preamble. The general objections will not be discussed further here.

41. Several comments on proposed § 56.5 stated that to require IRB review of studies involving non-institutionalized subjects will result in a tremendous additional burden on IRBs. One comment argued that, as a result of the regulations, it might become necessary for institutions to employ full-time reviewers, which would decrease the quality of persons serving on IRBs.

FDA disagrees with these comments. The agency does not expect that any existing IRBs will be overwhelmed with new studies. FDA has exempted all studies that begin before the effective date of these regulations from the requirement of IRB review (see § 56.104). Also, as discussed in paragraph 17 of this preamble, the agency anticipates that where the need arises to accommodate studies with non-institutionalized subjects, new IRBs will be formed by professional societies, local medical societies, etc.

42. One comment on proposed § 56.5 stated that IRBs formed to review research conducted by physicians in their private practices will pose a large problem because sponsors will be reluctant to deal with them out of fear that the IRBs will not properly review studies under these regulations, and, as a result, FDA will refuse to accept studies that the IRBs review.

FDA rejects this comment. The agency has made every effort to make these regulations as clear and precise as possible. The agency stands ready to answer any question an IRB may have about these regulations. Consequently, there should be no reason for an IRB to be seriously out of compliance with Part 56. FDA emphasizes that the agency expects it to be a rare occurrence for studies reviewed by an IRB to be rejected because of the IRB's noncompliance with these regulations.

This expectation is discussed further in paragraph 46 of this preamble.

43. Another comment on proposed § 56.5 suggested that device manufacturers should be allowed to set up IRBs to review protocols and patient consent forms for use by individual clinical investigators.

FDA agrees and points out that these regulations allow any manufacturer to set up an IRB. The agency advises, however, that one of the primary responsibilities of an IRB is to be sensitive to the concerns of the community in which the study will be conducted. Therefore, an IRB formed by a manufacturer or a sponsor must be aware of, and give full consideration to, those concerns.

44. Two comments stated that provision should be made in the final regulations for FDA to accept studies without IRB review where no IRB exists.

FDA rejects these comments. All human subjects of FDA regulated research (except for human subjects of the research specifically exempted by § 56.104 or for which a waiver has been granted under § 56.105 of these regulations) are entitled to the protection of IRB review. FDA is not willing to permit human subjects to be deprived of this protection simply because an IRB is not available locally. Although local review is preferable, FDA has never established local review as a rigid requirement. If an IRB is not available locally, review can be sought at an IRB established in any of the ways discussed in paragraphs 17 and 41 of this preamble.

45. A number of comments objected to proposed § 56.5(a) (now § 56.103(a)) because of the requirement that an application for a research permit must be reviewed and approved by an IRB before it could be accepted by FDA. One comment stated that it was wasteful to require IRB review of a study when FDA may later reject the application. Several comments stated that IRB review should take place after FDA has given its approval or, at a minimum, be concurrent with FDA review.

The agency has considered these comments and has modified § 56.103(a) to respond to the concerns. IRB review and approval will be required before any human subjects may enter into a clinical investigation. However, the IRB may review the study before, during, or after FDA conducts its review.

46. Two comments on proposed § 56.5(b) (now § 56.103(b)) suggested that data from a clinical investigation that were not subject to initial review by an IRB might be acceptable despite the absence of a review. One comment argued that if the agency does not

consider the data, it might deprive members of the public of the opportunity to use a test device that will benefit them. This comment suggested that the problem could be dealt with by permitting an investigation to be approved by an IRB after the fact.

FDA rejects these comments. Post hoc review by an IRB is contrary to the purposes of IRB review. FDA believes it possesses the statutory authority to reject the data from a study, even though the scientific validity of the data generated may not have been affected, when the clinical investigation did not receive IRB review, or when the clinical investigation was under the review of a disqualified IRB or was conducted at a disqualified institution. Although the agency may not reject the data in every case, it reserves the right to do so when circumstances so warrant, and § 56.103(b) has been modified accordingly. The agency will consider, among other factors, the risks to human subjects that would be created if it rejected the data and required that the study be redone.

47. One comment stated that FDA should not require IRB approval for studies being conducted after premarket approval of a regulated article has been granted by the agency.

The comment misunderstands the scope of these regulations, as stated in § 56.101. These regulations govern studies of regulated articles that are conducted for submission to FDA. Studies that are not intended to be submitted in support of an initial or supplemental research or marketing permit do not fall within the purview of these regulations. The agency believes, however, that the best protection for human subjects would be for all clinical studies to be reviewed by an IRB.

48. Many comments objected to the provision in proposed § 56.6 that would have waived the requirement for IRB review of clinical investigations begun prior to the effective date of these regulations only if those studies were completed within 1 year of the effective date. Some comments suggested that studies should be exempted if they were completed within 2 years. Others suggested that studies be exempted if completed within 3 years. Ten comments urged that the regulations should apply only to studies begun after the effective date.

FDA has decided to exempt all studies that were begun before the effective date of these regulations and that were not otherwise subject to a requirement of IRB review under FDA regulations before that date, and § 56.104(b) so provides. The agency believes that the administrative burden that would be

created by requiring IRB review of studies that were begun before the effective date of Part 56 far outweighs any benefits to human subjects that might be created. If the requirement was extended, the large number of studies that IRBs would suddenly have to review would prevent them from reviewing new proposals and from undertaking their continuing review of previously approved research. FDA believes that IRBs should be free to concentrate on the latter two types of research.

However, FDA advises that any expansion of a study that would otherwise be exempt under § 56.104 (a) or (b) to include a new institution will be subject to IRB review. Thus, if a new institution is added to a multicentered study of an investigational drug or device after the effective date of these regulations, IRB review must be conducted at the new institution.

49. FDA received numerous comments about proposed § 56.6(b), which would have established the circumstances in which the requirement of IRB review could be waived. Several comments objected to this provision on the ground that human subjects would not be adequately protected if a waiver were granted.

FDA is in substantial agreement with the latter comments. However, the agency recognizes that there may be circumstances in which a waiver would be appropriate. Therefore, FDA has revised the waiver provision (§ 56.105) to provide a sponsor or a sponsor-investigator with an opportunity to request that the agency waive some or all of the IRB requirements. A waiver may be granted by the responsible Bureau. The agency cautions, however, that it anticipates using the waiver provision only in special circumstances, upon a showing that a waiver is in the interest of patients who are subjects, and that an alternate mechanism for assuring the protection of human subjects is available. FDA also advises that, at the present time, it will consider applications for a waiver for those investigational new drug applications that have been commonly termed "compassionate INDs" or "treatment INDs" or for the distribution of investigational drugs under an investigational new drug exemption for the treatment of patients when alternate therapy is not available or is less effective. FDA also points out that because the statute requires IRB review of device studies, the agency will not waive the requirement of IRB review in those cases.

50. One comment suggested that the FDA regulations concerning membership

of an IRB should be identical to the HHS regulations.

FDA agrees, and the agency has rewritten proposed §§ 56.21, 56.25, 56.26, and 56.34 (now § 56.107) to conform to the revised HHS requirements.

51. Several comments stated that FDA should not require racial and cultural diversity of IRB members because this requirement may be inappropriate to the community that the IRB serves, and because this requirement has no relevance to the competence of persons who serve on an IRB. One comment stated that the IRB regulations are an inappropriate place to implement affirmative action plans.

These comments misinterpret § 56.107(a). The regulation does not require racial and cultural diversity in all cases. It requires that the racial and cultural backgrounds of the members be sufficiently diverse to assure that the IRB will be sensitive to the attitudes and concerns of the community and to the human subject population.

52. One comment suggested that it would be helpful if the term "cultural background" was defined.

FDA has used the term "cultural background" in § 56.107(a) to encompass such socio-economic characteristics as age, economic status, and ethnic origin.

53. One comment suggested that provision be made in the regulations for an IRB to include alternate members.

Although § 56.107(a) does not explicitly provide for alternate members, it would allow an IRB to adopt written procedures (see § 56.108) for using alternate members in the IRB's deliberations in case one of the regular members is absent or is disqualified from considering a proposal because of a conflict of interest. FDA points out, however, that the names of any alternate members must be included on the list of IRB members required by § 56.115(a)(5).

54. Several comments stated that there was no basis for requiring an IRB to have members of both sexes. Two comments suggested that a balance of men and women might not always be possible, and therefore, the requirement should be amended to read, "if possible."

FDA rejects these comments. The agency believes that to achieve a reasonable ethical perspective, IRB membership should be comprised of both men and women. Section 56.107(b) does not require that the number of men and women be equal. Rather, it requires that the IRB not be made up only of men or only of women. FDA points out that this requirement does not mean that members of both sexes are required to

be present for a quorum. No comments pointed to any specific situations in which it would not be possible to find competent men and competent women to serve on an IRB.

55. Several comments stated that the standards for IRB membership in the proposed regulations were too restrictive. The comments urged that FDA adopt more flexible requirements on the make-up of an IRB. Three comments pointed out that it would not always be appropriate to have a physician or to have a scientist on a five-member board. In contrast, one comment stated that the proposed requirements for IRB composition were too vague.

FDA recognizes that it cannot specify in detail the composition of an IRB that would be appropriated to review each of the diverse types of studies that are included within FDA jurisdiction. Therefore, FDA has rewritten § 56.107 to allow an institution great flexibility in the make-up of its IRB. The regulation sets forth the minimum requirements that FDA believes must be met if an IRB's advice and counsel are to receive respect. In addition to the racial and cultural diversity discussed in paragraph 51 of this preamble, an IRB must possess the professional competence to review the research activities it considers (§ 56.107(a)). It may not be made up of members of one profession (§ 56.107(b)). An IRB must include at least one member whose primary concerns are in nonscientific areas (§ 56.107(c)), and at least one member must have no connection to the institution except for his or her membership on the IRB (§ 56.107(d)). FDA has eliminated the requirement that an IRB must include at least one physician and one scientist in all cases. This change was made in consultation with HHS to achieve identical requirements and takes into consideration the need for some flexibility in the make-up of IRBs that review FDA-regulated research. However, FDA emphasizes that § 56.107(a) requires that IRBs have as members persons with the professional competence necessary to review the proposed research. For example, FDA would expect that an IRB that reviews investigational new drug studies will include at least one physician.

56. One comment suggested that it would be helpful if the term "nonscientist" was defined.

FDA believes that the examples given in § 56.107(c) of the types of individuals "whose primary concerns are in nonscientific areas" adequately explain this term.

57. One comment stated that in spite of the recommendation of the National

Commission that an IRB that regularly reviews research that has an impact on vulnerable subjects should include persons who are primarily concerned with the welfare of those subjects, no provision for special representation of vulnerable subjects was contained in the proposed regulations.

FDA disagrees with this comment. Such a requirement is contained in § 56.107(a).

58. One comment recommended that rather than setting out a specific number of lay persons to serve on an IRB, the regulation should establish a minimum proportion of the membership that is to be nonscientists.

FDA disagrees with the comment. The standards set forth in these regulations are minimum standards that must be met by an IRB. If an institution or IRB wishes to exceed these standards and have a certain proportion of the IRB members be nonscientists, it is free to do so. However, an IRB must retain the necessary expertise to effectively review any protocol submitted to it, and therefore, it may need a number of scientists (whether medical doctors, dentists, technical staff, or others) on the IRB. FDA believes that, except for minimum standards, it should not dictate how many people should be from a specific profession.

59. One comment objected to the exclusion from membership on an IRB of immediate family members of a person affiliated with the institution. This comment stated this requirement would put severe restraints on recruiting IRB members in academic communities.

FDA points out that § 56.107(d) does not exclude members of the immediate family of a person affiliated with an institution from being members of an IRB. However, none of those family members may serve as the nonaffiliated member of the IRB. This rule is consistent with the National Commission's recommendation. FDA believes that even in small academic communities in IRB can find at least one person willing to serve on the IRB who is not affiliated with the institution and who is not the immediate family member of a person affiliated with the institution.

60. Many comments stated that under proposed § 56.26 (now § 56.107(e)), members of an IRB who selected other members would be precluded from conducting research. Several comments stated that the requirement should only be that an IRB member may not participate in the IRB's initial or continuing review of a clinical investigation in which the member has a conflicting interest. One comment suggested that the section should be

modified so that no investigator would select IRB members solely to review his or her own investigation. One comment stated that IRBs at larger institutions had sufficient numbers of members to permit members to disqualify themselves if they felt there was a conflict of interest.

FDA agrees that revision is needed and has rewritten § 56.107(e) to coincide with the corresponding section in the Department's regulations. This requirement now provides that no member of an IRB may participate in the IRB's initial or continuing review of any clinical investigation in which the member has a conflicting interest. FDA believes that the IRB or the institution should determine what constitutes a conflicting interest.

61. One comment suggested that for each local IRB to seek consultative opinions on studies proposed for many research centers is redundant and would hinder the timely initiation of important research.

FDA agrees with this comment. Cooperative review of multi-institutional studies is expressly authorized by § 56.114. Expert technical opinion can be provided by a central source, so that each IRB can use that opinion to evaluate the study in light of the ethical standards of the local community.

62. One comment on proposed § 56.34 (now § 56.107(f)) suggested that consultants be allowed to vote with an IRB.

FDA rejects this comment. The decision of an IRB must represent the judgment of the members of the IRB. Although consultants should provide information about the ethical acceptability of a study, FDA believes it would be a distortion of their function to permit them to vote. Therefore, § 56.107(f) prohibits consultants from voting.

63. One comment on proposed § 56.80 (Now § 56.108(a)) suggested that the requirement in the 1978 proposal that an IRB adopt written procedures for the initial and continuing review and monitoring of clinical investigations be modified to delete the requirement of "Monitoring." The comment argued that the sponsor was primarily responsible for monitoring.

FDA deleted the term "monitoring" from repropoed § 56.80 in the August 14, 1979 document. FDA has further rewritten § 56.108(a) in these final regulations to match the HHS section. However, FDA points out that IRBs are responsible for the continuing review of a study to ensure that the rights and welfare of human subjects are protected. Therefore, FDA would expect IRBs to review studies at a frequency consistent

with the risks and to consider those data that bear on the rights and welfare of the human subjects. (See paragraph 89 below.)

64. One comment stated that instead of uniformity among IRBs, there will probably be diversity because each IRB will be able to establish its own regulations within the loose Federal framework.

FDA agrees that each IRB will be able to establish its own procedures within the Federal framework, which represents minimum standards. An institution or IRB is free to impose greater standards of protection for human subjects than those required by these regulations. As stated previously, FDA does not believe that it should provide detailed directions to IRBs on how they are to comply with these regulations. How the IRBs meet the general standards should be left to each individual IRB and institution.

65. A few comments stated that IRBs are being forced into a "police role" as opposed to an ethical review in an atmosphere of trust and cooperation.

FDA disagrees with the comments. There is no requirement that IRBs treat investigators with less cooperation than in the past. However, it is up to the IRB to assure itself, by whatever method it deems appropriate, and to assure FDA that the rights and welfare of human subjects are being protected. FDA encourages IRBs and clinical investigators to cooperate and interact with each other in a nonadversarial manner. Nevertheless, FDA considers it an appropriate requirement that IRBs develop procedures to determine whether there is a need for verification, from sources other than the investigators, that there has been no material change in certain protocols since their previous review. Verification is not required by FDA but should be an available avenue when, in the opinion of the IRB, verification will provide necessary protections for subjects involved in greater than minimal risk research.

66. Several comments on proposed § 56.81 objected to defining a quorum in terms of specific professional groups that must be represented. These comments asserted that such a requirement could have the effect of giving one member of the IRB the power to prevent the IRB from meeting by refusing to appear. A few comments suggested possible remedies to this situation, including adopting a rule that any member who missed two consecutive meetings of an IRB without good cause would automatically be dismissed.

As stated previously, FDA believes that, within the framework of these regulations, each institution or IRB should set up its own rules and procedures governing IRB membership and attendance. However, FDA believes that it is important that a person whose primary concerns are in nonscientific areas be present when the IRB conducts its business because that member represents an important element of diversity. Therefore, FDA has retained in § 56.108(b) the requirement that the nonscientific member must be present for there to be a quorum. To ensure that a nonscientific member will be present, an IRB may wish to have more than one member whose primary concerns are in nonscientific areas.

67. Several comments stated that FDA should allow meetings to take place by conference calls. These comments argued that effective dialogue can occur between IRB members on conference calls without forcing the members to be physically present in one room.

Although FDA, like HHS, encourages meetings to take place with members physically present in the room, FDA also recognizes that in some cases time and commuting expense would favor conference calls. As long as each IRB member can actively participate in any discussion of a protocol and has all pertinent material before the call, FDA has no objection to allowing meetings to occur in such a fashion and will consider meetings that take place by conference call to be "convened" meetings. These meetings must follow the same requirements (minutes, etc.) as meetings with members physically present.

68. One comment stated that the proposed requirement in § 56.87(b) (now § 56.108(c)) that an IRB report any serious or continuing noncompliance by investigators with the IRB's determinations to the institution and to FDA extends beyond the intended role of an IRB.

FDA rejects this comment. During the course of its continuing review of a study, an IRB may become aware that a clinical investigator has not complied with its requirements or determinations. If the noncompliance is serious enough, an IRB may withdraw its approval of the investigation. Disciplinary action against the investigator may also be in order. Consequently, FDA has required in § 56.108(c) that the IRB report an investigator's serious noncompliance to the bodies that have authority to take action against the investigator—the institution and FDA.

69. One comment on proposed § 56.87(b) agreed that it was appropriate for IRBs to report any noncompliance

with the requirements of the IRB to FDA, but the comment stated that IRBs should also have authority to suspend the investigator until the situation is reviewed by FDA.

Under § 56.113, the IRB is authorized to suspend or terminate its approval of any research that is not being conducted in accordance with the IRB's requirements or that has resulted in unexpected serious harm to human subjects. Where appropriate, action against a clinical investigator may be taken by FDA, or by the institution either directly or through the IRB if that authority is delegated to the IRB by the institution.

70. One comment stated that it was unclear in proposed § 56.82 whether a complete review of a proposed investigation is necessary if minor changes in the protocol, requested by the IRB, are agreed to by the investigator and the sponsor.

FDA believes that it is up to each individual IRB to decide whether it wants to review the study completely or merely to note that the requested changes have been made. However, the IRB must maintain documentation of changes made (§ 56.115(a)(2)). FDA has rewritten § 56.109(a) to match the corresponding section in the Department's regulations. This section provides that the IRB shall review and shall have authority to approve, to require modifications in, or to disapprove all research within FDA's jurisdiction.

71. Many comments objected to proposed § 56.82(a) because they interpreted the proposed regulations to require IRBs to conduct a scientific review of pertinent prior animal and human studies with the test article, as well as ethical review. A few comments stated that IRBs may not wish to see the complete animal studies but may wish to see only the conclusions from those studies.

FDA has deleted the requirement of review of prior studies from § 56.109(a). FDA emphasizes that it would not expect an IRB to conduct a scientific review of a study except to the extent necessary for the IRB to assure itself that the human subjects will not be needlessly placed at risk. However, an IRB is free to review prior studies, in whole or through summaries.

72. On its own initiative, FDA has added § 56.109 (b) and (c) to these regulations to make explicit an IRB's obligations with regard to the informed consent materials that are to be given to human subjects by the investigator (see Part 50 published elsewhere in this issue of the Federal Register).

73. One comment suggested that FDA explicitly authorize IRBs to require that human subjects in studies involving greater than minimal risk be given a cooling off period in which to consider the information that they have been given as part of the informed consent process.

FDA does not agree that there is a need to make such an explicit authorization. Implicit in the IRB's authority to review the information given to human subjects as part of informed consent is the authority to require that a specific period of time must lapse between when the information is presented to a potential subject, and when the subject must decide whether to participate in the investigation.

74. One comment suggested that informed consent materials be sent to FDA for approval before the start of a study.

FDA disagrees with this suggestion. Because IRB review includes an assessment of the adequacy of informed consent, FDA does not believe that prior approval of informed consent materials by FDA is necessary for all of the clinical investigations submitted to the agency. However, FDA points out that it may review consent materials if they are submitted as part of an application for a research permit or during the course of an inspection of an IRB or clinical investigator.

75. Many comments objected to the requirement in the proposed regulations that the IRB notify the investigator or sponsor in writing that it has received the proposed investigation. A few comments stated that the actual paperwork used by an IRB to conduct its business is its own responsibility. Another comment, however, stated that both the investigator and the sponsor need to be informed of IRB activities, so both should be notified when the study is received for review.

FDA agrees that this requirement should be deleted from the final regulation. The decision of the IRB to approve or not to approve the study, rather than the date of receipt of the study for review, is the information that must be communicated to the investigator (see § 56.109(d)).

76. Several comments suggested that an IRB has no relationship to the sponsor but only to the investigator and the institution. These comments suggested that, consequently, an IRB should not have to communicate at all with the sponsor.

As explained in paragraph 5 of this preamble, FDA agrees with these comments and has deleted from

§ 56.109(d) the requirement that the IRB notify the sponsor.

77. Several comments objected to the requirement contained in the proposed regulations that an IRB must approve or disapprove an investigation as soon as possible after receipt of the proposal. These comments suggested that this requirement could be interpreted to mandate that special meetings be convened merely because a study was submitted or could lead to confusion about what "as soon as possible" meant.

FDA agrees with these comments and has deleted this requirement from the final regulations.

78. One comment on proposed § 56.87 (now § 56.109(c)) stated that it was unclear how often an IRB should review research covered by these regulations.

Section 56.109(c) explicitly states that review shall occur at intervals appropriate to the degree of risk but not less than once per year.

79. Several comments stated that in the provisions for continuing review of research by an IRB, FDA is attempting to delegate its authority to enforce the act to a group of private citizens. One comment stated that this provision would make the IRB into an investigator for FDA. These comments stated that the act does not grant FDA authority to make such a delegation.

FDA rejects these comments. FDA is not delegating its authority to enforce the act. However, unanticipated risks are sometimes discovered during the course of an investigation, and new information sometimes comes to light showing that the risks in a study are not justified. Periodic review will assure that these risks are promptly brought to the IRB's attention and will provide extra protection to subjects. Consequently, FDA believes periodic review by an IRB is essential if an IRB is to adequately protect the rights and welfare of the human subjects involved in a clinical investigation. In paragraph 4 of this preamble, FDA already discussed its authority to adopt requirements that protect human subjects and there is no need to repeat that discussion here.

80. One comment suggested that these regulations should authorize IRBs to require investigators to provide human subjects with any new knowledge about a test article that is developed during the course of a study.

FDA and HHS have both provided as an additional element of informed consent that significant new findings developed during the course of the research that may affect the human subject's willingness to continue to participate must be provided to the subjects. Section 50.25(b)(5) of FDA's

informed consent regulations published elsewhere in this issue of the Federal Register so provides for investigations that fall within the jurisdiction of FDA. The comment does not require any change in Part 56.

81. Several comments on proposed § 56.83 (now § 56.110) offered suggestions of different types of studies that should receive expedited review.

FDA has carefully reviewed these comments, along with the comments on expedited review received by HHS, and has developed a list of procedures that, if they involve no more than minimal risk, can receive expedited review. Publication of the list is provided for in new § 56.110. FDA had decided that expedited review should play a much more important role under the final regulations than the agency originally proposed. After reviewing the comments, FDA believes that it is unnecessary to require that a full IRB meet to consider every study. For studies that present minimal risk, expedited review strikes the appropriate balance between protection of patient and minimizing the burdens imposed by these regulations.

The expedited review list has been separated from the text of these regulations and is published as a notice elsewhere in this issue of the Federal Register. FDA views this list as being subject to change and encourages public comment on what additional classes of research should be included in this list. The agency will publish appropriate revisions of the list in the Federal Register as the need arises. FDA also points out that the Department is publishing a slightly different list, but the differences are caused by the fact that HHS funds many types of studies that do not fall within FDA jurisdiction.

82. One comment on proposed § 56.83 suggested that because some changes in protocol are universally accepted as minor, they should be listed in the regulations. Another comment suggested that "minor change" should be specified to avoid confusion.

FDA disagrees with these suggestions. The scope of investigations regulated by FDA is so broad that FDA does not believe that it is feasible for the agency to list all of the different changes that might be considered to be minor. The agency advises that it considers that changes that result in increased risk to human subjects are not minor. However, FDA is unable to generalize about whether changes that apparently do not entail increased risk are minor. For example, the agency recognizes that a substantial increase in the number of human subjects above that originally approved by the IRB might be

considered to be a minor change in some clinical studies but a major change in others. Therefore, FDA believes that it is up to the IRB to determine on a case-by-case basis whether a proposed change in a protocol is minor. The agency intends to provide additional guidance on this issue in the educational program that it will conduct with the Department. The comments are rejected.

83. On its own initiative, FDA has added new § 56.110(c), which matches the HHS requirement, so that all members of an IRB will be kept informed of the studies approved under the expedited review procedure. FDA believes that it is important that all IRB members know what studies are being approved at that institution. An IRB is free to adopt specific procedures for keeping individual members informed.

New § 56.110(d), which is also identical to the HHS provision, permits FDA to suspend an IRB's use of expedited review when it becomes necessary to protect the rights or welfare of the human subjects involved in a study. Although it is unlikely that this provision will be used by the agency except in the most unusual circumstances, FDA believes that it is important, to protect human subjects, to retain this flexibility in the regulation.

84. Several comments on proposed § 56.86(a) (now § 56.111(a)(1)) objected to IRB review of research methods, stating that IRBs are not qualified to conduct such review, and that IRB's primary responsibility is not to determine the scientific merit of the study.

FDA agrees with these comments. It has drafted § 56.111(a)(1) to focus on the risks to subjects. FDA reemphasizes that IRBs need not conduct scientific reviews of clinical investigations except to the extent necessary to determine that human subjects will not be exposed unnecessarily to risk.

85. One comment on proposed § 56.86(c) asserted that the meaning of the phrase "safest procedures" is unclear.

FDA agrees and has revised § 56.111(a)(1)(i) to clarify the intent of the regulations with respect to risk.

86. One comment suggested that FDA adopt the HHS language on use of procedures being performed for diagnostic or treatment purposes, when these procedures are appropriate.

FDA agrees with the comment and has adopted language in § 56.111(a)(1)(ii) to match the HHS requirement. The IRB should ensure that if procedures that are to be used in a study are already being used on a human subject for diagnostic or treatment purposes, the research

procedures will be coordinated with the diagnostic or treatment procedures to avoid unnecessary repetition of the procedures.

87. Two comments suggested that proposed § 56.86(d) requiring that "risks to subjects be reasonable" and that "the importance of the knowledge to be gained should be considered" needed clarification.

FDA has rewritten § 56.111(a)(2) to match the HHS requirement. FDA advises that in a placebo-controlled trial, for example, no immediate benefit to the placebo group would be anticipated, so that the risks to that group must be reasonable in relation to the importance of the knowledge to be gained in the research. The regulations now state that the IRB shall not consider possible long-range effects of the knowledge gained in the research as a risk of conducting the research. Only those risks that relate to the particular human subjects involved in the investigation must be considered by the IRB.

88. Two comments on proposed § 56.86(b) (now § 56.111(a)(3)) stated that the term "equitable" was ambiguous and needed further explanation.

FDA disagrees with the comments. Special subgroups of the population should not have to bear a disproportionate amount of the risks of research that benefits others. The subjects of an investigation should not come from any particular group simply because it is convenient for the investigator to draw from that group. Scientific design and alternate human subject populations should be considered in assessing whether the selection of subjects is "equitable." For example, the IRB should require that the investigator justify the proposed involvement in the study of hospitalized patients, of other institutionalized persons, or of disproportionate numbers of racial or ethnic minorities or persons of low socioeconomic status. The comments are rejected, and § 56.111(a)(3) is published as proposed.

89. One comment questioned the meaning of the requirement in proposed § 56.86(g) (now § 56.111(a)(6)) that, where appropriate, data be monitored.

Where appropriate, IRB's should require that the research plan make adequate provision for monitoring the data collected to ensure the safety of human subjects. This procedure might be an appropriate requirement in large scale clinical trials or in studies with a high degree of risk. The IRB may require the use of data safety monitoring boards in order to meet the requirements of this provision. Thus, if it becomes clear that

risks are greater than anticipated, or that the benefits do not justify the risks of the research, the IRB is informed and can act on the information. This provision matches the HHS requirement.

90. One comment suggested that each IRB should set out guidelines for determining at what point in each experiment one treatment is shown to be safer and more effective than alternate treatments or no treatment.

FDA disagrees with this suggestion. IRBs generally will not have the scientific consistence to make such a judgment. The determination whether and at what point in an investigation a test article has been shown to be safe and effective in accordance with the requirements of the act is a determination that must be made by the investigator, the sponsor, and, ultimately, FDA. The comment does not require any change in the regulations.

91. One comment stated that the regulations should protect vulnerable groups, such as minorities. The comment stated that neither the HHS nor the FDA proposed requirement was sufficient in this regard.

FDA has rewritten § 56.111(b) (and HHS has rewritten the corresponding provision in its regulations) to require that the IRB assure that appropriate additional protections are provided if the human subjects are from a vulnerable group.

92. One comment stated that before exposing human subjects to risk, an IRB should be required to make a determination that treatment is available for injuries that may arise from the research.

FDA disagrees in part with this comment. Section 50.25(a)(6) of the informed consent regulations requires that the subject be told if treatment for injuries is available. It should then be up to the subject to decide if he or she wishes to participate in the study. However, FDA agrees that the IRB should determine whether the investigator has made adequate provision for emergency medical care, if it appears that such emergency care may become necessary during the course of the investigation.

93. One comment suggested that IRB's should follow human subjects after completion of the study, unless the investigator can show that it is not necessary to do so.

FDA disagrees and rejects the suggestion. If anyone should follow subjects after completion of the study, it is the investigator or the sponsor. IRBs are generally not in a position to follow human subjects. If an IRB believes that it is necessary to do so to protect the subjects, it can require as part of the

protocol that the investigator follow subjects after the completion of the study.

94. Several comments on proposed § 56.8 stated that a means is needed for an investigator, a sponsor, or an institution to appeal an IRB ruling.

FDA has renumbered § 56.8 as § 56.112 in the final regulations to conform with those issued by HHS. The National Commission did not recommend that there be a mechanism for appeal from IRB determinations. However, there is nothing in § 56.112 that would prevent an institution from formulating an appeals mechanism, so long as the final ruling body is an IRB that satisfies the requirements of Part 56. Appeal of an adverse IRB determination to other institutional bodies that do not meet the requirements of Part 56 is not allowed under the regulation.

95. One comment questioned why officials at an institution could overrule IRB approval but not IRB disapproval of a study. Another comment stated that § 56.8 might abrogate the authority of the head of an institution.

Review and approval of a proposed clinical investigation by an IRB should not preclude a subsequent decision by the institution itself to reject the investigation. Officials of the institution take into account factors other than ethical acceptability and patient protection in deciding whether to authorize a particular investigation. For example, IRBs do not make decisions regarding the priority of funding studies or policy on whether to conduct a certain type of study at the institution. Therefore, FDA believes that institutional officials should have the authority to overrule an IRB's decision to approve a study. At the same time, FDA has decided not to authorize an institution to overrule and IRB's rejection of a study. If an institution had that authority, and IRB would become merely advisory, and its responsibilities would be eliminated. The comments do not warrant any change in the regulations.

96. Several comments on proposed § 56.92 stated that the sponsor should be given notice of a decision by an IRB either to suspend or to terminate approval of a clinical investigation.

FDA rejects these comments for the reasons explained in paragraphs 5 and 76 of this preamble.

97. One comment on proposed § 56.92 (now § 56.113) stated that once FDA has acted on an application for a research permit, it would be unfair to allow an IRB to suspend its approval of a particular clinical investigation.

FDA disagrees with the comment. An IRB focuses on different factors in its review of a proposed investigation than the agency considers in deciding whether to grant a research permit. Consequently, approval of a proposed investigation by either an IRB or FDA does not preclude the other entity from suspending or terminating the approval of the investigation at a later date.

98. FDA has deleted from the final regulations the criteria for disapproval and suspension or termination of approval of a clinical investigation that were proposed in § 56.90. Section 56.113 now states that an IRB may suspend or terminate its approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. This section now conforms to the HHS provision. The agency believes that the section, as revised, adequately specifies general criteria for the suspension or termination of the IRB's approval of an ongoing study. The section also requires that the IRB promptly notify FDA of its actions. Where necessary, FDA can, in turn, take any steps necessary to assure that the subjects are protected.

99. Several comments objected to the requirement in proposed § 56.90 that, after suspending or terminating approval of an investigation, the IRB make recommendations to FDA about the care of the human subjects of that investigation. The comments argued that it was the responsibility of a physician, and not an IRB, to make such recommendations.

FDA agrees with the comments and has deleted this requirement from the final regulations. The agency believes that this requirement inappropriately imposed medical responsibilities on an IRB. The responsibility for human subjects in a study for which IRB approval has been suspended or terminated is more properly shared by the clinical investigator, the institution, and the sponsor.

100. Section 56.114 in the final regulations was proposed as § 56.9. That section has been rewritten for clarity but there is no change in its intent. It is now consistent with the corresponding provision in the HHS regulations. The purpose of this section is to assure IRBs that FDA will accept reasonable methods of joint review. Thus, an IRB need not re-review a study that has already received approval from another IRB, unless it chooses to do so. However, FDA advises that the requirement for the IRB to be sensitive to such factors as community attitudes (§ 56.107(a)) is applicable to § 56.114. The IRB's records must include, either in

the minutes or elsewhere, documentation of agreement that a specific study will be reviewed cooperatively.

101. Two comments on proposed § 56.185 (now § 56.115) suggested that the records of an IRB should be maintained by the institution rather than by the IRB.

FDA agrees that, in some cases, it may be more feasible for an institution to maintain the records of an IRB. Consequently, FDA has rewritten § 56.115(a) to provide that either the institution or the IRB may be responsible for preparing and maintaining adequate records of IRB activities.

102. One comment stated that it is unreasonable to require IRBs to keep records because they lack adequate storage facilities.

FDA advises that if an institution delegates the responsibility to maintain records to an IRB, it must also provide the IRB with adequate facilities to do so. The comment does not justify any change in § 56.115.

103. One comment suggested that proposed § 56.185 should spell out every record that the agency wants an IRB to keep. The comment stated that the proposed requirements were not sufficiently detailed.

FDA disagrees with this comment. Section 56.115(a) in the final regulations sets forth the minimum records that an institution or an IRB must keep to document the activities of the IRB. The IRB or the institution is free to maintain additional records if it chooses. However, FDA does not believe that any more extensive recordkeeping by the IRB or the institution is necessary.

104. Five comments objected that the documentation FDA proposed to require was an unnecessary burden on IRBs. These comments argued that the proposed documentation is not necessary to protect the rights and welfare of human subjects.

FDA rejects these comments. The agency believes that the records that an IRB or an institution must maintain under § 56.115(a) provide significant evidence of whether the procedures utilized by the IRB are adequately protecting the human subjects of the investigations that the IRB is reviewing. For example, when an IRB approves the use of a "short form," for informed consent as provided in § 50.27(b)(2), FDA would expect the IRB to retain in its files a copy of the written summary of the oral presentation of informed consent information that is given to human subjects in the clinical investigation.



105. Several comments stated that proposed § 56.185(d) (now § 56.115(a)(2)), which requires that the minutes of an IRB meeting include a summary of the discussion of substantive issues, is not reasonable.

FDA agrees in part with the comments. The National Commission recommended, and FDA agrees, that it is important to maintain detailed minutes of IRB meetings. However, FDA decided to reduce the burden on IRBs by requiring that the minutes contain: (1) A basis for IRB action only when the research is disapproved or requires modification; and (2) A written summary of the IRB discussion and resolution only when it involves controversial issues.

FDA does not believe that summarizing the discussions of controverted issues in the minutes will have a chilling effect on those discussions because FDA does not require the identification of specific individuals with specific comments in the summaries.

106. One comment suggested that minutes could be kept by an audio tape recording, which would be complete and more accurate than any summary.

FDA agrees that a tape recording is a more complete record of the meeting. However, FDA advises that retention of complete recordings of meetings does not relieve an IRB of its obligation under § 56.115(a)(2) to keep at least brief written summaries of its meetings that must be available for inspection.

107. A few comments stated that the voting records of individual members should not be kept. The comments stated that this requirement would have a chilling effect on IRB members.

FDA believes the requirement has been misunderstood. Proposed § 56.185 did not include such a requirement nor does § 56.115 of the final regulations. Section 56.115(a)(2) requires only that the number of members voting for and against a study be kept. While the members attending the meeting would also be recorded in the minutes, individual voting records are not required.

108. Three comments objected to any requirement that voting records be kept.

FDA disagrees with these comments. The voting records must be included in the IRB records for FDA to document that a majority of those members present voted in favor of conducting a particular study at that institution.

109. One comment suggested that individual voting records of IRB members should be submitted to FDA, so that even if a member objected to a study but was overruled by the other members, the objection would come to

the attention of FDA. The agency could then take appropriate action.

FDA disagrees with this suggestion. Section 56.115(a)(2) already requires that votes of an IRB be recorded, and that any controverted items discussed be summarized in the minutes of IRB meetings. Consequently, there is no need to record individual members' voting records. In addition, except in the most extreme circumstances, FDA does not believe that it should second guess a properly constituted and well-functioning IRB on the ethical acceptability of a study.

110. Several comments objected that the records about the members of an IRB that were required in the proposed regulations were overly burdensome.

The recordkeeping requirements in § 56.115(a)(5) have been limited to provide that only information that necessarily bears on the IRB's impartiality and expertise must be maintained.

111. One comment stated that the record retention time required by proposed § 56.195 (now § 56.115(b)) disregarded the possibility that problems might not appear for 20 to 30 years.

This comment suggested that the regulations should be changed to require that records be kept 7 years for adults and 25 years for minors and pregnant women.

Although an institution is free to adopt a longer requirement, FDA has decided to match the HHS provision that records must be kept a minimum of 3 years. The agency believes that the 3-year requirement strikes an appropriate balance between the need to retain records and the administrative burdens involved. Although some problems may not become apparent for 20 years or more, those instances are so rare that the agency concludes that they do not justify an absolute requirement that all IRB records be retained for such an extended period of time. In addition, FDA reviews IRBs on a 2-year cycle. Thus, the 3-year requirement will ensure that all of the important records of the IRB will be available for FDA review. If, however, an institution or an IRB believes that in a particular study it would be appropriate to retain the IRB records longer to protect the human subjects involved, the institution or the IRB is of course free to do so.

112. One comment stated that the period that IRBs or institutions are required to retain records should be consistent with the record retention requirements in the proposed regulations regarding obligations of sponsors and monitors of clinical investigations and the proposed

regulations regarding obligations of clinical investigators.

FDA rejects this comment. The records covered by these regulations are quite different than those that are proposed to be required under the sponsor-monitor and clinical investigator regulations. Therefore, the agency believes that the three sets of regulations need not be consistent on this point. The agency believes it is more appropriate to keep § 56.115(b) consistent with the corresponding provision in the HHS regulations. FDA believes that the 3-year period satisfies the needs of the agency while not imposing an unreasonable administrative burden on IRBs or their parent institutions.

113. A few comments suggested that records could be maintained by microfiche, microfilm, or other similar photographic method, if the records are properly verified as being accurate reproductions of the original records.

FDA agrees with these comments. There is nothing in these regulations that would prevent records from being reproduced and retained in this manner.

114. Many comments objected to the requirement in proposed § 56.15(a) that FDA be allowed to copy patient medical records during an IRB inspection. Most comments stated that IRBs do not have individual patient records. Other comments questioned whether FDA was requiring IRBs to obtain those records. Many comments stated that there were problems with confidentiality if IRBs were to obtain individual patient medical records and maintain them in the files for 5 years after completion of a clinical investigation to which the IRB records relate. Many comments stated that if this information is needed by the agency, it is available from either the sponsor or clinical investigator and should be obtained through proper legal channels from those persons.

In response to the comments, FDA has deleted from the final regulations any requirement that patient records be maintained by an IRB or that patient records be made available to FDA during an inspection of an IRB. If it becomes necessary for FDA to see the medical records of individual patients, adequate authority exists under the act for FDA to obtain those records from the clinical investigator or sponsor. Also, because IRBs would rarely have individual medical records, FDA wants to assure IRBs that there is no need to obtain individual patient records to comply with the requirements of § 56.115.

115. One comment suggested that IRBs do not have to submit to inspection by

FDA because inspections require warrants.

FDA rejects this comment and declines to change § 56.115(b) to respond to the comment. As discussed in the preamble to the 1978 proposal, FDA has authority to inspect an IRB, in many cases, without the IRB's permission. Under section 704(a) of the act (21 U.S.C. 374(a)), FDA may inspect establishments in which certain drugs or devices are processed or held and may examine research data that would be subject to reporting and inspection under sections 505(i) or (j), 507(d) or (g), 519, or 520(g) of the act. Under section 704(e) (21 U.S.C. 374(e)), FDA may inspect certain required records concerning devices. Thus, most sponsors and many investigators of investigational new drugs and investigational devices, and the institutions at which such studies are conducted, are subject to FDA inspection whether they consent or not.

FDA advises that if an IRB refuses to permit inspection, FDA may, under § 56.115(c), reject the studies conducted under review of that IRB from supporting an application for a research of marketing permit, or the agency may seek a warrant to inspect. However, there is no requirement that FDA obtain a warrant before inspection.

116. Two comments stated that inspections were too long, and that FDA should provide more detail about how inspections are to be conducted.

FDA has recently mailed an information sheet on the inspection process to the approximately 1,500 individuals, institutions, and organizations that have communicated with the agency previously about IRB's. FDA also sponsored a workshop on IRB compliance activities on November 7, 1980 (announced in the *Federal Register* of September 26, 1980; 45 FR 63929). The agency will distribute the transcript of the workshop to interested parties; will evaluate the workshop as well as written comments on it; and will then decide whether to make modifications in the current inspection program. The transcript and the information sheet are on file under Docket No. 80N-0399 in FDA's Dockets Management Branch (HFA-305), Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. The transcript and any comments on it may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

The comments do not require any change in the regulation.

117. A few comments on proposed § 56.15(b) (now § 56.115(c)) stated that FDA has no authority to refuse to consider a clinical investigation in support of an application for a research

or marketing permit if the IRB refuses to allow inspection by FDA officials. Some of the comments stated that FDA should have the burden of showing that the validity of the study is adversely affected by the IRB's refusal to allow inspection.

As stated in the preamble to the 1978 proposal, if follows from the authority to issue regulations establishing standards for IRBs that FDA also has the authority to prescribe the terms on which it will accept data generated in a clinical investigation reviewed by an IRB. Therefore, the agency may refuse to consider data from a clinical investigation in support of an application for a research or marketing permit, unless the IRB that reviewed the investigation consents to an inspection by FDA.

The connection between an IRB's refusal to permit an inspection and the agency's refusal to consider data is clear. FDA is charged by statute with the obligation of ensuring the protection of the rights and welfare of the human subjects who participate in clinical investigations involving articles subject to sections 505(i), 507(d), and 520(g) of the act. In performance of that obligation, the agency has adopted these regulations requiring IRB review. However, FDA has a concomitant obligation to ensure that these regulations are observed. FDA must verify that IRBs are operating in accordance with these regulations, and it must have access to the IRBs and their records to do so. When an IRB refuses to permit FDA to inspect its records, FDA cannot verify that the IRB is properly constituted and operating correctly. Consequently, the agency cannot be assured that human subjects have been given the protection that the IRB mechanism is intended to afford, and it may be appropriate for the agency to refuse to accept the data from the studies that the IRB has reviewed.

However, FDA points out two additional facts: First, before rejecting the data from a clinical investigation, the agency will review each study to determine whether the risks created by requiring the study to be re-done outweigh the benefits of rejecting the data.

Second, FDA expects that it will be a very rare occurrence for an IRB to refuse to allow an inspection by FDA personnel. FDA has found that the vast majority of IRBs are cooperative at the time of inspection.

The comments do not justify any change in § 56.115(c) from the regulation as proposed.

118. A few comments stated that it is unfair for the agency to "punish" the

sponsor of a study by refusing to accept the data from a study that was reviewed by an IRB that refused to allow FDA inspection.

FDA has already explained in paragraphs 46 and 117 above that it will not automatically reject data. FDA also points out that, with these regulations (see § 56.120 et seq.), the agency has available more direct administrative actions against institutions and IRBs for noncompliance. Thus, the agency may apply sanctions directly against the entity that refused inspection. However, there may be occasions when it would be appropriate for the agency to also refuse to accept data, and FDA has reserved that option.

119. FDA received numerous comments criticizing the provisions of Subpart K of the proposed regulations (now Subpart E) relating to the disqualification of IRB's.

In response, FDA has simplified and streamlined Subpart E of the final regulations. FDA has also shifted the focus of the administrative sanctions for noncompliance from the IRB to the institution. The agency recognizes that an IRB is created by and is responsible to the institution. Consequently, it is the duty of the institution to assure that its IRB meets the obligations imposed by Federal statute and regulations. FDA believes that when an IRB is found not to be in compliance with the regulations, and the institution to which the IRB is responsible does not take positive steps to correct the deficiencies, the appropriate response is to take action against the institution. However, there are exceptions to this rule. If an IRB is not directly responsible to a single institution, e.g., where an IRB reviews clinical investigations for more than one institution, and the IRB is found not to be in compliance with these regulations, FDA believes it would be appropriate to take action directly against the IRB. A second exception is the situation in which an IRB is one of several directly responsible to a single institution, e.g., where an IRB reviews certain kinds of clinical investigations at the institution, and where an IRB is found not to be in compliance with these regulations. FDA believes that it may not be appropriate to disqualify all the IRBs at the institution because one is out of compliance. Therefore, FDA will take action against the individual IRB, and not against the institution, when the institution has taken all appropriate steps within its power to correct the IRB's deficiencies, but the IRB remains out of compliance.

Section 56.120(c) reflects the agency's shift in focus to the institution. However, the regulation also provides that FDA

may take action against an IRB or a component of the parent institution if the agency determines that it is appropriate to do so under the facts of the particular case.

120. Several comments on proposed § 56.202(c) suggested that the lesser regulatory actions that were referred to in the proposed regulations should be listed.

FDA accepts these comments. Section 56.120(b) has been added to the final rule to set forth the lesser administrative actions that the agency may take if FDA finds deficiencies in the operation of an IRB and to describe the circumstances in which these lesser administrative actions may be used by the agency.

121. Two comments stated that notification of other Federal agencies of a possible IRB disqualification, as provided in the proposed regulations, would presume that IRB is guilty before it had an opportunity for a hearing and would make it difficult to recruit members.

FDA rejects these comments. In most instances, FDA will not advise other Federal or State agencies of deficiencies in the operation of an IRB, unless the agency decides to disqualify the IRB or its parent institution. However, in § 56.120(b)(4), the agency has reserved the right to do so if it finds serious deficiencies in the operation of an IRB during an inspection. In addition, FDA, as an agency of HHS, will share knowledge gained from inspections with other agencies within the Department, including the National Institutes of Health.

122. A few comments stated that FDA should exhaust all other remedies before disqualification. Other comments suggested that the IRB should have an opportunity to correct or refute the deficiencies found by FDA.

Section 56.121(a) of the final regulations provides that disqualification proceedings will not be instituted by the agency, unless the agency determines that grounds for holding a hearing exist, and the institution or the IRB has failed to take adequate steps to correct the deficiencies listed in the letter sent by the agency under § 56.120(a).

123. One comment stated that if FDA decided to retain the disqualification mechanism, the regulations should clearly state that disqualification will be used only in the most extreme cases and not on a routine basis.

FDA agrees with this comment. Disqualification will be used by the agency only when it is necessary to protect the rights and welfare of human subjects, and after the institution or IRB has refused or has continuously failed to

comply with these regulations. FDA hopes never to use this sanction, and, based on the demonstrated willingness of institutions to correct deficiencies in their IRBs, the agency does not expect to use this sanction except in the most extraordinary circumstances. However, the agency believes that it is important to retain the option to disqualify an institution or an IRB if it becomes necessary to do so to protect human subjects.

124. Several comments pointed out that nowhere in the act is disqualification mentioned. These comments consequently concluded that FDA lacks the authority to disqualify IRBs.

FDA disagrees and rejects these comments. FDA has previously discussed its authority to promulgate these regulations (see paragraphs 4 and 117 of this preamble). Inherent in that authority is the authority to enforce these regulations. Disqualification is an essential element of the enforcement mechanism adopted by the agency. Without such an enforcement mechanism, compliance with these regulations would be voluntary, and these regulations would be nothing more than guidelines that would not adequately protect human subjects.

125. A few comments suggested that disqualification of an IRB or an institution would only hurt the sponsor, because studies reviewed by the IRB would not be accepted by FDA. The comments stated that sponsors exert little control over IRBs and have little opportunity to ensure that IRBs comply with these regulations.

FDA believes that it has responded to these concerns in paragraph 118 of this preamble. FDA would suggest that a sponsor assure itself, through the clinical investigator, that the IRB that reviews the clinical investigation protocol meets FDA requirements.

126. Several comments suggested that FDA should send notice of the initiation of proceedings to disqualify an IRB or its parent institution to all investigators and sponsors whose studies are under the review of the IRB.

FDA rejects this suggestion. FDA believes it would be an unreasonable expenditure of agency resources for it to send out such notices prior to a hearing. While a great deal of effort would have to be expended in putting together a list of sponsors and investigators involved with the institution and in sending them notices, the reason for the notice could be easily mooted if the IRB comes into compliance, or if FDA decides against disqualification. The agency believes that its resources are better spent after the hearing, notifying all interested

parties it can identify that the agency has decided to disqualify the institution or the IRB. FDA advises that this notification may require publication of the disqualification decision in the Federal Register.

127. One comment suggested that an additional provision should be inserted into the final regulations to allow the IRB 30 to 60 days to prepare for the hearing, except where the safety of the human subjects requires immediate action.

FDA rejects this suggestion. Hearings under these regulations will be conducted in accordance with the requirements for a regulatory hearing before the FDA set forth in 21 CFR Part 16. Adequate time to prepare for a regulatory hearing is afforded under those regulations.

128. Several comments objected to the grounds for disqualification set forth in proposed § 56.202 (now § 56.121(b)). One comment argued that a blanket statement that disqualification could be based on a failure to comply with any regulations regarding IRBs would open the door to harassment and abuse of this system. Two comments stated that although it would be appropriate to disqualify an IRB if its noncompliance adversely affected the rights and safety of human subjects, it made no sense to disqualify an IRB because its noncompliance affected the validity of a study.

FDA has revised the grounds in § 56.121(b) for disqualification. To assure that the remedy is invoked only when appropriate, § 56.121(b)(1) provides that an IRB's failure to comply must be repeated to be grounds for disqualification (see paragraph 129). Noncompliance that adversely affects the validity of an investigation is no longer a basis for disqualification (§ 56.121(b)(2)).

129. Two comments stated that failure to comply with these regulations should not trigger disqualification. One of these comments stated that FDA should have to show a willful intent not to comply.

FDA disagrees with these comments. Although disqualification will not be used lightly, the agency should not have to show that the IRB or the institution did not intend to comply with the regulations. Repeated failure to comply may or may not indicate a willful intent, but it is sufficient to trigger disqualification. Section 56.121(b)(1) of the final regulations so provides. The important point is that the failure to comply is repeated and not an isolated event. Of course, a flat refusal to comply with these regulations could also trigger disqualification.

130. Three comments stated that the regulations should provide that the agency will advise a sponsor of the disqualification of an IRB that is reviewing studies of that sponsor.

FDA accepts this comment and has revised § 56.121(c) to so provide. The agency will notify any sponsor of which it is aware that has had studies reviewed by the disqualified IRB. This notification may require publication of the disqualification decision in the *Federal Register*.

131. Several comments questioned whether an institution has to replace its IRB after the IRB is disqualified.

Because FDA has shifted the focus of these regulations from the IRB to the institution, disqualification will usually be directed at the institution itself. In order for the IRB of a disqualified institution to be in compliance with these regulations, the institution would have to be reinstated. The situation is somewhat different for institutions with more than one IRB or for institutions whose studies are reviewed by an IRB that serves several institutions. As discussed in paragraph 119 above, FDA may disqualify the IRB rather than the institution in such situations. Those institutions are then free to establish a new IRB, to replace the disqualified IRB, but FDA would not require them to do so. An institution with several IRBs may choose to have another IRB that is competent to assume the responsibilities of the disqualified IRB. For example, the institution would assign an IRB that normally reviews drug studies the responsibility to assume the review of drug studies that were previously under the review of a disqualified IRB. However, FDA would find unacceptable the assignment of those duties to an IRB that normally reviews behavioral research, whose members lack the professional competence necessary to review drug studies.

132. Several comments stated that investigations reviewed by an IRB before disqualification should not automatically be presumed to be unacceptable. A few stated that only the particular studies where deficiencies were found should be unacceptable to FDA.

FDA disagrees in part with the comments. FDA believes that if it is necessary to disqualify an institution or an IRB, the agency cannot be assured that any study conducted at that institution or reviewed by that IRB provided for the rights and welfare of the human subjects. Because disqualification will not be undertaken lightly, the deficiencies that required disqualification are likely to be so pervasive that they had an effect on

more than one study. Therefore, FDA believes that any study reviewed by a disqualified IRB or conducted at a disqualified institution is suspect. However, as stated previously in paragraph 46 of this preamble, the agency will review the studies conducted as a disqualified institution or reviewed by a disqualified IRB to decide on a case-by-case basis whether to reject the data.

133. One comment expressed concern that confidential information would be disclosed to the public during the disqualification process. A few comments stated that no data, clinical reports, or records regarding particular studies ought to be disclosed.

Section 56.122 provides that the determination of the agency to disqualify an institution and the administrative record regarding that determination are disclosable to the public under the agency's public information regulations. Under § 20.61 (21 CFR 20.61), any trade secret or confidential commercial information in the administrative record is exempt from disclosure. Under § 20.63, medical and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, are also exempt. Therefore, there is no basis for concern that confidential information will be disclosed, and the comments are rejected.

134. One comment stated that adverse publicity caused by disqualification would make recruitment for IRBs very difficult.

FDA recognizes that some adverse publicity may arise from a disqualification of an IRB or an institution. However, because IRBs play such an important role in the protection of human subjects, and because disqualification will be undertaken only when there has been a serious disregard by an IRB or an institution of its responsibilities, FDA believes it is appropriate to retain the disqualification mechanism and the provisions allowing the agency to publicly disclose the fact of the disqualification at the discretion of the agency.

135. One comment stated that because an IRB is created to serve an institution, any disqualification should be of the institution, and the burden of reinstatement should be placed upon that institution.

FDA generally agrees with these comments and, except for the situations discussed in paragraph 119 of this preamble, has changed the focus of disqualification and reinstatement to the institution. To be reinstated pursuant to § 56.123, an institution must adequately demonstrate to FDA how the concerned

IRB will comply with these regulations. FDA does not believe that it should spell out exactly how the institution should demonstrate how compliance with these regulations will be assured, because institutions may choose different methods of assuring such compliance.

136. Three comments stated that additional sanctions against individual members of an IRB would make it difficult to recruit members to serve on any IRB.

FDA disagrees with these comments. Other sanctions will be used in cases where disqualification of the institution or the IRB might not be the appropriate action, e.g., where individual members of an IRB submit false information to the Federal Government, which is a criminal offense. The agency does not believe that qualified people will be deterred from serving on an IRB by the fact that they will be held accountable if they break the law.

137. One comment stated that in light of the other sanctions referred to in proposed § 56.215 (now § 56.124) disqualifications would be superfluous.

FDA disagrees with this comment. As stated in paragraph 123 of this preamble, while FDA expects to use disqualification only rarely, it is important that the agency retain the option to use it if the need arises. In some situations, disqualification may be a more appropriate remedy than criminal sanctions. In other situations, it may be necessary to institute disqualification proceedings in conjunction with criminal proceedings to assure that human subjects will be adequately protected.

138. FDA is adopting the conforming amendments as proposed. However, in accordance with the principles of common sense, the amendments proposed separately but applicable both to Part 50 and Part 56 have been combined and are included with FDA's informed consent final rule published elsewhere in this issue of the *Federal Register*.

139. On its own initiative, the agency is also adopting amendments to the IDE regulations (21 CFR Part 812) to conform them to Part 56. The IDE regulations were promulgated by FDA after the August 14, 1979 reproposal of these regulations.

However, the agency has decided not to amend the IDE regulations for intraocular lenses (21 CFR Part 813). The ongoing intraocular lens investigations are exempt from the requirements established by these regulations under § 56.104(a). Therefore, it would not be appropriate to modify Part 813 at this time. In addition, the agency is revising Forms FD-1571, 1572, and 1573 in 21 CFR

312.1(a) to conform them to these regulations. FDA stated in the 1978 proposal (43 FR 35198) that it would revise these forms at the time the final IRB regulations were adopted.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 701(a), 706, and 801, 52 Stat. 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511-518 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 560, 562-574 (21 U.S.C. 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371(a), 376, and 381)) and the Public Health Service Act (secs. 215, 351, 354-360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 241, 262, 263b-263n)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

#### PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. In Part 16, § 16.1 is amended by adding a new regulatory provision under paragraph (b)(2) to read as follows:

##### § 16.1 Scope.

- (b) \* \* \*
- (2) \* \* \*

Section 56.121(a), Relating to disqualifying an institutional review board or an institution.

2. By adding new Part 56, to read as follows:

#### PART 56—INSTITUTIONAL REVIEW BOARDS

##### Subpart A—General

- Sec.
- 56.101 Scope.
- 56.102 Definitions.
- 56.103 Circumstances in which IRB review is required.
- 56.104 Exemptions from IRB requirement.
- 56.105 Waiver of IRB requirement.

##### Subpart B—Organization and Personnel

- 56.107 IRB membership.

##### Subpart C—IRB Functions and Operations

- 56.108 IRB functions and operations.
- 56.109 IRB review of research.
- 56.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
- 56.111 Criteria for IRB approval of research.
- 56.112 Review by institution.
- 56.113 Suspension or termination of IRB approval of research.

Sec.

- 56.114 Cooperative research.

##### Subpart D—Records and Reports

- 56.115 IRB records.

##### Subpart E—Administrative Action for Noncompliance

- 56.120 Lesser administrative actions.
- 56.121 Disqualification of an IRB or an institution.
- 56.122 Public disclosure of information regarding revocation.
- 56.123 Reinstatement of an IRB or an institution.
- 56.124 Actions alternative or additional to disqualification.

Authority: Secs. 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511-518 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 560, 562-574 (21 U.S.C. 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371(a), 376, and 381), secs. 215, 301, 351, 354-360f, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 241, 262, 263b-263n).

##### Subpart A—General Provisions

###### § 56.101 Scope.

(a) This part contains the general standards for the composition, operation, and responsibility of an Institutional Review Board (IRB) that reviews clinical investigations regulated by the Food and Drug Administration under sections 505(i), 507(d), and 520(g) of the act, as well as clinical investigations that support applications for research or marketing permits for products regulated by the Food and Drug Administration, including food and color additives, drugs for human use, medical devices for human use, biological products for human use, and electronic products. Compliance with this part is intended to protect the rights and welfare of human subjects involved in such investigations.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

###### § 56.102 Definitions.

As used in this part:

(a) "Act" means the Federal Food, Drug, and Cosmetic Act, as amended (secs. 201-902, 52 Stat. 1040 et seq., as amended (21 U.S.C. 321-392)).

(b) "Application for research or marketing permit" includes:

- (1) A color additive petition, described in Part 71.
- (2) Data and information regarding a substance submitted as part of the procedures for establishing that a substance is generally recognized as

safe for a use which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, described in § 170.35.

(3) A food additive petition, described in Part 171.

(4) Data and information regarding a food additive submitted as part of the procedures regarding food additives permitted to be used on an interim basis pending additional study, described in § 180.1.

(5) Data and information regarding a substance submitted as part of the procedures for establishing a tolerance for unavoidable contaminants in food and food-packaging materials, described in section 406 of the act.

(6) A "Notice of Claimed Investigational Exemption for a New Drug" described in Part 312.

(7) A new drug application, described in Part 314.

(8) Data and information regarding the bioavailability or bioequivalence of drugs for human use submitted as part of the procedures for issuing, amending, or repealing a bioequivalence requirement, described in Part 320.

(9) Data and information regarding an over-the-counter drug for human use submitted as part of the procedures for classifying such drugs as generally recognized as safe and effective and not misbranded, described in Part 330.

(10) Data and information regarding an antibiotic drug submitted as part of the procedures for issuing, amending, or repealing regulations for such drugs, described in Part 430.

(11) An application for a biological product license, described in Part 601.

(12) Data and information regarding a biological product submitted as part of the procedures for determining that licensed biological products are safe and effective and not misbranded, as described in Part 601.

(13) An "Application for an Investigational Device Exemption," described in Parts 812 and 813.

(14) Data and information regarding a medical device for human use submitted as part of the procedures for classifying such devices, described in Part 860.

(15) Data and information regarding a medical device for human use submitted as part of the procedures for establishing, amending, or repealing a standard for such device, described in Part 861.

(16) An application for premarket approval of a medical device for human use, described in section 515 of the act.

(17) A product development protocol for a medical device for human use, described in section 515 of the act.

(18) Data and information regarding an electronic product submitted as part of the procedures for establishing, amending, or repealing a standard for such products, described in section 358 of the Public Health Service Act.

(19) Data and information regarding an electronic product submitted as part of the procedures for obtaining a variance from any electronic product performance standard, as described in § 1010.4.

(20) Data and information regarding an electronic product submitted as part of the procedures for granting, amending, or extending an exemption from a radiation safety performance standard, as described in § 1010.5.

(21) Data and information regarding an electronic product submitted as part of the procedures for obtaining an exemption from notification of a radiation safety defect or failure of compliance with a radiation safety performance standard, described in Subpart D of Part 1003.

(c) "Clinical investigation" means any experiment that involves a test article and one or more human subjects, and that either must meet the requirements for prior submission to the Food and Drug Administration under section 505(i), 507(d), or 520(g) of the act, or need not meet the requirements for prior submission to the Food and Drug Administration under these sections of the act, but the results of which are intended to be later submitted to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The term does not include experiments that must meet the provisions of Part 58, regarding nonclinical laboratory studies. The terms "research," "clinical research," "clinical study," "study," and "clinical investigation" are deemed to be synonymous for purposes of this part.

(d) "Emergency use" means the use of a test article on a human subject in a life-threatening situation in which no standard acceptable treatment is available, and in which there is not sufficient time to obtain IRB approval.

(e) "Human subject" means an individual who is or becomes a participant in research, either as a recipient of the test article or as a control. A subject may be either a healthy individual or a patient.

(f) "Institution" means any public or private entity or agency (including Federal, State, and other agencies). The term "facility" as used in section 520(g) of the act is deemed to be synonymous with the term "institution" for purposes of this part.

(g) "Institutional Review Board (IRB)" means any board, committee, or other group formally designated by an institution to review, to approve the initiation of, and to conduct periodic review of, biomedical research involving human subjects. The primary purpose of such review is to assure the protection of the rights and welfare of the human subjects. The term has the same meaning as the phrase "institutional review committee" as used in section 520(g) of the act.

(h) "Investigator" means an individual who actually conducts a clinical investigation (i.e., under whose immediate direction the test article is administered or dispensed to, or used involving a subject) or, in the event of an investigation conducted by a team of individuals, is the responsible leader of that team.

(i) "Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) "Sponsor" means a person or other entity that initiates a clinical investigation, but that does not actually conduct the investigation, i.e., the test article is administered or dispensed to, or used involving, a subject under the immediate direction of another individual. A person other than an individual (e.g., a corporation or agency) that uses one or more of its own employees to conduct an investigation that it has initiated is considered to be a sponsor (not a sponsor-investigator), and the employees are considered to be investigators.

(k) "Sponsor-investigator" means an individual who both initiates and actually conducts, alone or with others, a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject. The term does not include any person other than an individual, e.g., it does not include a corporation or agency. The obligations of a sponsor-investigator under this part include both those of a sponsor and those of an investigator.

(l) "Test article" means any drug for human use, biological product for human use, medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the act or under sections 351 or 354-360F of the Public Health Service Act.

#### § 56.103 Circumstances in which IRB review is required.

(a) Except as provided in §§ 56.104 and 56.105, any clinical investigation which must meet the requirements for prior submission (as required in Parts 312, 812, and 813) to the Food and Drug Administration shall not be initiated unless that investigation has been reviewed and approved by, and remains subject to continuing review by, an IRB meeting the requirements of this part. The determination that a clinical investigation of this part.

(b) Except as provided in §§ 56.104 and 56.105, the Food and Drug Administration may decide not to consider in support of an application for a research or marketing permit any data or information that has been derived from a clinical investigation that has not been approved by, and that was not subject to initial and continuing review by, an IRB meeting the requirements may not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any other applicable regulations to submit the results of the investigation to the Food and Drug Administration.

(c) Compliance with these regulations will in no way render inapplicable pertinent Federal, State, or local laws or regulations.

#### § 56.104 Exemptions from IRB requirement.

The following categories of clinical investigations are exempt from the requirements of this part for IRB review:

(a) Any investigation which commenced before July 27, 1981, and was subject to requirements for IRB review under FDA regulations before that date, provided that the investigation remains subject to review of an IRB which meets the FDA requirements in effect before July 27, 1981.

(b) Any investigation commenced before July 27, 1981, and was not otherwise subject to requirements for IRB review under Food and Drug Administration regulations before that date.

(c) Emergency use of a test article, provided that such emergency use is reported to the IRB within 5 working days. Any subsequent use of the test article at the institution is subject to IRB review.

#### § 56.105 Waiver of IRB requirement.

On the application of a sponsor or sponsor-investigator, the Food and Drug Administration may waive any of the requirements contained in these

regulations, including the requirements for IRB review, for specific research activities or for classes of research activities, otherwise covered by these regulations.

#### Subpart B—Organization and Personnel

##### § 56.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members' backgrounds including consideration of the racial and cultural backgrounds of members and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, including but not limited to subjects covered by other parts of this chapter, the IRB should include one or more individuals who are primarily concerned with the welfare of these subjects.

(b) No IRB may consist entirely of men, or entirely of women, or entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in nonscientific areas; for example: lawyers, ethicists, members of the clergy.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

#### Subpart C—IRB Functions and Operations

##### § 56.108 IRB functions and operations.

In order to fulfill the requirements of these regulations, each IRB shall:

(a) Follow written procedures (1) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution, (2) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review, (3) for insuring prompt reporting to the IRB of changes in a research activity, (4) for insuring that changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except where necessary to eliminate apparent immediate hazards to the human subjects; and (5) for insuring prompt reporting to the IRB of unanticipated problems involving risks to subjects or others.

(b) Except when an expedited review procedure is used (see § 56.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

(c) Be responsible for reporting to the appropriate institutional officials and the Food and Drug Administration any serious or continuing noncompliance by investigators with the requirements and determinations of the IRB.

##### § 56.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by these regulations.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § 50.25. The IRB may require that information, in addition to that specifically mentioned in § 50.25, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent in accordance with § 50.27, except that the IRB may, for some or all subjects, waive the requirement that the subject or the subject's legally authorized representative sign a written consent

form if it finds that the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context. In cases where the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by these regulations at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

##### § 56.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Food and Drug Administration has established, and published in the *Federal Register*, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate, through periodic republication in the *Federal Register*.

(b) An IRB may review some or all of the research appearing on the list through an expedited review procedure, if the research involves no more than minimal risk. The IRB may also use the expedited review procedure to review minor changes in previously approved research during the period for which approval is authorized. Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in § 56.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The Food and Drug Administration may restrict, suspend, or terminate an institution's or IRB's use of the expedited review procedure when necessary to protect the rights or welfare of subjects.

**§ 56.111 Criteria for IRB approval of research.**

(a) In order to approve research covered by these regulations the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) by using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies that subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment, the IRB should take into account the purposes of the research and the setting in which the research will be conducted.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with and to the extent required by Part 50.

(5) Informed consent will be appropriately documented, in accordance with and to the extent required by § 50.27.

(6) Where appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) Where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) Where some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as persons with acute or severe physical or mental illness, or persons who are economically or educationally disadvantaged, appropriate additional safeguards have been included in the study to protect the rights and welfare of these subjects.

**§ 56.112 Review by institution.**

Research covered by these regulations that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

**§ 56.113 Suspension or termination of IRB approval of research.**

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the Food and Drug Administration.

**§ 56.114 Cooperative research.**

In complying with these regulations, institutions involved in multi-institutional studies may use joint review, reliance upon the review of another qualified IRB, or similar arrangements aimed at avoidance of duplication of effort.

**Subpart D—Records and Reports**

**§ 56.115 IRB records.**

(a) An institution, or where appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each

member and the institution; for example: full-time employee, part-time employee, a member of governing panel or board, stockholder, paid or unpaid consultant.

(6) Written procedures for the IRB as required by § 56.108(a).

(7) Statements of significant new findings provided to subjects, as required by § 50.25.

(b) The records required by this regulation shall be retained for at least 3 years after completion of the research, and the records shall be accessible for inspection and copying by authorized representatives of the Food and Drug Administration at reasonable times and in a reasonable manner.

(c) The Food and Drug Administration may refuse to consider a clinical investigation in support of an application for a research or marketing permit if the institution or the IRB that reviewed the investigation refuses to allow an inspection under this section.

**Subpart E—Administrative Actions for Noncompliance**

**§ 56.120 Lesser administrative actions.**

(a) If apparent noncompliance with these regulations in the operation of an IRB is observed by an FDA investigator during an inspection, the inspector will present an oral or written summary of observations to an appropriate representative of the IRB. The Food and Drug Administration may subsequently send a letter describing the noncompliance to the IRB and to the parent institution. The agency will require that the IRB or the parent institution respond to this letter within a time period specified by FDA and describe the corrective actions that will be taken by the IRB, the institution, or both to achieve compliance with these regulations.

(b) On the basis of the IRB's or the institution's response, FDA may schedule a reinspection to confirm the adequacy of corrective actions. In addition, until the IRB or the parent institution takes appropriate corrective action, the agency may:

(1) Withhold approval of new studies subject to the requirements of this part that are conducted at the institution or reviewed by the IRB;

(2) Direct that no new subjects be added to ongoing studies subject to this part;

(3) Terminate ongoing studies subject to this part when doing so would not endanger the subjects; or

(4) When the apparent noncompliance creates a significant threat to the rights and welfare of human subjects, notify relevant State and Federal regulatory agencies and other parties with a direct



interest in the agency's action of the deficiencies in the operation of the IRB.

(c) The parent institution is presumed to be responsible for the operation of an IRB, and the Food and Drug Administration will ordinarily direct any administrative action under this subpart against the institution. However, depending on the evidence of responsibility for deficiencies, determined during the investigation, the Food and Drug Administration may restrict its administrative actions to the IRB or to a component of the parent institution determined to be responsible for formal designation of the IRB.

**§ 56.121 Disqualification of an IRB or an institution.**

(a) Whenever the IRB or the institution has failed to take adequate steps to correct the noncompliance stated in the letter sent by the agency under § 56.120(a), and the Commissioner of Food and Drugs determines that this noncompliance may justify the disqualification of the IRB or of the parent institution, the Commissioner will institute proceedings in accordance with the requirements for a regulatory hearing set forth in Part 16.

(b) The Commissioner may disqualify an IRB or the parent institution if the Commissioner determines that:

- (1) The IRB has refused or repeatedly failed to comply with any of the regulations set forth in this part, and
- (2) The noncompliance adversely affects the rights or welfare of the human subjects in a clinical investigation.

(c) If the Commissioner determines that disqualification is appropriate, the Commissioner will issue an order that explains the basis for the determination and that prescribes any actions to be taken with regard to ongoing clinical research conducted under the review of the IRB. The Food and Drug Administration will send notice of the disqualification to the IRB and the parent institution. Other parties with a direct interest, such as sponsors and clinical investigators, may also be sent a notice of the disqualification. In addition, the agency may elect to publish a notice of its action in the Federal Register.

(d) The Food and Drug Administration will not approve an application for a research permit for a clinical investigation that is to be under the review of a disqualified IRB or that is to be conducted at a disqualified institution, and it may refuse to consider in support of a marketing permit the data from a clinical investigation that was reviewed by a disqualified IRB as conducted at a disqualified institution,

unless the IRB or the parent institution is reinstated as provided in § 56.123.

**§ 56.122 Public disclosure of information regarding revocation.**

A determination that the Food and Drug Administration has disqualified an institution and the administrative record regarding that determination are disclosable to the public under Part 20.

**§ 56.123 Reinstatement of an IRB or an institution.**

An IRB or an institution may be reinstated if the Commissioner determines, upon an evaluation of a written submission from the IRB or institution that explains the corrective action that the institution or IRB plans to take, that the IRB or institution has provided adequate assurance that it will operate in compliance with the standards set forth in this part. Notification of reinstatement shall be provided to all persons notified under § 56.121(c).

**§ 56.124 Actions alternative or additional to disqualification.**

Disqualification of an IRB or of an institution is independent of, and neither in lieu of nor a precondition to, other proceedings or actions authorized by the act. The Food and Drug Administration may, at any time, through the Department of Justice institute any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in lieu of, and before, at the time of, or after, disqualification. The agency may also refer pertinent matters to another Federal, State, or local government agency for any action that that agency determines to be appropriate.

*Effective date.* This regulation shall become effective July 27, 1981.

(Secs. 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513-518, 518-520, 701(a), 706, and 801, 52 Stat. 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511-517 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-560, 562-574 [21 U.S.C. 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371(a) 376, and 381]; secs. 215, 301, 351, as amended [42 U.S.C. 216, 241, 282, 263b-263n])

Dated: January 19, 1981.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 81-2688 Filed 1-28-81; 8:45 am]

BILLING CODE 4110-03-M

**21 CFR Part 50**

[Docket No. 78N-0049]

**Protection of Human Subjects; Prisoners Used as Subjects in Research; Correction**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Correction.

**SUMMARY:** In FR Doc. 80-16578 appearing at page 36386 in the Federal Register of Friday, May 30, 1980, the following correction is made in the first column of page 36391: In § 50.1 *Scope*, in paragraph (a) the word "prisoner" is removed.

**FOR FURTHER INFORMATION CONTACT:** Agnes Black, Federal Register Writer (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

Dated: January 19, 1981.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 81-2688 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-03-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****[Docket No. 77N-0350]****Protection of Human Research Subjects; Clinical Investigations Which May Be Reviewed Through Expedited Review Procedure Set forth in FDA Regulations****AGENCY:** Food and Drug Administration.**ACTION:** Notice.

**SUMMARY:** This notice contains a list of research activities which institutional review boards may review through the expedited review procedures set forth in FDA regulations for the protection of human research subjects.

**FOR FURTHER INFORMATION CONTACT:**

John C. Petricciani, Office of the Commissioner (HFB-4), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-9320.

**SUPPLEMENTARY INFORMATION:**

Elsewhere in this issue of the Federal Register, the Food and Drug Administration (FDA) is publishing final regulations establishing standards for institutional review boards (IRBs) for clinical investigations relating to the protection of human subjects in research. Section 56.110 (21 CFR 56.110) of the final IRB regulations provides that the agency will publish in the Federal Register a list of categories of research activities, involving no more than minimal risk, that may be reviewed by an IRB through expedited review procedures. This notice is published in accordance with § 56.110.

The agency concludes that research activities with human subjects involving no more than minimal risk and involving one or more of the following categories (carried out through standard methods), may be reviewed by an IRB through the expedited review procedure authorized in § 56.110.

(1) Collection of hair and nail clippings in a non-disfiguring manner; of deciduous teeth; and of permanent teeth if patient care indicates a need for extraction.

(2) Collection of excreta and external secretions including sweat and uncannulated saliva; of placenta at delivery; and of amniotic fluid at the time of rupture of the membrane before or during labor.

(3) Recording of data from subjects who are 18 years of age or older using noninvasive procedures routinely employed in clinical practice. This category includes the use of physical

sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighting, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. This category does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays or microwaves).

(4) Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects who are 18 years of age or older and who are in good health and not pregnant.

(5) Collection of both supra- and subgingival dental plaque and calculus, provided the procedure is not more invasive than routine prophylactic scaling of the teeth, and the process is accomplished in accordance with accepted prophylactic techniques.

(6) Voice recordings made for research purposes such as investigations of speech defects.

(7) Moderate exercise by healthy volunteers.

(8) The study of existing data, documents, records, pathological specimens, or diagnostic specimens.

(9) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

This list will be amended as appropriate and a current list will be published periodically to the Federal Register.

Dated: January 19, 1981.

**Jere E. Goyan,**

*Commissioner of Food and Drugs.*

[FR Doc. 81-2690 Filed 1-27-81; 3:59 pm]

**BILLING CODE 4110-03-M**

# **federal register**

---

Tuesday  
January 27, 1981

---

**Part X**

**Environmental  
Protection Agency**

---

**Tampering Enforcement Regulations**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 85

[EN FRL 1718-4]

### Tampering Enforcement Regulations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency (Agency or EPA) is considering amending Part 85 of Title 40 of the Code of Federal Regulations by adding a subpart establishing tampering enforcement regulations.

The Agency receives frequent inquiries, particularly from various segments of the automotive industry, about the prohibitions against "tampering" that appear in Section 203(a)(3) of the Clean Air Act. The purpose of this rulemaking is to clarify EPA's tampering enforcement policy for vehicle manufacturers, dealers, fleet operators, independent repair shops, consumers, and others.

**DATES:** EPA will consider comments received on or before March 30, 1981, in developing a Notice of Proposed Rulemaking or Interim Final Regulations or policy statement, as appropriate.

**ADDRESSES:** *Comments.* Send written comments to: Central Docket Section (A-130), U.S. Environmental Protection Agency, Attn: Docket No. EN-80-2, 401 M Street, S.W., Washington, D.C. 20460.

*Docket.* Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-80-2 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. The docket is available for review between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Barbara Giliberti, Field Operations and Support Division (EN-397), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472-9350.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 203(a)(3) of the Clean Air Act (Act), 42 U.S.C. § 7522(a)(3), prohibits "tampering" with the emission control systems of motor vehicles. The Section reads as follows:

Sec. 203. (a) The following acts and the causing thereof are prohibited—

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person engaged in the business of repairing, servicing, selling, leasing or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles, knowingly to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title following its sale and delivery to the ultimate purchaser.

Section 205 of the Act provides for a maximum civil penalty of \$10,000 for any manufacturer, dealer or other person who violates paragraph (3)(A) of Section 203(a) and of \$2,500 for any person who violates paragraph (3)(B) of Section 203(a). Section 205 further provides that any such violation shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Section 204 of the Act provides for injunctive relief against violations of Section 203(a).

EPA's primary objective in enforcing the tampering prohibition is to assure the unimpaired operation of motor vehicle emission controls. According to EPA emission estimates, motor vehicles account for nearly three-quarters of the total carbon monoxide, over one-third of the hydrocarbons, and one-third of the oxides of nitrogen emitted to the atmosphere.<sup>1</sup> In urban areas, these percentages may be higher. These emissions contribute to a wide variety of medical problems, including anemia, heart strain, headaches, and lung and eye irritation. The unimpaired operation of emission controls is necessary to ensure reductions in these harmful emissions.

A survey conducted by EPA in 1979<sup>2</sup> indicated that approximately 18 percent of the 1973-1980 model year motor vehicle fleet had been subjected to obvious tampering, e.g., tampering with the EGR system. An additional 46.5% showed at least one item in the arguably tampered (potential, but not clear-cut tampering) category, e.g., the idle limiter cap was missing.<sup>3</sup> The increased

<sup>1</sup> National Enforcement Investigations Center and Field Operations and Support Division, U.S. Environmental Protection Agency, "Motor Vehicle Tampering Survey—1979" (May 1980).

<sup>2</sup> *Id.*, at 3.

<sup>3</sup> Carburetors are set to the proper fuel-air mixture at the factory. Limiter caps are then placed on the idle mixture screws to prevent misadjustments. Misadjustments will usually cause a significant increase in CO emissions. Enrichments producing

emissions from this portion of the fleet have a substantial adverse impact on air quality and, in turn, on human health.

At present, the main sources of guidance as to the Agency's enforcement policy are statements contained in letters responding to particular concerns and in Mobile Source Enforcement Memorandum 1A (Memo 1A).<sup>4</sup> This memorandum, entitled Interim Tampering Enforcement Policy, was issued on June 25, 1974, prior to the 1977 amendments to the Act. Those amendments extended the prohibition on post-sale tampering to include any person engaged in the business of repairing, servicing, selling, leasing or trading motor vehicles or motor vehicle engines or who operates a fleet of motor vehicles.

The specific language of Memo 1A addresses only dealers and vehicle and engine manufacturers. This is because, at the time Memo 1A was prepared, the post-sale tampering prohibition applied only to dealers and manufacturers. In August of 1977, Section 203(a)(3)(B) was added to the Act, and that prohibition was extended to include the parties listed above. The policy enunciated in Memo 1A has been interpreted as extending to these parties, and some of them have expressed concern with EPA's interpretation of the prohibition.

A substantial amount of concern exists in the industry as to what constitutes a violation of the tampering prohibition. EPA has received numerous inquiries requesting further interpretation of the statute. In some cases, the confusion over the meaning of the tampering prohibition may have led to people refraining from acceptable activities because of fear of being held liable for tampering.

The Agency is considering the development of rules describing specific acts which, in its view, constitute tampering in order to provide more guidance to those parties affected and to encourage uniform compliance. The regulations would be intended:

- (1) To inform the public of EPA's present enforcement policies; and
- (2) To respond to other concerns of the public, such as what types of vehicle "modifications" or "repairs" are tampering and to interpret further the "causing" language of the statute.

greater than about 1% CO in the exhaust do not provide enough oxygen for the correct oxidizing function of the catalyst. As a result, the vehicle usually exceeds EPA standards. Because idle limiter cap removal was so prevalent that to place it in the tampered category would obscure the rest of the data, vehicles on which limiter caps were missing or disconnected were placed in the "arguably tampered" category.

<sup>4</sup> A copy of Memo 1A is in Public Docket EN-80-2.

## II. Discussion

Section 203(a)(3) of the Act does not require that a vehicle exceed emission standards in order for a tampering violation to occur; it simply prohibits the act of removing or rendering inoperative any emission control device or element of design. Therefore, a tampering violation may have been committed if a motor vehicle emission control system is changed from its original certified configuration by a person subject to the Section 203(a)(3) tampering prohibition. It has been suggested that EPA adopt a policy of enforcement only if the act in question causes an increase in vehicle emissions or causes emissions to exceed standards. Such a policy may require performing the expensive and time-consuming Federal Test Procedure on each vehicle for which tampering is alleged.

Although the Agency has interpreted § 203(a)(3) in Memo 1A (and has interpreted Memo 1A on a case-by-case basis in response to inquiries), some members of the industry have expressed concern about the scope of the provision and EPA's enforcement policy. Following is a partial list of the areas about which the public has inquired:

(1) The potential liability of a repair facility which works on a vehicle that has been subjected to previous tampering;

(2) The potential liability, under the "causing" language, of part suppliers who sell, but do not install, parts the installation of which may involve the removal or rendering inoperative of an emission control device. An example of such a part is a straight pipe which could replace a catalytic converter;

(3) The acts which might be viewed as completing an act of tampering and the potential liability associated with such acts;

(4) The potential liability, under the "causing" language, of publishers or distributors of emission control "bypass" manuals;

(5) The potential liability of people who convert vehicles to alternative fuels or exhaust systems;

(6) The potential liability of manufacturers of aftermarket turbochargers and catalytic converters, and other add-on and replacement parts;

(7) The policy of the Agency towards add-on accessories which could cause a vehicle to fail to meet standards but which do not involve physical removal or adjustment of an emission-related component;

(8) The applicability of the tampering prohibition to "racing vehicles";

(9) The policy of the Agency towards replacement of parts on which an act of tampering has already been completed;

(10) The definition of a fleet operator;

(11) The potential liability of a person who converts a California-version car to a 49-State version, and vice versa; and

(12) The potential liability of a person who "engine switches."

This is not an exclusive list of the areas which may be considered. The Agency would like comments on all aspects of tampering. EPA is particularly interested in learning what questions the public has about the tampering prohibition and about EPA's tampering policy as expressed in Memo 1A, and in suggestions about how these concerns may be reasonably resolved. EPA's responses to these questions, as well as to others which may arise, will be provided during the rulemaking process.

The Federal prohibition against tampering does not require the promulgation of regulations in order to become effective; Section 203(a)(3) can be and is being enforced as it stands. The Agency notes that a considerable period of time is involved in a full rulemaking. For these reasons, and because many people in the automotive industry have indicated a need to know how EPA's tampering enforcement policy specifically applies to them, EPA is interested in receiving comments from affected parties as to whether the Agency should issue interim final regulations rather than proposed rules. The interim final rules would take effect upon publication, and the public would have 60 days to comment on them. The rules would then be modified, as appropriate, and republished. Another possibility is for the Agency to prepare a general statement concerning its tampering enforcement policy in lieu of rulemaking.

Proposed regulations, interim final regulations or a general policy statement, as appears appropriate, will be issued as soon as practicable after the end of the comment period provided by this notice.

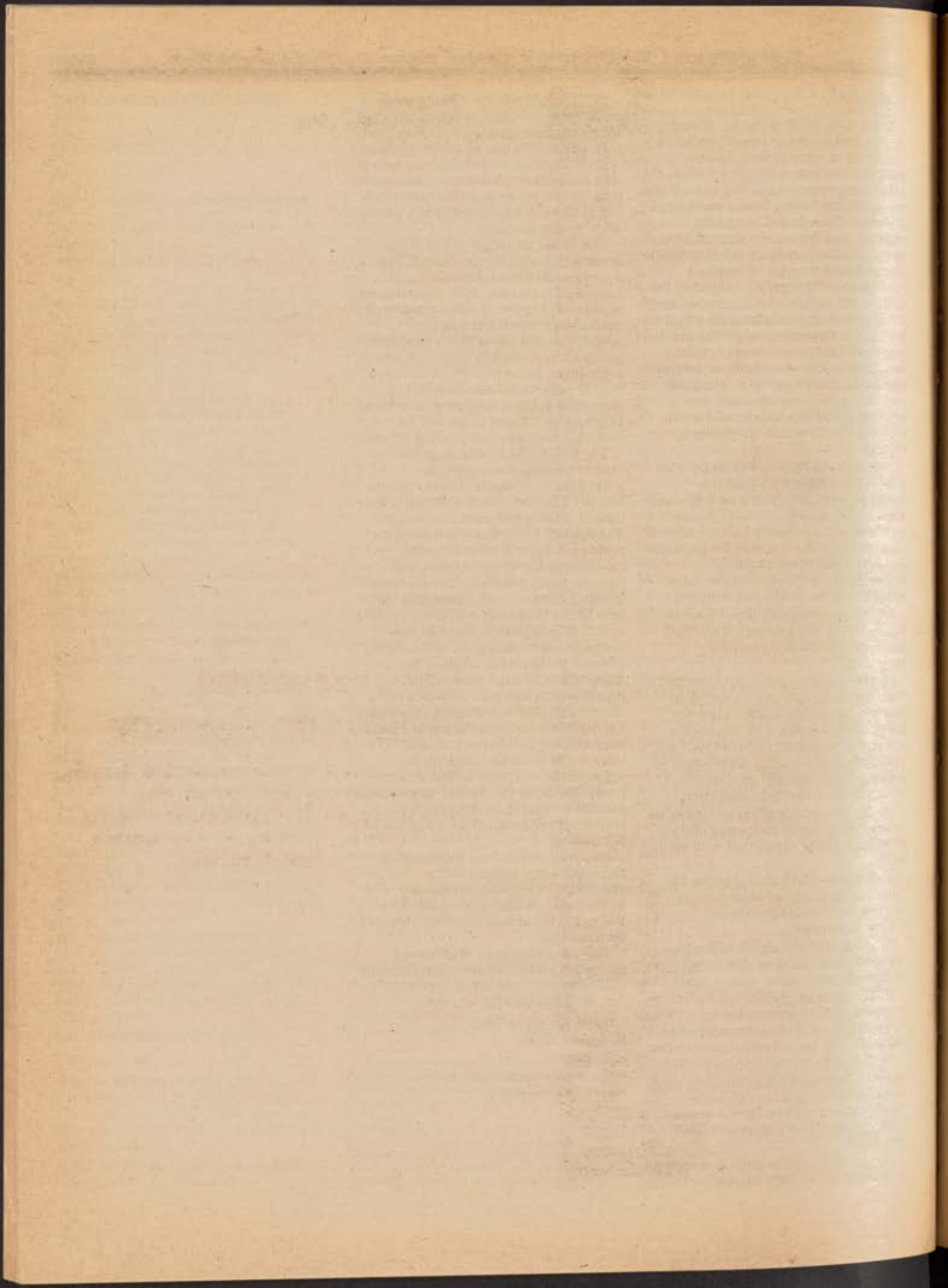
This advance notice of proposed rulemaking is issued under the authority of Sections 203 and 301 of the Clean Air Act, 42 U.S.C. §§ 7522 and 7601.

Dated: January 19, 1981.

Douglas M. Costle,  
Administrator.

[FR Doc. 81-2915 Filed 1-26-81; 8:45 a.m.]

BILLING CODE 8560-33-M



# federal register

---

Tuesday  
January 27, 1981

---

Part XI

## Environmental Protection Agency

---

Agency Policy to Premanufacture Testing  
of New Chemical Substances and  
Announcement of Rescheduled Meeting  
and Extension of Comment on Certain  
Environmental Test Standards

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 720

[OPTS 50024; TSH-FRL 1720-1]

#### New Chemical Substances; Premanufacture Testing Policy

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule related notice.

**SUMMARY:** This document announces existing Agency policy concerning an approach to premanufacture testing of new chemical substances. It identifies types of test data concerning physical and chemical properties and health and environmental effects which the Agency recommends be developed by manufacturers planning to manufacture a new chemical substance. This document also identifies test protocols which the Agency recommends be utilized to develop these data. The data elements identified here are those under consideration by the Organization for Economic Cooperation and Development (OECD) as recommended "Minimum Pre-market Data" (MPD) for premarket assessment in the OECD member nations.

**FOR FURTHER INFORMATION CONTACT:** John B. Ritch, Director, Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm E-229, 401 M St. SW, Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C.: (202-544-1404).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, establishes a national policy that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures" (sec. 2(b)(1)). TSCA section 5 establishes a premanufacture notification program and requires the submission of health and environmental effects test data which are in the possession or control of the intended manufacturer or processor of new chemical substances. However, TSCA does not establish a requirement that premanufacture testing be performed on all new chemical substances.

To encourage the voluntary development of premanufacture health and environmental effects test data,

EPA has devoted extensive attention to development of a premanufacture testing policy in both national and international forums. EPA reached consensus on such testing within the framework of the Organization for Economic Cooperation and Development (OECD), an international organization of twenty-four nations that includes the major chemical producing nations of the non-communist world. The Agency has considered numerous approaches to premanufacture testing and has solicited and reviewed public comments on both policy and technical aspects of such testing. This document describes the Agency's premanufacture testing policy. It describes a base set of data that the Agency recommends as a starting point for premanufacture testing; and it calls for flexibility and the exercise of professional judgment in utilization of the base set. A number of test protocols are recommended for use in developing the base set data.

##### II. Background

Under section 5 of the Toxic Substances Control Act (TSCA), 15 U.S.C. section 2604, any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit notice to the Environmental Protection Agency (EPA) at least ninety days before he commences manufacture or import.

Section 3(9) defines a "new chemical substance" as any chemical substance which is not included on the list, or "inventory," of existing chemical substances compiled by EPA under section 8(b). Notices of availability of the Inventory were published in the *Federal Register* of May 15, 1979 (44 FR 28558) and revised on July 29, 1980 (45 FR 50544). As required by section 5, the requirement for premanufacture notification became effective thirty days later on July 1, 1979.

Section 5(d)(1) of the Act defines the contents of a premanufacture notice. It requires the manufacturer to report certain information described in section 8(a)(2), e.g., chemical identity, uses, and exposure data. In addition, section 5(d)(1) requires the submission of test data, in the possession or control of the person submitting the notice, which are related to the effects on health or the environment from the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance. Section 5 does not require that particular tests be performed on all new chemical substances before submission of premanufacture notices.

EPA proposed premanufacture notification requirements and review

procedures published in the *Federal Register* of January 10, 1979 (44 FR 2242), together with a reporting form for submission of the information required by Section 5(d)(1). After consideration of the public comments on this proposal, EPA repropose the reporting form and certain of the reporting requirements published in the *Federal Register* of October 16, 1979 (44 FR 59764). The proposed form and reporting requirements provide a format for submission of data from health and environmental testing. However, they do not require that particular tests be performed.

EPA issued and requested comments on a discussion of premanufacture testing policy and technical issues published in the *Federal Register* of March 16, 1979 (44 FR 16240). The discussion document noted that EPA was considering publishing voluntary premanufacture testing guidance and presented several approaches to constructing such guidance, including the use of a base set.

Seventy-one public comments were received, most of them from chemical manufacturers and trade associations. Most industry commentators recommended that EPA not publish guidance, while a few commentators expressed the view that testing guidance would be of significant benefit to the premanufacture notice program.

The most common argument against publishing premanufacture testing guidance was that the statute does not expressly authorize EPA to publish such testing guidance and, should EPA publish voluntary testing guidance, the Agency would effectively make its use mandatory by using the guidance as a "checklist" for evaluating data adequacy of premanufacture notices.

The Agency believes that it has the authority to publish a non-binding policy statement under section 5. Moreover, the Agency is convinced that the publication of a non-binding policy statement on premanufacture testing is in the public interest. EPA has received numerous individual informal requests from manufacturers to provide guidance for new chemical testing. This policy statement reflects the present Agency policy concerning appropriate new chemical testing and makes it available to the general public. Until such time as this policy is modified, the Agency will use the base set of data described herein as the starting point for constructing recommended premanufacture testing programs for purposes of both informal requests for guidance and petitions for such guidance submitted under section 4(g) of TSCA.



In response to the second concern mentioned above, the Agency recognizes that it cannot use testing guidance published under section 5 to establish a *de facto* general testing requirement for new chemicals. Section 5(b)(1)(A) provides the mechanism for establishing testing requirements for certain new chemicals. Under section 5(b)(1)(A), a manufacturer of a new chemical subject to a section 4 test rule must submit the test data specified in the rule as part of the premanufacture notice required by section 5.

EPA is exploring ways to apply section 4 test rules to categories of chemical substances as authorized by section 26(c). Once category test rules are in effect, a new chemical substance which is a member of the defined category will be subject to the testing requirements as provided by section 5(b)(1)(A).

Another frequent comment was that, if EPA does recommend a base set, there should be flexibility in its application; i.e., that the manufacturer should retain discretion to modify it to suit various situations that may arise. These commentators stated that a "rigid" base set would preclude scientific discretion to tailor chemical testing to particular chemicals and production and use patterns. The Agency agrees with this comment. The policy calls for use of the base set as a starting point for testing but recognizes that particular circumstances of chemical characteristics and production/use patterns may justify deletion, substitution, or addition of data components. Either more or less testing than reflected by the base set of data may result. The Agency requests that companies which utilize the recommended base set to formulate their testing program for a new chemical explain deletions from or substitutions in the recommended base set.

The premanufacture testing policy contains two basic elements: (1) a base set of data which EPA recommends be developed by manufacturers and (2) recommended test protocols for developing the data. Both elements incorporate the results of international testing harmonization efforts of the Organization for Economic Cooperation and Development (OECD). EPA has been an active participant in this work for the past three years. Harmonization of chemical testing among nations is necessary to improve national controls, to efficiently utilize scarce resources, and to avoid unnecessary barriers to international trade. For these reasons, the development of consistent data requirements and testing methods was

identified as a priority issue at the international level by the OECD in 1977.

The efforts to reach agreement on chemical testing have proceeded under the aegis of the Chemicals Group of the OECD. Five expert groups, each under the leadership of individual member countries, were mandated to prepare, by the end of 1979, "state of the art" reports on mutually agreed, scientifically sound test methods for developing data for the prediction of chemical risk. These groups and lead countries were:

#### Group and Country

Physical/Chemical Properties—Federal Republic of Germany  
 Ecotoxicology—Netherlands  
 Degradation-accumulation A Japan, Federal Republic of Germany  
 Long-term Toxicology—United States  
 Short-term Toxicology—United Kingdom

A sixth expert group under the leadership of Sweden, called the Step Systems Group, considered the concept of step-sequence (tiered) testing systems. Based in part on the work of the other expert groups, the Step Systems Group was mandated to develop a step sequence testing scheme, including a recommended minimum premarket data set, for use by member countries in the assessment of new chemical substances.

Approximately 350 government and industry experts from all over the world have participated directly in the work of these expert groups. U.S. participants from government and industry numbered about twenty-five. In addition, the work of these groups has been formally reviewed and commented upon by the major international business and trade union organizations, the OECD Business and Industry Advisory Committee (BIAC), the OECD Trade Union Advisory Committee (TUAC), and a number of U.S. chemical manufacturers, trade associations, and environmental organizations.

With minor exceptions, the final reports of the five expert groups on testing were completed by the end of 1979 and all are complete at this time. These groups developed approximately 44 separate test methods (called "test guidelines" in OECD documents). Some of these test methods are considered final, while others are still undergoing inter-laboratory validation. In addition, most of the final reports from these groups identified particular tests which are appropriate for providing data for a premarket assessment.

Based in part on the work of these groups, the Expert Group on Step Systems produced a preliminary final report which contained a recommended

premarket base set of data called the "Minimum Premarket Data" set (MPD).

The reports of all six expert groups were made available for public comment in the U.S. in April, 1980. (See "Organization for Economic Cooperation and Development (OECD) Chemicals Program; Final Reports on Testing Guidelines; Notice of Availability," published in the *Federal Register* of April 17, 1980 (45 FR 26129).) Thirty-one comments were received. Commentators were divided on the Step Systems Group report, which recommended flexible application of the MPD. Three commentators supported the MPD, and one recommended against its use by EPA. Several other commentators expressed reservation about the use of the MPD and stressed the need for flexibility in its application.

Most commentators felt that the expert group reports containing test protocols were of high quality. Several commentators stressed the need for some flexibility in the recommended OECD test procedures, and there were numerous technical comments on the procedures themselves. These comments were considered by EPA and the U.S. delegation to the High Level Meeting of the OECD Chemicals Group, which took place in May, 1980.

Environmental ministers and senior officials from other concerned regulatory agencies of the OECD member nations met in May, 1980, to review the work of the expert groups and to make recommendations to the OECD Council concerning disposition of various work products. At that meeting, the participants endorsed the work of the expert groups and recommended that the final test methods be adopted and that draft methods be made final. In addition, they endorsed the minimum premarket set of data developed by the Step Systems Group and recommended that it and the various test guidelines be provisionally applied in member countries pending approval by the OECD Council. In December, 1980, the Environment Committee of the OECD also endorsed the MPD and test guidelines and recommended that the OECD Council publish both as a Council decision, which would make them binding on member nations. EPA anticipates that the OECD Council will issue a decision on the MPD and test guidelines early next year.

The base set of data which EPA is recommending herein is identical to the MPD developed by the OECD. The term "base set" will be used in this notice to denote the MPD.

It is recognized within the OECD working groups that, although the recommended base set tests are

generally applicable to new chemicals, not all may be applicable in certain circumstances. The OECD working groups also recognize that additional testing beyond the base set may be appropriate for some chemicals, as indicated by base set test results and/or circumstances of use and exposure. Current OECD plans are to develop general "flexibility criteria" to provide guidance concerning deviations from the recommended set of tests. EPA plans to incorporate such flexibility criteria into its premanufacture testing policy as the criteria are developed by the OECD.

The base set is the first step in the step sequence testing scheme that is being developed by the OECD. EPA will continue to participate in efforts to develop the remainder of the step sequence scheme. As further steps are agreed upon in the OECD, EPA plans to modify the premanufacture testing policy stated here accordingly.

In addition to these international testing harmonization efforts, EPA has been active in efforts of the Interagency Regulatory Liaison Group (IRLG) to harmonize testing methodologies among the U.S. chemical regulatory agencies. The IRLG is comprised of representatives from the Consumer Product Safety Commission, the Food and Drug Administration, the Occupational Safety and Health Administration, and the Department of Agricultural Food Safety and Quality Service in addition to EPA. The National Toxicology Program (represented by the National Cancer Institute), the Department of Commerce, and the Department of Energy have participated as advisors.

The purpose of the IRLG effort is to develop uniform testing methodologies to provide data for chemical assessment purposes. To date, the IRLG has, after public review, finalized test standards for acute oral toxicity, acute dermal toxicity, acute eye irritation, and teratology. Test standards for a number of other health effects, as well as for environmental effects and physical chemical properties, are under development. These standards, which will be consistent with the OECD test guidelines, will be published for public comment by the IRLG during the coming months.

### III. Policy Statement

EPA recommends that manufacturers of a new chemical substance subject to the premanufacture notification requirements of TSCA utilize the base set of data listed below as a starting point for designing a premanufacture testing program.

### A. Recommended Base Set

#### 1. Physical/Chemical Data:

Melting point/melting range  
Boiling point/boiling range  
Density of liquids and solids  
Vapor pressure  
Water solubility  
Partition coefficient, n-octanol/water  
Hydrolysis (as a function of pH)  
Spectra (UV and visible)  
Soil adsorption/desorption  
Dissociation constant  
Particle size distribution

#### 2. Acute Toxicity Data:

Acute oral toxicity  
Acute dermal toxicity  
Acute inhalation toxicity  
Skin irritation  
Skin sensitization  
Eye irritation (for chemicals showing no skin irritation)

#### 3. Repeated Dose Toxicity Data:

14-28 days, repeated dose test(s) using probable routes(s) of human exposure

#### 4. Mutagenicity Data (Screening Tests):

Gene (point) mutation  
Chromosome aberrations

#### 5. Ecotoxicity Data:

Acute toxicity, LC<sub>50</sub> study, fish (96 hour)  
*Daphnia* reproduction study (3 broods)  
Growth inhibition study, unicellular alga (4 days)

#### 6. Degradation/Accumulation Data:

Ready Degradability  
Bioaccumulation (uptake from medium)

### B. Recommended Test Methodologies

EPA recommends that tests to provide the data elements listed above be performed according to methods published by the OECD, the IRLG, or by EPA test standards promulgated under section 4 of TSCA, section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), or other approved EPA methods. In the absence of final test methods from one of these sources, other test methods which are generally accepted among professionals in the particular scientific field would be appropriate.

Sources for TSCA, FIFRA, and IRLG tests will be cited later in this notice. The OECD test guidelines will be published by OECD in early 1981. In addition, EPA plans to make them available from the Industry Assistance Office in the near future. They may be requested by calling the toll free number given earlier in this notice.

### C. Modifications

The base set may be modified to suit particular chemicals and production/use

patterns. For example, technical considerations may make some tests inapplicable for certain chemicals. Also, in some cases, the results of some physical/chemical properties tests may indicate that certain other tests are unnecessary or inappropriate. In circumstances of very low human exposure or environmental release, a lesser amount of testing may be warranted.

Other considerations may suggest that additional testing should be performed. For example, structure/activity analysis may suggest the need for testing for carcinogenic effects, which are not directly addressed in the base set. Similarly, circumstances of high potential human exposure or environmental release would generally indicate a need for additional testing. For example, in circumstances of repeated human exposure, a 90-day subchronic test and tests for teratogenic and reproductive effects would be recommended.

The screening-level base set data also may indicate the need for follow-up testing. For example, the data may indicate the need for oncogenicity, chronic toxicity, or additional ecological effects tests. EPA is continuing to study the relationship of various "follow-up" tests to the tests in the base set recommended here. In the future, the Agency expects to publish guidance concerning such relationships.

Similarly, particular circumstances may require modification of a test method. In such case, the modification should not reduce the effectiveness or accuracy of the test.

EPA requests persons using the recommended base set data as a starting point for premanufacture testing to explain the scientific rationale for any deletions, substitutions or additions to the base set. EPA also requests persons who modify a recommended test method, or who substitute a different test method, to provide the protocol and a scientific rationale for the change.

### IV. Discussion

The recommended base set of data elements is intended to provide information which, in conjunction with required premanufacture information related to use and exposure, will permit an initial assessment of potential risk which a chemical substance may present to health or the environment. The base set of data was constructed with both scientific and economic considerations in mind. Each data element supplies information that is useful for risk assessment, as explained more fully below. Also data elements related to certain important effects, for

example teratogenicity and neurotoxicity, are not included in the base set because relatively inexpensive and reliable (validated) screening tests are not available.

#### A. Relationships To Section 5(e) Actions

Section 5(e) of TSCA authorizes EPA to prohibit or limit manufacture of a new chemical substance if the Agency does not have sufficient information to conduct a reasoned risk assessment but finds that the chemical may present an unreasonable risk or that it is or will be produced in substantial quantities and either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance. EPA will consider all available relevant information in determining whether to initiate a 5(e) action concerning a premanufacture notice. EPA will not automatically initiate 5(e) actions if a manufacturer declines to utilize the recommended base set or deviates from the base set.

#### B. Test Cost analysis

Since there are no published cost data for OECD test guidelines, EPA requested a contractor (Contract No. 68-01-5864) to develop an appropriate methodology and estimate the cost of these protocols. The methodology and analysis are presented in a separate document entitled *Cost Analysis Methodology and Protocol Estimates: OECD Minimum Premarket Data (MPD) Test Protocols*, January, 1981, which may be obtained from the information contact above. Because so me OECD test guidelines are not currently being used in the United States, the estimated costs shown below should be considered only representative of actual costs. The test costs are not additive since the total cost to a firm will be determined by the testing program devised and followed by that firm for each individual chemical. Because this policy statement establishes voluntary testing guidance rather than regulations, an economic impact analysis is not warranted.

The Agency has initiated a study of the over-all economic impacts of TSCA on the chemical industry. This study will examine changes in research and development programs for new chemicals including changes in testing as well as such effects as impacts on growth, innovation, and international trade. By looking at the impacts of all TSCA regulations (testing, premanufacturing notification, control actions, and reporting requirements), the Agency believes that it will be better

able to analyze the economic impact of TSCA.

#### C. Base Set Data Elements

The following discussion provides, for each base set data element, an explanation of its utility in performing a risk assessment, references to or sources for the recommended test protocols for each element, and available information on the estimated cost of performing the test according to the protocol.

1. *Physical/chemical properties.* (a) *Melting Point/melting range.* (1) *Contribution to risk assessment.* The melting point of a chemical is the temperature at which the solid and liquid forms of the chemical are in equilibrium. Data on melting point/melting range are useful for chemical fate and exposure analysis because they indicate the physical state of a chemical substance at ambient temperatures. This gives an indication of the distribution of the substance in the water, soil, and air. In addition, the melting point is important for identification purposes and, as a measure of purity, can give indication of impurities which may have environmental relevance. Melting point data may also be useful for the design of other tests of the chemical.

(2) *Test protocols and estimated cost.* OECD: Estimated cost of test—\$100. IRLG: None. TSCA, section 4: Proposed—45 FR 77341, § 772.122-2.

FIFRA, section 3: Proposed—43 FR 29710, § 163.61-8(3) and 43 FR 29712 (Appendix).

(b) *Boiling point/boiling range.* (1) *Contribution to risk assessment.* The boiling point of a liquid is the temperature at which its vapor pressure equals the pressure of its surrounding environment. Data on boiling point/boiling range are useful for chemical fate and exposure analysis because they indicate the physical form of the substance at ambient temperatures. A boiling point near ambient temperatures indicates the possibility of vaporization of the substance, with concomitant possibility of exposure by inhalation. These data are also useful for identification purposes, and may contribute to the design of other tests of the chemical.

(2) *Test protocols and estimated cost.* OECD: Estimated cost of test—\$50. IRLG: None. TSCA, section 4: In preparation. FIFRA, section 3: Proposed—43 FR 29710, § 163.61-8(9) and 43 FR 29712 (Appendix).

(c) *Density of liquids and solids.* (1) *Contribution to risk assessment.* Density is the mass per unit volume of a chemical substance at a specified

temperature. Data on density is useful for assessment of chemical transport and fate because it indicates whether immiscible, low-reactivity chemicals will tend to sink or float when released into water.

(2) *Test protocols and estimated cost.* OECD: Estimated cost of test—\$50. IRLG: None. TSCA, section 4: Proposed—45 FR 77338, § 772.122-1.

FIFRA, section 3: Proposed—43 FR 29710, § 163.61-8(8) and 43 FR 29712 (Appendix).

(d) *Vapor pressure curve.* (1) *Contribution to risk assessment.* Vapor pressure values indicate the tendency of pure substances to vaporize and thus provide an indication of the relative volatilities of chemical substances. Volatility is an important consideration in assessing chemical fate and potential for exposure, because volatilization may lead to dispersal of an uncontained chemical substance over wide areas. Also the vapor pressure can be useful in deciding whether to conduct a photochemical degradation test.

(2) *Test protocols and estimated cost.* OECD: Estimated cost of test—\$300. IRLG: None. TSCA, section 4: Proposed—45 FR 77345, § 772.122-3.

FIFRA, section 3: Proposed—43 FR 29710, § 163.61-8(10) and 43 FR 29712 (Appendix).

(e) *Water solubility.* (1) *Contribution to risk assessment.* The water solubility of a chemical is an important parameter determining its environmental transport and distribution. In general, highly soluble chemicals are more likely than poorly soluble chemicals to be distributed by the hydrologic cycle. In addition, water solubility can affect adsorption and desorption on soils and volatility from aquatic systems, as well as possible transformation by hydrolysis, photolysis, oxidation, reduction, and biodegradation in water. Also, knowledge of water solubility is needed for the design of most chemical tests and many ecological and health tests. Water solubility also affects uptake by humans and other living organisms.

(2) *Test protocols and estimated cost.* OECD Estimated cost of test—\$300. IRLG: None. TSCA, section 4: In preparation. FIFRA, section 3: Proposed—43 FR 29710, § 163.61-8(4) and 43 FR 29712 (Appendix).

(f) *Octanol/water partition coefficient.* (1) *Contribution to risk assessment.* The octanol/water partition coefficient,  $P$ , is the ratio of the equilibrium molar concentrations of a chemical substance in octanol and

water. Accumulation and transport of a chemical substance in a living organism are governed by polarity, water solubility, affinity for fatty tissues, and the nature of potential binding to biological receptors. The octanol/water partition coefficient measures the relative equilibrium distribution of a substance between the fat and water phases of the test system. It therefore serves as an indicator of

bioconcentration potential in fatty tissues and of the ability to pass through all membranes. Bioconcentration potential is an important factor in assessing chemical risk. In conjunction with data on chemical persistence, bioconcentration potential may be used to identify chemicals which may be transported via food chains.

(2) Test protocols and estimated cost. OECD: Estimated cost of test—\$250. IRLG: None.

TSCA, section 4: Proposed—45 FR 77350, § 772.122-4.

FIFRA, section 3: Proposed—43 FR 29710, § 163.61-8(6) and 43 FR 29712 (Appendix).

(g) *Hydrolysis (as a function of pH)*.

(1) Contribution to risk assessment. Hydrolysis can be an important phenomenon in determining the persistence of a chemical substance in the environment. Chemical substances may undergo hydrolysis and be transformed into new substances with properties different from their precursors. The importance of these transformations of chemicals as dominant pathways in aqueous media can be determined quantitatively from data on hydrolysis rate constants.

(2) Test protocols and estimated cost. OECD: Estimated cost of test—\$250. IRLG: None.

TSCA, section 4: In preparation. FIFRA, section 3: Proposed—43 FR 29717, § 163.62-7(b) and 43 FR 29721 (Appendix).

(h) *Spectra (UV and visible)*. (1) Contribution to risk assessment. The ultraviolet and visible light absorption spectra of chemical substances in solution are important physical properties that are characteristic of molecular structure. Spectral data can give indications of the wavelengths at which photochemical degradation of the chemical may occur. Such data are therefore useful for determining the need for further testing of persistence in the atmosphere or aquatic environment.

(2) Test protocols and estimated cost. OECD: Estimated cost of test—\$200. IRLG: None.

TSCA, section 4: In preparation. FIFRA, section 3: Proposed—43 FR 29710, § 163.61-7(b)(2) and 43 FR 29712 (Appendix).

(i) *Soil adsorption/desorption*. (1) Contribution to risk assessment. The affinity of a chemical substance for particulate substances is an important factor affecting its environmental movement and ultimate fate. Substances that adsorb tightly to soil particles may be less subject to environmental transport in the gaseous phase or in solution. On the other hand, high adsorptivity to soil particles may increase environmental transport with windblown dust or eroding soil; high adsorptivity may also lead to accumulation of the substance in the soil.

(2) Test requirements and/or protocols and estimated cost. OECD: Estimated cost of test—\$2,000. IRLG: None.

TSCA, section 4: Proposed—45 FR 77352, § 772.122-5.

FIFRA, section 3: Proposed—43 FR 29716, § 163.62-5(c) and 29719 § 163.62-9(d) and 29721 (Appendix).

(j) *Dissociation constant*. (1) Contribution to risk assessment. The dissociation characteristics of a chemical are important for risk assessment because they govern the form in which the chemical exists. This, in turn, determines its chemical behavior and transport characteristics. Dissociation also affects adsorption onto soil particles and sediments and movement into and out of living cells.

(2) Test protocols and estimated cost. OECD: Estimated cost of test—\$150. IRLG: None.

TSCA, section 4: In preparation. FIFRA, section 3: None.

(k) *Particle size distribution*. (1) Contribution to risk assessment. Particle size distribution affects the probability of human inhalation or ingestion of a limited sub-class of particulates as well as the likely point of their deposition in the respiratory tract. It also influences the distribution of a particle in the environment. Accordingly, the data element which describes particle size is important because it identifies potential health hazards arising from human inspiration due to direct exposure and provides information on the transportation and sedimentation of particulates in water and air.

(2) Test protocols and estimated cost. OECD: Estimated cost of test—\$100. IRLG: None.

TSCA, section 4: In preparation. FIFRA, section 3: None.

2. *Ecotoxicology*. (a) *Acute toxicity to fish*. (1) Contribution to risk assessment. Data on a chemical's toxicity to fish are important because of the substantial value of commercial and recreational fishing and the essential functional role of fish in aquatic food chains. These

studies provide data to determine the median lethal concentration (LC<sub>50</sub>) of a chemical substance for fish, and permit estimation of the chemical's toxicity to a vertebrate species relative to that of other chemicals. This estimation of relative toxicity contributes to the assignment of priorities for further testing. In addition, acute toxicity tests may provide guidance for subsequent chronic testing.

(2) Test protocols and estimated cost. OECD: Estimated cost of testing—\$1,250 (includes LC<sub>50</sub>, rangefinding test, and analytical assay).

IRLG: None.

TSCA, section 4: In preparation.

FIFRA, section 3: Proposed—43 FR 29734, § 163.72-1.

(b) *Growth inhibition study, unicellular algae*. (1) Contribution to risk assessment. Testing for inhibition of the growth of algae indicates the extent to which a chemical substance can affect primary producers in lakes, streams, estuaries, and oceans. This testing provides data from which threshold toxicity values can be determined and positioned relative to other chemicals. This study can also generally indicate growth stimulation as well as growth inhibition. Algae are particularly important as test organisms among plants because they constitute the major mechanism for fixation of energy in most aquatic environments.

(2) Test protocols and estimated cost. OECD: Estimated cost of testing—\$1,450 (includes IC<sub>50</sub>, rangefinding test and analytical assay.)

IRLG: None.

TSCA, section 4: In preparation.

FIFRA, section 3: None.

(c) *Daphnia* reproduction study (3 broods). (1) Contribution to risk assessment. *Daphnia* provide important data for risk assessment because they are very sensitive to toxic substances and serve in the base set as a representative of invertebrate species. This life-cycle study permits a more complete evaluation of potential hazard from chronic exposure to a chemical through the different life stages and functions of the organism.

(2) Test protocols and estimated cost. OECD: Estimated cost of testing—\$1,400 (includes reproduction test, rangefindings test and analytical assay.)

IRLG: None.

TSCA, section 4: In preparation.

FIFRA, section 3: None.

3. *Degradation/Accumulation*. (a) *ready biodegradability*. (1) contribution to risk assessment. Biodegradation is the predominant mechanism for mass transformation of organic compounds in soil and water. Biodegradation data

permits a more realistic prediction of the chemical's environmental concentration, which is essential to an adequate assessment of its risk to the environment.

Biodegradation is also the most important degradative mechanism for organic compounds with respect to extent degradation; photochemical to chemical degradation and other processes usually do not completely mineralize organic substances. The form of a chemical which is most prevalent in the environment is an important aspect of risk. Accordingly, knowledge of the extent of a chemical's potential to biodegrade is necessary to determine the environmental fate of a chemical. It is also essential to assess the risk posed by the chemical to the environment.

Testing for ready biodegradability also contributes to risk assessment by providing a preliminary indication of the test substance's effect on microorganisms. Moreover, these data can indicate the potential effects of a new chemical on the microbial population and thus on the effectiveness of a secondary sewage treatment plant.

(2) Test protocols and estimated cost. OECD: Estimated cost of test—range of \$250 to \$9,000 (depending on which of several tests is selected).

Note.—The OECD Expert Group on Degradation/Accumulation has identified five candidate tests for assessing "ready biodegradability," and has provided guidance for selecting the appropriate test for various types of chemicals.

IRLG: None.

TSCA, section 4: In preparation.

FIFRA, section 3: Proposed—43 FR 29716, § 163.62-7 and 29720 § 163.62-11.

(b) *Bioaccumulation* (uptake from medium). (1) contribution of risk assessment. The tendency to bioaccumulate enables chemical substance to cause toxic injury and alter ecological processes at concentrations much lower than those predicted from acute and subacute studies. Moreover, it enhances the chemical's ability to affect life far removed from the initial points of entry into the environment. More indirect effects can occur when a chemical which is highly accumulative contaminates organisms like fish to the extent that they are unsafe or undesirable to consumers.

Preliminary screening data is necessary to distinguish chemical substances with low or moderate bioaccumulative character from those with high bioaccumulative character. This information will be used in conjunction with data on toxicity, transport, and fate of a chemical to

assess the risk resulting from the release of that chemical into the environment.

(2) Test protocols and estimated cost. OECD: There are two OECD base set bioaccumulation tests: bioconcentration in marine organisms (estimated cost \$850) and static bioaccumulation in fish (estimated cost \$2,000).

IRLG: None.

TSCA, section 4: In preparation.

FIFRA, section 3: 43 FR 29720, § 163.62-11.

4. *Toxicity Studies For Human Health Effects.* (a) *Acute Toxicity: Oral, dermal, and inhalation.* (1) Contribution to risk assessment. Acute toxicity studies must be determined to assess the potential risk of poisoning by a single exposure to a new chemical. These studies provide data to determine the median lethal dose (LD<sub>50</sub>) of a chemical substance and permit estimation of the toxicity of this substance relative to that of other chemicals. They may also provide data to approximate its mode(s) of action, to determine its specific toxic effect(s) on target organs and functions, and to determine any difference in sensitivity to this substance among species or routes of exposure.

(2) Test protocols and estimated cost. OECD: Estimated cost of tests—Acute Oral Toxicity \$2,000;

Acute Dermal Toxicity \$2,800; Acute Inhalation Toxicity \$3,300.

IRLG: 44 FR 49015 (announces availability of draft guidelines from Industry Assistance Office) TSCA, section 4: (i) Acute Oral Toxicity-Proposed—44 FR 44066, § 772.112-21; (ii) Acute Dermal Toxicity-Proposed—44 FR 44067, § 772.112-22; (iii) Acute Inhalation Toxicity-Proposed—44 FR 44067, § 772.112-23.

FIFRA, section 3: (i) Acute Oral Toxicity-Proposed—43 FR 37355, § 163.81-1; (ii) Acute Dermal Toxicity-Proposed—43 FR 37356, § 163.81-2; (iii) Acute Inhalation Toxicity-Proposed—43 FR 37357, § 163.81-3.

(b) *Primary dermal irritation/corrosion.* (1) Contribution to risk assessment. Data from a primary dermal irritation study indicate the capacity of a chemical to cause irritation and/or corrosion effects on the skin of laboratory animals. This evaluation can be used to guide health and safety practices for the handling of a chemical substance.

(2) Test protocols and estimated cost. OECD: Estimated cost of test—\$700.

IRLG: None.

TSCA, section 4: Proposed—44 FR 44071, § 772.112-25.

FIFRA, section 3: Proposed—43 FR 37360, § 163.81-5.

(c) *Primary eye irritation/corrosion.*

(1) Contribution to risk assessment. Data from a primary eye irritation study indicate the capacity of a substance to produce injury to the eye and associated mucus membranes. Evaluation of this potential hazard can be used to guide health and safety practices for the handling of a chemical substance.

(2) Test protocols and estimated cost. OECD: Estimated cost of test—\$450.

IRLG: 44 FR 49015.

TSCA, section 4: Proposed—44 44070, § 772.112-24.

FIFRA, section 3: Proposed—43 FR 37359, § 163.81-4.

(d) *Skin sensitization.* (1) Contribution to risk assessment. Data from dermal sensitization studies indicate the capacity of a chemical to induce a state of delayed contact sensitization when it comes in contact with the skin of laboratory animals. The evaluation of a chemical for potential skin sensitizing hazard can be used to guide health and safety practices for the handling of a chemical substance.

(2) Test protocols and estimated cost. OECD: Available in 1981. Estimated cost of test—range of \$3,200 to \$6,700 (depending on which method is selected)

IRLG: None.

TSCA, section 4: Proposed—44 FR 44071, § 772.112-26.

FIFRA, section 3: Proposed—43 FR 37361, § 163.81-6.

(a) *14-28 day repeated dose.* (1) Contribution to risk assessment. Repeated dose toxicity studies are performed to determine dose-response relationships and major organ toxicity associated with repeated exposure to a test substance. Repeated dose information is also of fundamental importance in cost effectively designing expensive subchronic or chronic toxicity studies with much longer exposure periods.

(2) Test protocols and estimated cost. OECD: Available in 1981. Estimated cost of test—\$10,200-12,800.

IRLG: None.

TSCA, section 4: Proposed—44 FR 44072, § 772.112-31.

Note.—The TSCA protocol calls for a minimum 90-day study on a rodent and non-rodent species.

FIFRA, section 3: Proposed—43 FR 37363, § 163.82.

Note.—The FIFRA protocol calls for a minimum 90-day study of a rodent and non-rodent species.

(f) *Mutagenicity.* (1) Contribution to risk assessment. Data from mutagenicity studies may indicate the capacity of a substance to produce alterations (mutation) in the genetic materials of a

cell either at the gene or chromosome level. Such mutations may result in teratogenic or carcinogenic effects in exposed persons, as well as mutagenic effects that are transmitted to future generations. Since some chemicals induce only one genetic alteration, studies for both gene (point) mutations and chromosomal aberrations are needed in the basic screening step. The preferred test for gene mutations is the *S. typhimurium* reversal mutation assay (Ames test). The *E. coli* WP2 reverse mutation assay may be substituted if this system is likely to be more sensitive to the test chemical. While an *in vitro* mammalian cytogenetics test is preferred in testing for chromosome aberrations, an *in vivo* mammalian cytogenetics test may be substituted where a scientific rationale exists.

(2) Test protocols and estimated cost. OECD: Estimated cost of tests. (i) *Gene Mutations-S. typhimurium* Reverse Mutation Assay—\$1,000; *E. coli* WP2 Reverse Mutation Assay—\$350. (ii) *Chromosome Aberrations-In vitro* mammalian cytogenetics test \$3,000; *In vivo* mammalian bone marrow cytogenetics test; \$13,000. Micronucleus test—\$2,000.

IRLG: None.

TSCA, Section 4: Proposed—44 FR 44054, § 772.114-1—772.114-4.

FIFRA, Section 3: Proposed—43 FR 37388, § 163.84-1—163.84-4.

Dated: January 19, 1981.

(15 U.S.C. 2601 et seq.)

Douglas M. Costle,  
Administrator.

[FR Doc. 81-2051 Filed 1-26-81; 8:45 am]

BILLING CODE 5560-31-M

#### 40 CFR Part 772

[OPTS-46007A; TSH FRL 1593-3-1594-4; TSH-FRL 1720-1a]

#### Environmental Test Standards: Clarification of Policy; Extension of Time for Comment and Rescheduled Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of time for comment.

**SUMMARY:** This notice extends the comment period and reschedules the related meeting, open to the public, to receive oral comment for the Agency's proposal of certain environmental test standards published in the Federal Register on November 21, 1980 at (45 FR 77332). This notice also gives a clarification of policy respecting that proposal's preamble discussion of these standards' relationship to international guidelines, particularly those being

developed through the Organization for Economic Cooperation and Development (OECD).

**DATES:** Written comments should be submitted on or before Monday, March 16, 1981. The opportunity to present oral comments in an open meeting has been rescheduled to Tuesday, March 31, 1981, 1:00-5:00 p.m. The previously announced meeting for February 10th is hereby canceled. See below for further details on this open meeting.

**ADDRESSES:** Written comments should bear the EPA document control number (OPTS-46007A) and should be submitted to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances (OPTS), Environmental Protection Agency, Room E447, 401 M St., SW, Washington, D.C. 20460, (202-755-8050).

See Supplementary Information, Extension of Time for Comment for location of the open meeting.

**FOR FURTHER INFORMATION CONTACT:** John B. Ritch, Jr., Director, Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E427, 401 M St., SW, Washington, D.C. 20460, Toll free: (800-424-9065); in Washington, D.C.: (202-554-1404).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Agency is proposing a series of generic standards for development of test data to have available for incorporation in specific chemical testing rules as they are issued under section 4 of the Toxic Substances Control Act (TSCA). The authority for these proposals is TSCA, Pub. L. 94-469; 90 Stat. 2006; 15 U.S.C. 2603. Previously published proposals covered the development of data on chronic health effects and Good Laboratory Practices for health effects (May 9, 1979, 44 FR 27334), and also on acute and subchronic toxicity, mutagenic, teratogenic and reproductive effects and metabolism studies (July 26, 1979, 44 FR 44054). On November 21, 1980 (45 FR 77332) the Agency proposed standards for development of test data on certain physical and chemical characteristics of substances and Good Laboratory Practices related to environmental effects testing. The notice covered testing for Density/Relative Density, Melting Temperature, Vapor Pressure, Octanol/Water Partition Coefficient and Soil Thin Layer Chromatography. In the future the Agency will be proposing additional test standards for neurobehavioral toxicity, other physical, chemical and environmental persistence

characteristics and various ecological effects.

In the preamble to the November 21st proposal (45 FR 77335) the Agency discussed the relationship of TSCA test standards to interagency and international test guidelines. Since then, the Agency has been requested to clarify this relationship, in particular with respect to its activities within the framework of the Organization for Economic Cooperation and Development (OECD). The clarification of policy below addresses this concern.

#### II. Clarification of Policy: Relationship to International Guidelines

In proposing these requirements, EPA recognized its obligations under Title IV of the Trade Agreements Act of 1979 (Pub. L. 96-39). That law provides the legal framework for implementing trade agreements entered into by the United States. Title IV (the Standards Code), by setting forth principles and procedures for Federal agencies, including EPA, to follow in rulemaking, aims at preventing the creation of unnecessary technical barriers to foreign trade.

As stated in section 401, the Standards Code is not intended to prevent Federal agencies from making rules or setting standards affecting international trade, for example, in chemical products, if such measures have as a demonstrable purpose the achievement of a legitimate domestic objective, such as protecting health, safety or the environment within the United States, and do not operate to exclude imported products which fully meet the objectives of such measures. Title IV states, however, that agencies involved in such rulemaking shall consider the adoption of existing international standards, if they are appropriate, and shall ensure that imported products are treated no less favorably than like domestic or other imported products.

As noted in the earlier Federal Register notice, the U.S. EPA has been a full and regular partner in extensive international consultations and negotiations in the OECD during the development of its chemical testing and other requirements under TSCA. The Agency places a high priority on these activities because of benefits both for international chemical trade and for more effective health and environmental protection.

U.S. experts, along with those of other OECD member states, have worked since 1977 to develop agreed chemical testing guidelines and good laboratory practices, as well as an agreed set of data that should be developed for new chemicals prior to marketing. The

United States strongly endorsed the work of the expert groups at a meeting of high level national regulatory officials in May 1980 and firmly committed the United States to domestic implementation.

Therefore, the policy of the United States with respect to the current proposal is to pursue consistency in its test standards with the OECD Test Guidelines. They will have the same basic requirements, so that data developed according to either EPA or OECD procedures with respect to those requirements should satisfy EPA needs.

A concerted effort will be made to incorporate OECD wording into EPA standards/guidelines; however, where EPA language provides a substantial improvement or is necessary to comply with a U.S. statutory or judicial requirement, it can be used. Additions to, or deletions from, the OECD guidelines will be strictly limited and a rationale provided in such cases. Additions should generally be limited to suggested or preferred criteria or to explanatory phrases (rather than required) such that the basic requirements cannot be construed as being different.

### III. Extension of Time for Comment

In the November 21st notice, a deadline of January 21, 1981 was set for receiving written comments, and an opportunity to present oral comment was offered on February 10, 1981. Today's notice extends the time for filing written comments until Monday, March 16, 1981, cancels the February 10th meeting and announces a new opportunity to present oral comment in an open meeting on March 31, 1981.

Several foreign governments have indicated a desire to comment on these proposed test standards and a difficulty in doing so before the deadline set for written comment. In addition, interested parties in the U.S. have requested an extension of the comment period. Therefore, the Agency is granting an extension of the time for comment. Directions for filing written comment are given under ADDRESSES above.

The open meeting will be held from 1:00 p.m. to 5:00 p.m., Tuesday, March 31, 1981, in Room M3906, Waterside Mall, U.S.E.P.A. Headquarters, 401 M Street, S.W., Washington, D.C. 20460. The opportunity to present oral comment is granted to persons having some information, interpretation or argument on alternatives that is not duplicative of their written commentary and is more easily communicated in an oral exchange than in writing. Persons wishing to make presentations should request time by contacting the Industry

Assistance Office by telephone (800-242-9065 or, in Washington, 554-1404).

(Sec. 4, Toxic Substances Control Act (TSCA), (90 Stat. 2006 (15 U.S.C. 2603)))

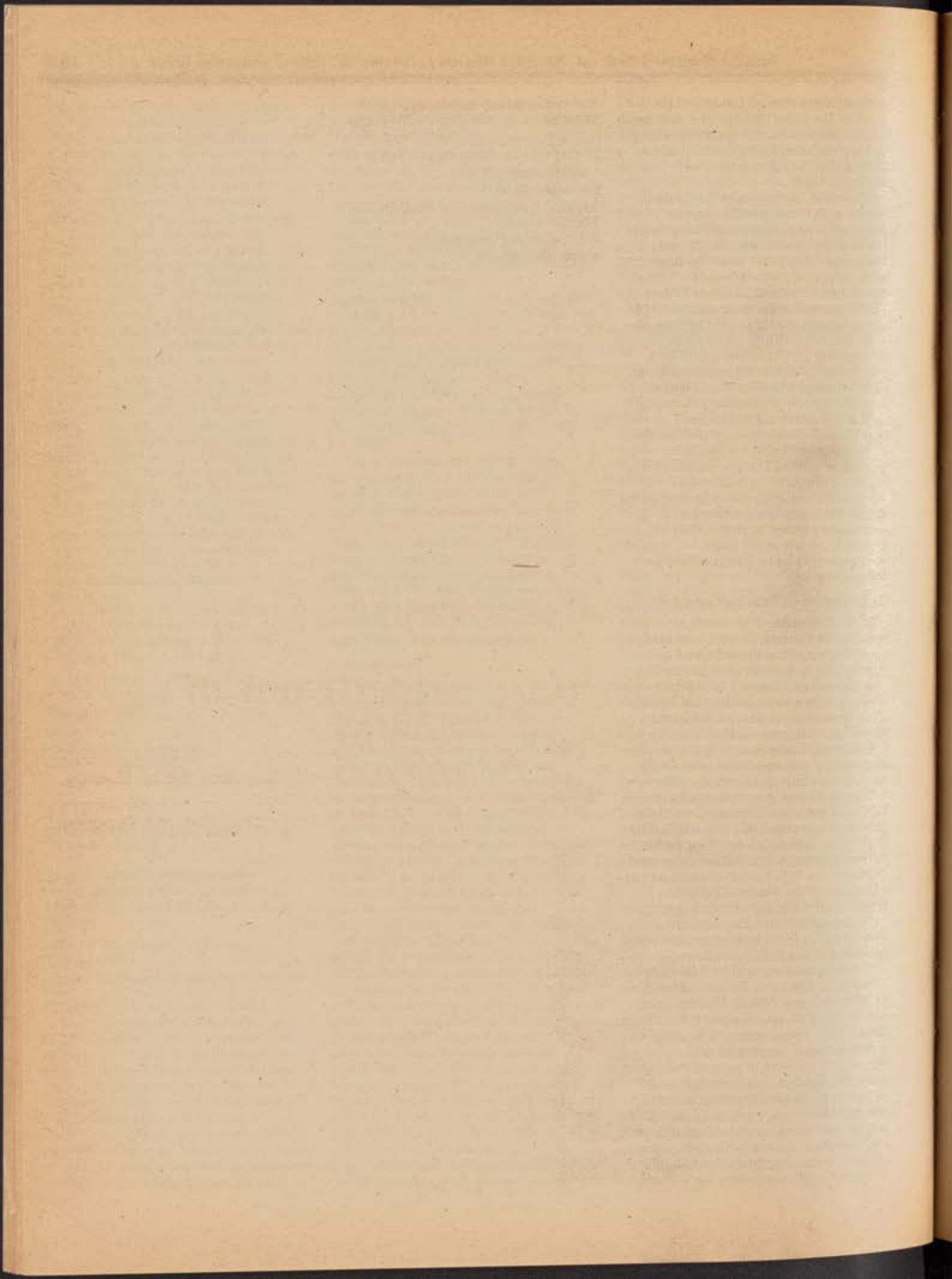
Dated: January 19, 1981.

**Steven D. Jellinek,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 81-2853 Filed 1-26-81; 8:45 am]

**BILLING CODE 6560-31-M**





# **federal register**

---

Tuesday  
January 27, 1981

---

**Part XII**

**Department of  
Energy**

---

Office of Conservation and Solar Energy

---

Residential Conservation Service Program

## DEPARTMENT OF ENERGY

## Office of Conservation and Solar Energy

## 10 CFR Part 456

[Docket No. CAS-RM-79-101]

## Residential Conservation Service Program

AGENCY: Department of Energy.

ACTION: Proposed amendments and public hearing.

**SUMMARY:** The Department of Energy (DOE) is proposing alternative amendments to the Residential Conservation Service (RCS) program regulations (10 CFR Part 456) as they relate to the treatment of urea-formaldehyde foam insulation. The RCS program was established pursuant to Title II, Part 1 of the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619, 92 Stat. 3206 *et seq.*) as amended by the Energy Security Act (ESA) (Pub. L. 96-294, 94 Stat. 611 *et seq.*). The purpose of the program is to encourage the installation of energy conservation measures and renewable resource measures, in existing houses by residential customers of larger gas and electric utilities and home heating suppliers.

On November 7, 1979, DOE issued a final rule for the RCS program (44 F.R. 64602). Included in the Final Rule were several reserved sections. A proposed rule which filled in these reserved sections and proposed additional sections was published on December 21, 1979, (44 FR 75956); two of the reserved sections relating to material and installation standards for urea-formaldehyde (U-F) foam insulation were published on an interim final basis on September 25, 1980 with an effective date of February 24, 1981. Reference to the interim final rule will refer to the September 25, 1980, rules unless otherwise specified.

In publishing the interim final rule, DOE determined that, based upon available information, it ensured a minimum level of general safety and effectiveness with respect to U-F foam. DOE noted, however, that further suggestions from the Consumer Product Safety Commission (CPSC) received after the comment period could possibly improve the interim final standard, and DOE indicated its intent to propose improvements to the standards.

On January 13, 1981, however, the CPSC voted to propose a ban on U-F foam insulation.

In light of all these developments, DOE is today proposing, in the

alternative, several amendments to improve the interim standards or a ban on the installation of U-F foam under the RCS program.

**DATES:** Written comments must be received by March 30, 1981, 4:30 p.m., e.s.t. in order to ensure their consideration. Requests to speak must be received by 4:30 p.m., February 11, 1981.

**Public hearing:** February 20, 1981 at 9:00 a.m., at 2000 M Street, N.W., Washington, D.C., Room 2105.

**ADDRESSES:** Comments and requests to speak at the hearing should be addressed to Carol Snipes, Department of Energy, Conservation and Solar Energy, Office of Hearings and Dockets, Mail Station 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (Phone: (202) 252-9319). See "Comment Procedures" under Supplementary Information below.

**FOR FURTHER INFORMATION CONTACT:**

Shelley Launey, Building Conservation Services Division, Conservation and Solar Energy, 1000 Independence Avenue, S.W., Room GH-068, Washington, D.C. 20585, (202) 252-1660.

Daniel T. Ruge, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., 6B-128, Washington, D.C. 20585, (202) 252-9519.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction.
- II. Background.
- III. Regulatory Analysis and Urban Impact Assessment.
- IV. Environmental Impact Statement.
- V. Consultation with Other Federal Agencies.
- VI. Contractor Contributions to the Rulemaking.
- VII. Comment and Hearing Procedures.
- VIII. Proposed Amendments.

**I. Introduction**

Interim final standards for urea-formaldehyde foam (U-F) insulation, relating both to its manufacture and to its installation under the Residential Conservation Service (RCS) program, were published September 25, 1980 (45 FR 63786). These interim standards in the absence of other regulatory action by DOE, become effective on February 24, 1981. The Department of Energy (DOE or Department) is proposing, in the alternative, to amend the interim final standards for U-F foam insulation (10 CFR 456.810 and 456.909) or to eliminate the product from use under the RCS program altogether.

**II. Background****A. Summary**

The National Energy Conservation Policy Act (NECPA) requires the Secretary to develop any material and installation standards determined necessary to ensure the general safety and effectiveness of materials installed under the RCS program. DOE published interim final standards for U-F foam rather than final standards on September 25, 1980. We recognized that there was much we do not yet know about the chemistry of the product and that as our understanding of U-F foam increased, changes to the standards would probably be justified.

In fact, after the close of the comment period on the proposed standards, the CPSC suggested several changes to the U-F foam standards. Subsequently, on January 13, 1981, the CPSC voted to propose a nationwide ban on U-F foam insulation.

Accordingly, the Department today is proposing either to make certain changes to the standards, frequently along the lines earlier suggested by the CPSC, or to preclude the use of U-F foam under the RCS program.

In making these proposals, DOE intends to provide the opportunity to take that action, supported by the record, that best serves the public interest. While information currently available to DOE does not contradict our determination made in promulgating the interim standards, that those standards assure at least a minimum level of general safety and effectiveness, the CPSC has indicated that it has new information relating to chronic risk of injury from U-F foam. Moreover, DOE cannot ignore the formal proposal to ban U-F foam by the primary government agency responsible for health and safety in consumer goods. Consequently, DOE is also proposing a ban on U-F foam in the RCS program. DOE is proceeding at the same time to propose amendments to improve the interim standards. These proposals, which DOE believes would significantly improve the standards, are based on DOE's continuing studies and recommendations made by the CPSC after the close of the comment period in the last proceeding on U-F foam. If the record supports DOE's tentative conclusion on these proposals, DOE would adopt them *unless*, on the basis of the record, DOE is convinced that despite these improvements the standards for U-F foam do not assure at least a minimum level of general safety and effectiveness. In that regard, DOE will reassess the conclusions reached in adopting the interim final rule as well as consider any new information. Since the

RCS program is already beginning to operate in several States, the Department believes that it is important to preserve the one safeguard against the potential problems of U-F foam insulation which can be assured by February 24. This safeguard is, of course, at least minimum material and installation standards for U-F foam insulation.

The Department wishes to emphasize that the action it is taking today is not intended in any way to detract from the deliberations of the CPSC on U-F foam insulation. The Department still maintains that any more restrictive final regulatory action taken by the CPSC will supersede our U-F foam standards. Moreover, we will reassess our regulations on U-F foam at any time that our ongoing dialogue with the CPSC indicates that it is appropriate for us to do so. Finally, if necessary, DOE could take emergency regulatory action to ban U-F foam from the RCS program at any time it believes that safety and health require such action.

Following below is a description of the proposed amendments to the standards. Even where DOE has not included CPSC suggestions in the proposed regulatory language, the DOE will include them in the amended standards, if they are justified by the public comments in response to this notice and relevant information otherwise available to the Department.

*B. Proposed Amendments to the Interim Final Material Standard for Urea-formaldehyde (U-F) Foam Insulation*

1. *Limitation on methylol content in resin.* At the suggestion of CPSC, DOE considered proposing a limitation on the combined content of formaldehyde and methylol in U-F foam resin. This combined limitation would replace the current limitation on only the formaldehyde content of the resin. New evidence suggested that limiting only formaldehyde content may be counter-productive for two reasons. First, durability of the foam may be reduced. Equally important, however, is the relationship between urea, formaldehyde, and methylol in the foam. Methylol is a component of the polymer resulting from the bonding of urea and formaldehyde molecules. Under certain temperature and humidity conditions which cannot always be predicted, methylol may contribute to release of formaldehyde vapors. Although limiting the formaldehyde content in the resin may be effective in limiting the potential for initial off-gassing of formaldehyde vapors, it may not be effective in limiting the potential for release of long-term or hydrolyzable formaldehyde

which is formed after the installation of the U-F foam insulation. It was suggested that by limiting the combined content of formaldehyde and methylol a more complete chemical control of the resin may be provided, resulting in reduced potential for off-gassing.

However, DOE has decided not to propose a limitation on combined methylol and formaldehyde content because of the following reasons:

(1) We are unaware of a method to extract methylol separately from other U-F foam components. Nor are we aware of evidence to support a specific acceptable content of methylol;

(2) We know of no evidence to document a relationship between methylol content and off-gassing. Although a knowledge of the chemical bonding characteristics of U-F foam components suggests that such a relationship should exist, no one has yet demonstrated the relationship in either the laboratory or the field.

The test procedure contained in § 456.810(d)(6) of the Interim Final Rule measures in actuality, not only free formaldehyde, but also extractable methylol and other aldehydes. Extractable methylol is but a portion of the total methylol content, but is the only portion for which a procedure is available to remove it from U-F foam components other than the aldehydes. DOE is therefore changing the title of the test procedure in § 456.810(d)(6) from "Free Formaldehyde Content" to "Extractable Methylol and Aldehyde Content (including formaldehyde)". Since methylol undoubtedly contributes to the content of extractable formaldehyde in the resin and fresh foam, DOE will retain the percentage weight limitations of the total formaldehyde content (including extractable methylol) in resin and fresh foam. Extractable methylol and aldehyde content will continue to be limited to 0.5 percent by weight in the resin and 0.3 percent by weight in the fresh foam. (See Amendment 4.)

DOE specifically requests comments on the following:

- What evidence exists to show that U-F foam with low formaldehyde and methylol content results in low formaldehyde release?
- What is the relationship between methylol content and formaldehyde release? and
- What experience have manufacturers had in experimenting with low formaldehyde and methylol content in resulting foam quality?

2. *Test procedure for determining formaldehyde content of fresh foam.* The interim final material standard (§ 456.810(f)(8)) requires that the

formaldehyde content of resin be determined 15 minutes after foaming. If the potential exists for releasing additional formaldehyde after initial foaming, the formaldehyde content should be measured at intervals after initial foaming. The free formaldehyde measured immediately after foaming may be more akin to unreacted formaldehyde in the resin than formaldehyde in the cured foam because the reaction has progressed only slightly and may take longer to reach completion. CPSC, therefore, requested that DOE also measure formaldehyde content at about 3 weeks and 2 months after initial foaming. As a result, DOE is proposing that extractable methylol and aldehyde (including formaldehyde) in the fresh foam be measured 15 minutes, 2 weeks, and 56 days after foaming. Although there is little data to substantiate the 2-week and 56-day test period, decay curves developed at the University of Iowa show that formaldehyde content flattened out at approximately 6-10 days. Two weeks is proposed as a testing point to provide sufficient opportunity for this segment of the curve to be reached. Fifty-six days is also proposed as a testing point because it is an identical time period to that in the corrosion test described in § 456.810(f)(4). Although it is currently unknown if a relationship between formaldehyde release and time exists, work is progressing at the University of Iowa under contract to DOE to determine if such a relationship can be established.

DOE is proposing that the samples be held at ambient laboratory conditions of  $24 \pm 5^\circ\text{C}$  ( $75 \pm 10^\circ\text{F}$ ) and  $50 \pm 10\%$  rh. In addition, DOE is proposing that the original sample be foamed at the upper and lower tolerance limits of the component ratios as recommended by the manufacturer, as well as at the recommended ratio. This will help ensure that even if the applicator has not adjusted his equipment optimally, excessive additional formaldehyde formation is still unlikely. (See Amendment 11.) DOE specifically requests comments on the following issues: (1) What are the relative advantages and disadvantages of conducting the test at ambient laboratory conditions rather than at temperatures which may be encountered in an actual installation? (2) Will laboratory results under ambient conditions reflect results in the field? (3) What effect will testing after 2 weeks and 56 days have on the cost of laboratory testing? (4) What should be an allowable level of formaldehyde 56 days after foaming? Should it be the

same as is measured 15 minutes after foaming?

3. *C-13 NMR (Nuclear Magnetic Resonance) Resin Testing.* Testing of U-F foam insulation is particularly complex because conditions and components may change from batch to batch, and depending upon the capacity of the manufacturer, hundreds of batches could be produced between testing by the independent laboratory. This means that test results on one batch of material may not necessarily reflect the results of another batch which was not tested. For purposes of this standard, a batch is presently defined as the type and amount of specific ingredients combined at one time to form U-F foam resin and foaming agent.

The Consumer Product Safety Commission (CPSC) suggested that C-13 testing might be used to ensure that each batch of material contained the same chemical components as the batch tested by the independent laboratory. Although it is unlikely that C-13 testing could detect specific amounts of each component, it could detect new additives or it could determine if there was a departure from the chemical components submitted for laboratory testing. DOE stated in the preamble to the Interim Final U-F foam standard that we intended to propose that each manufacturer submit for testing a sample of resin from each batch of material manufactured. CPSC estimated that the cost of each analysis would range from \$.50 to \$2.00.

DOE has had opportunity in the meantime to examine C-13 testing more closely and has determined that application of C-13 NMR testing to U-F foam resins is premature in the context of a product standard for the following reasons:

(1) No specification for instrument parameters exists for performing the C-13 NMR analysis on U-F resins, and as a result, intensity variations in the readings may occur. Reproducibility errors range from 10-15 percent under ideal circumstances. Possible causes for intensity variations include the following:

- The RF power may not be sufficiently powerful to irradiate all nuclei equally.
- The C-13 NMR equipment may not have sufficient storage or data points to completely define resonance intensities.
- The carbon atoms in a molecule may have relaxation times which are widely variant.

(2) The method of quantitative analysis of resins is very complicated. The resonance peaks of the methylol and other functional groups are either

broad and/or overlap with other resonance peaks. The lack of resolution resulting from different chain lengths and multiple structures within the resin probably will lead to large errors of determination.

(3) Timing is of critical importance in obtaining an accurate analysis. After production of the U-F foam resin, the urea-formaldehyde polymer continues to react at a slow rate. If samples are sent great distances and if holding times for shipping and analysis are long, then the formaldehyde and methylol content of that particular batch, as determined by the C-13 analysis, may not be representative of that batch. Because the resin continues to react on standing, it would be necessary for each manufacturer to ensure that all samples are analyzed rapidly. DOE does not believe that manufacturers will have sufficient control over shipping, storage, and analysis of samples from every batch to ensure the necessary immediate analysis.

(4) When CPSC suggested C-13 NMR testing they estimated that it could be conducted for \$.50-\$2.00. A limited survey conducted by DOE shows that the cost may be more in the order of 20 to 100 times that estimate. And these prices may or may not include analysis. It is questionable whether C-13 NMR testing apparatus will be allowed to be used for long periods of time for resin testing, or, if so, at what price. In a paper presented by B. Everett of CIBA-Geigy Plastics Division, at the NBS Technical Workshop on Formaldehyde, April 9-11, 1980, sponsored by CPSC, the C-13 NMR spectra of urea-formaldehyde resins were described. The spectrum obtained under the conditions described required " \* \* \* an average experimental time of 16-18.5 hours." Given the simplest of situations, freight charges, actual laboratory analysis, and charges associated with rapid turn-around times, the cost far exceeds the \$2.00 range.

As a result of the above, DOE is of the opinion that the state-of-the-art of C-13 NMR U-F Foam resin testing is not sufficiently developed or practical for DOE to propose as a quality assurance requirement.

As a substitute for the C-13 NMR testing, DOE is proposing test procedures for determining specific gravity, pH, viscosity and extractable methylol and aldehyde in the resin. Once a manufacturer has determined the range of specific gravity, pH, viscosity, and extractable methylol and aldehyde appropriate for his product, future testing to ensure the resin is within the specified range will help to

ensure similarity of components and manufacturing process. (See Section 4.)

Although DOE currently believes C-13 testing is premature for inclusion within the standard, we solicit comments, detailed data, and other information on the applicability of its use as a criterion for judging quality control. As with all other CPSC suggestions not reflected in the proposed regulatory language, DOE will include a requirement for C-13 testing in the amended standards, if its inclusion is justified by public comments and other relevant materials.

We also request comments on other techniques used by manufacturers to help ensure quality control in this area.

4. *Additional Quality Control Test Procedures (Including Specific Gravity, Viscosity, pH, and Extractable Methylol and Aldehydes.)* Quality control of the production of urea-formaldehyde resins is essential to assure that unacceptable resins which would result in poor quality foam are not distributed to applicators. Quality control of resin production means that physical and chemical properties of the freshly-produced resins are the same from batch to batch. Production of the resin should be consistent. Important properties to measure for controlling the quality of urea-formaldehyde resins are viscosity, specific gravity, pH, and extractable methylol and aldehyde content. The significance of measuring each of the properties is as follows:

• *Viscosity and Specific Gravity.* These properties are an indication of the degree of reaction between the urea and formaldehyde chemicals and that the chemical reaction has proceeded as designed. The chemical reaction and its degree should be the same from batch to batch of resin. Variations in these properties from batch to batch may be an indication that the products of reaction are not the same from batch to batch.

• *pH.* In the production of U-F resins, the catalyzed reaction mixture containing urea, formaldehyde and other chemicals is essential neutralized at a certain point in the reaction. The neutralization quenches the reaction between the urea and formaldehyde before polymerization is complete. The partially polymerized resin is shipped to job sites where polymerization is reinitiated in the application process to produce the foam insulation. Proper neutralization of the original reaction mixture is essential to attain a resin which may be satisfactorily applied and have proper self-life. For this reason, the pH of each batch of resin should be similar.

• *Extractable Methylol and Aldehyde Content.* Measurement of this property

of the resin is proposed to determine that the extractable methylol and aldehyde content of each batch of resin does not exceed a tolerance limit established by the manufacturer. In addition, this limit must be at or below the limit established in section (d)(6)(i) of DOE Interim Standard § 456.810. The extractable methylol and aldehyde content in the resin may be another indication that the reaction between urea and formaldehyde has proceeded as designed. In this regard, the extractable methylol and aldehyde content in the resin should not vary significantly from the manufacturer's specified value.

Manufacturers should have their own specification values for these properties, since they are expected to vary between manufacturers. DOE is proposing that manufacturers test each freshly-produced batch of resin to determine its viscosity, specific gravity, pH and percentage of extractable methylol and aldehyde. The results of the measurements will then be compared to the manufacturer's specified values ( $\pm 10$  percent) for these properties to determine whether the new batch of resin meets the specification. Resins which do not meet the manufacturer's specification are not in compliance with the DOE standard and must not be distributed or installed under the RCS program. Results of tests should be recorded and kept for future reference. In addition, manufacturers will submit these specifications to the testing laboratory as part of the annual testing program described in § 456.810(e). Resin submitted to the laboratory which does not fall within the manufacturer's specifications constitutes noncompliance with the standard.

These properties of urea-formaldehyde resins should be determined as follows:

- *Viscosity*—The viscosity should be determined according to the procedure given in ASTM D2393.

- *Specific gravity*—The specific gravity should be determined according to the procedure described in sections 12 and 13 of ASTM D1045.

- *pH*—The pH should be determined using a standard laboratory pH meter. The pH meter should be calibrated using a standard buffer solution of 7.0 before each determination of resin pH.

- *Extractable methylol and aldehyde*—The extractable methylol and aldehyde content should be determined by using the standard test method in § 456.810(f)(7). (See Amendments 4 & 5.)

5. *Testing by a NVLAP accredited laboratory.* In the interim final standard, DOE required that all testing be done by

an independent laboratory (§ 456.810(e)) to ensure compliance with the applicable standard. Because testing capability can vary considerably from laboratory to laboratory, DOE is proposing that the provision be amended to require testing by an independent accredited laboratory under the National Voluntary Laboratory Accreditation Program (NVLAP). In the event that there are not any laboratories certified to perform a particular test, the present requirement that an independent laboratory perform the test will still pertain.

NVLAP was established by the Department of Commerce to ensure that certain laboratories are technically qualified to conduct specific test methods. NVLAP only concerns itself with products and test methods which an industry or Government group requests be included in the program. NVLAP does not currently accredit laboratories to conduct *all* of the test methods contained in the Interim Final Rule under § 456.810(d) and (g). Only the test methods for determining a material's thermal resistivity by ASTM C177, ASTM C518, or ASTM C236, surface burning characteristics by ASTM E84 and dry density by ASTM D1622 are presently included. DOE has requested that all other test methods in § 456.810 be included in the thermal insulation laboratory accreditation program. (See Amendment 9.)

Procedures are published in the *Federal Register* notice of January 23, 1980 (45 FR 5572) explaining how interested laboratories may apply for accreditation and the necessary requirements. NVLAP does not require that all laboratories be accredited to conduct all test methods but rather laboratories can choose only those test methods they wish to be accredited to perform. Further information is available from:

John W. Locke, Coordinator NVLAP, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (202) 377-2054.

6. *Shipping/Storage Conditions.* DOE is concerned that temperature conditions after manufacture and prior to installation do not affect the chemistry of the resin and foaming agent and result in shortened shelf-life beyond that anticipated by the manufacturer. U-F foam components subjected to excessively high or low temperatures will result in foam which does not set properly. Because components exposed to very low temperature, (below freezing) appear to recover once they gradually increase in temperature, DOE is proposing to limit temperature at only the upper end. DOE is proposing that

manufacturers, distributors, and contractors store U-F foam components only in conditioned spaces kept at or below 26° C (80° F). This requirement will help ensure that U-F foam components do not prematurely deteriorate while in the hand of manufacturers, distributors, or contractors.

Similar restrictions could be placed on the shipping and handling of U-F foam components between manufacturers, distributors and contractors. The chance of components being exposed to high temperatures during transit is particularly high under certain circumstances and therefore a control on shipping conditions would be helpful. However, DOE could not determine an effective means to accomplish this without creating undue burden for the shipper, manufacturer, or distributor, and without seriously increasing the price of U-F foam to the consumer. Refrigerated trucks and freight cars are available but are costly to operate.

Another suggestion made, by CPSC, to DOE was to outfit each container of resin or foaming agent with temperature recording devices during shipping. Based on the record of temperatures to which components were subjected, the remaining shelf-life could then be adjusted. However, to date, DOE has been unable to identify any such device commercially available and applicable to containers used to ship and store U-F foam components. DOE requests comments or suggestions on procedures which could be followed during shipping to ensure the product quality and durability. (See Amendment 8).

7. *Equipment Modifications.* Because installation equipment plays such an important role in the quality of U-F foam application, DOE is proposing several modifications or additions to the equipment requirements in § 456.810(g), at the suggestion of CPSC.

First, DOE proposes that all equipment used to install U-F foam be capable of automatically recirculating and agitating resins and foaming agents continuously throughout the foaming process. This requirement should help maintain uniformity of components and help ensure that no chemical separation occurs and that no temperature gradient builds up during installation. (See Amendment 14).

Second, DOE proposes that compressed bottled gas (only air or nitrogen) be used in place of air compressors. DOE is specifying what gases should be used in order to avoid the use of propane, butane, oxygen or other bottled gases which could result in a hazardous situation for installer and homeowners alike. Oil contamination

from air compressors may cause foam to collapse and result in greater shrinkage of the foam. Bottled gas will eliminate the possibility of oil contamination, and cause less pressure fluctuations. (See Amendment 14.)

Third, DOE proposes that all equipment used to install U-F foam insulation respond by automatic shut down within 10 seconds to any drop in regulated gas pressure or to a 20 percent change in component ratios. DOE has been informed that equipment meeting these specifications is commercially available. (See Amendment 14.)

In the Interim Final Rule, equipment that either automatically shutdown or alarmed on a 20 percent change in component ratio could be used for foam installation. However, DOE now feels that the foaming process should cease when such a ratio change occurs to prevent any installation of poor quality foam. In the event of operator ignorance or neglect, large amounts of poor quality foam could be installed which would be very difficult to remove. Therefore, a change is being proposed to allow only equipment which has an automatic shutdown. Under the proposed amendment, equipment with an alarm and an automatic shutdown is permissible but equipment having only an alarm is not.

As specified in the Interim Final Rule in § 456.909(f) only equipment recommended by the foam manufacturer can be used with the manufactured product. This requirement is also being added to the material standard under equipment requirements in § 456.810(g)(1). By adding this requirement here, the combination of it along with new provisions proposed herein will provide a complete and clear listing of all equipment requirements. (See Amendment 14.)

Once equipment is designed for installing U-F foam insulation, two situations arise which impact the quality of the installation. The first situation pertains to the capability of the equipment to consistently sustain the correct component ratio during the entire foaming process. DOE is proposing that the test found in the interim standard § 456.810(g) be done by an accredited laboratory for each model type of equipment before the manufacturer can certify its use by installers in the field. This test verifies the stability of the equipment to maintain correct component ratio under various conditions, namely, continuous pumping of  $20 \pm 5$  gallons of each component and ten on-off cycles. This requirement would ensure that only equipment of adequate quality would be used in the field and would provide a

high level of confidence that the correct component ratio is being maintained during an actual installation. Twenty gallons of resin represents approximately one-half of the total volume needed for an average size house. (See Amendment 14.)

The second situation arises once the equipment is in the hands of the installer. Periodic inspections of the equipment and recalibration of the pressure gauges and other indicating devices are important to ensure a correct foam product for each installation by the installer. DOE is proposing that each piece of equipment be inspected, refurbished and calibrated to the original manufacturer's specifications by the manufacturer or independent facility every 6 months. In particular, the nozzle orifice size would be checked for correct dimension and the applicator passages would be cleaned of any obstructions. Likewise, all pressure gauges, indicating devices, alarms, and automatic shutdown switches would be checked and calibrated. Correct overall operation of the equipment would be verified. (See Amendment 28.)

As evidenced by comments following the publication of the Interim Final Rule, clarification is needed to explain the various tolerance limits placed on the equipment concerning the allowable change in component ratio. DOE is proposing that equipment of each model type be able to satisfy the test in paragraph § 456.810(g) to within  $\pm 5$  percent tolerance of the manufacturer's prescribed ratio. We are also proposing that equipment automatically shutdown anytime there is a  $\pm 20$  percent change in the component ratio during installation. The discrepancy between these two tolerances (5 and 20 percent) is not critical because two separate situations are involved. The first requirement ( $\pm 5$  percent) is a guideline to ensure that each model type of equipment sold to installers is manufactured with the designed capability of consistently producing foam with the correct component ratio. The actual tolerance is determined directly by measuring the quantity of each component at the beginning and end of the test. The second requirement ( $\pm 20$  percent) provides a broader limit than the first which results in greater equipment stability during an installation. Since the foam's component ratio cannot be checked on a continuous basis while being installed, equipment manufacturers have relied on a ratio of component pressures for an indication of component ratio. Since the ratio is determined indirectly, a broader

tolerance limit is justified. Nevertheless, DOE feels that this 20 percent tolerance as indicated by the pressure device ensures a sufficient level of quality for the foam. Further, it reduces the possibility of causing needless and frequent shutdowns due to expected fluctuations in component pressures during installation.

### III. Regulatory Analysis and Urban Impact Assessment

The President by Executive Order 12044 has directed agencies of the executive branch to conduct a Regulatory Analysis of regulations which they prepared that are likely to have a major economic impact. In accordance with OMB Circular A-115, an Urban Community Impact Assessment should be prepared when the Proposed Rule is a major policy and program initiative. This assessment should be incorporated into the Regulatory Analysis.

DOE determined that the Residential Conservation Service program, authorized under Title II, Part 1 of the National Energy Conservation Policy Act, was a major action which required preparation of Regulatory Analysis and an Urban and Community Impact Assessment. Consequently, the Department prepared the two analyses in draft in conjunction with the Final Rule which was published November 7, 1979 (44 FR 64602). The final Regulatory Analysis, which incorporates the final Urban and Community Impact Assessment, include analysis of the Interim Final Rule and the amendments proposed herein.

A single copy of the Final Regulatory Analysis may be obtained by writing: Mr. James R. Tanck, Director, Building Conservation Services Division, Department of Energy, Conservation and Solar Energy, 1000 Independence Avenue, S.W., Room GH-068, Washington, D.C. 20585.

While this Regulatory Analysis addresses most of the issues required to be addressed by the Regulatory Flexibility Act of 1980, DOE has determined that the requirements of that Act do not apply to this proposed rule, because the number of small businesses that may be significantly affected is not substantial.

### IV. Environment Impact Statement

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) DOE prepared an Environmental Impact Statement for the entire Residential Conservation Service Program. The subject matter of this rulemaking was evaluated in the

programmatic Environmental Impact Statement (DOE/EIS-0050) and was published in the *Federal Register* on November 7, 1979 (44 FR 64602). A copy may be obtained by writing: Mr. James R. Tanck, Director, Building Conservation Services Division, Conservation and Solar Energy, 1000 Independence Avenue, S.W., Room GH-068, Washington, D.C. 20585.

#### V. Consultation With Other Federal Agencies

In preparing these proposal amendments, DOE consulted with representatives of the National Bureau of Standards.

#### VI. Contractor Contributions to the Rulemaking

The Institute of Agricultural Medicine and Environmental Health of the University of Iowa assisted in the development of the proposed amendments.

#### VII. Comment and Hearing Procedures

##### A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments, with respect to the proposed procedures, requirements and criteria. Comments should be submitted to the addresses indicated in the addresses section of this preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Conservation Service Program, (Docket No. CAS-RM-79-101)." Fifteen copies should be submitted. All written comments must be received by 60 days from date of publication 4:30 p.m. e.s.t., to ensure consideration.

All written comments received on the Proposed Rule will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m., and 4:00 p.m., Monday through Friday. Any information of data considered by the person furnishing it to be confidential must be so identified and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information of data and treat it according to its determination.

##### B. Hearing Procedure

The time and place of the public hearing are indicated in the date and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representative of a

group of class of persons that has an interest in the proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, and must be received before 4:30 p.m., on February 11, 1981.

Such a request may be hand delivered to Room 1F-085, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours 8:00 a.m., and 4:30 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Residential Conservation Service Program", Docket No. CAS-RM-79.101.

The person making the request should briefly describe the interest concerned; if appropriate, state why he or she is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day.

Each person who, in DOE's judgment, proposes to present relevant material and information shall be selected to be heard and shall be notified by DOE of his or her participation before 4:30 p.m., on February 17, 1981.

Persons selected to appear at the hearing should bring 15 copies of his or her statement to the hearing site.

The hearing will begin at 9:00 a.m., e.s.t., on February 20, 1981, Room 2105, 2000 M Street, N.W., Washington, D.C.

##### C. Conduct of Hearing

DOE reserves the right to arrange the schedule of presentations to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer to chair the hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, at the registration desk. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcripts, will

be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m., and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

**Authority:** Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3208 *et seq.*, as amended by Title V, Subtitle B of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.*; Department of Energy Act, Pub. L. 95-619, 91 Stat. 565 *et seq.*, 42 U.S.C. 7101 *et seq.*

In consideration of the foregoing, the Department of Energy proposes to amend Title 10, Chapter II, Part 456 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., January 19, 1981.

T. E. Stelson,

*Assistant Secretary, Conservation and Solar Energy.*

Title 10, Chapter II, Part 456 of the Code of Federal Regulations is amended as follows:

##### A. Primary Proposals

###### § 456.810 [Amended]

1. On page 64793, second column, after § 456.810(b)(6), insert a new paragraph (7) to read as follows and renumber the subsequent paragraphs: (7) "Accredited Laboratory" means a laboratory whose ability to perform certain test methods on thermal insulation materials has been approved by the U.S. Department of Commerce under the National Voluntary Laboratory Accreditation Program (NVLAP).

2. On page 63793, second column, § 456.810(b), after the definition of "ASTM D257-76" insert a new paragraph as follows: (14) "ASTM D1045-72" means ASTM Standard Method of Sampling and Testing Plasticizers Used in Plastics.

3. On page 63793, second column, § 456.810(b), after the definition of "ASTM D1622-63" insert a new paragraph as follows: (16) "ASTM D2393-72" means ASTM Standard Test Method for Viscosity of Epoxy Resins and Related Components.

4. On page 63793, third column, § 456.810(d)(6) delete paragraph (d)(6) and insert in lieu thereof a new paragraph (d)(6) as follows: (6) *Extractable methylol and aldehyde content.* (i) The extractable methylol and aldehyde content of the resin (including formaldehyde) used in U-F foam insulation shall be determined in accordance with the procedure in

paragraph (f)(7). The percent by weight, however, shall not exceed 0.5 percent. Values determined by manufacturers shall be submitted as part of the annual laboratory retesting program. The laboratory shall ensure that the percentage by weight of the test samples is within  $\pm 10$  percent of the manufacturer's specification. (ii) The extractable methylol and aldehyde content of the fresh foam (including formaldehyde) shall not exceed 0.3 percent by weight when tested as specified in paragraph (f)(8).

5. On page 63793, third column, after paragraph (d)(6) insert new paragraphs (d)(7), (d)(8) and (d)(9) as follows and renumber existing paragraphs (d) (7) thru (13) accordingly: (7) *Viscosity*. The viscosity of U-F foam resin shall be determined by the manufacturer in accordance with ASTM D2393-72. The manufacturer shall then submit this value to the laboratory conducting the manufacturer's annual retesting program and also to all qualified installers. The laboratory shall ensure that the sample being tested is within  $\pm 10$  percent of the manufacturer's specified viscosity.

(8) *Specific Gravity*. The specific gravity of U-F foam resin shall be determined in accordance with section 12 and 13 of ASTM D1045-72 by the manufacturer. The manufacturer shall then submit this value to the laboratory conducting the manufacturer's annual retesting program and also to all qualified installers. The laboratory shall ensure that the sample being tested is within  $\pm 10$  percent of the manufacturer's specific gravity. (9) *pH*. The pH of U-F foam resin shall be determined by the manufacturers using a standard laboratory pH meter calibrated with standard buffer solution of 7.0 before each determination. The manufacturers shall then submit this value to the laboratory conducting the manufacturer's annual retesting program, and also to all qualified installers. The laboratory shall then ensure that the sample being tested is within  $\pm 10$  percent of the manufacturer's specified value.

6. On page 63794, third column, § 456.810(d)(13)(iii), delete the last sentence of paragraph (13)(iii) and insert in lieu thereof the following: During the on-site inspection, the manufacturer shall ensure proper functioning of the installer's equipment.

7. On page 63794, third column, § 456.810(d)(13)(iv), insert after the first occurrence of the word "equipment" the words "model type"; and delete in the first sentence "the equipment manufacturer" and insert in lieu thereof "an paragraphs (d)(7), (d)(8) and (d)(9) as follows and renumber existing

paragraphs (d) (7) thru (13) accordingly: (7) *Viscosity*. The viscosity of U-F foam resin shall be determined by the manufacturer in accordance with ASTM D2393-72. The manufacturer shall then submit this value to the laboratory conducting the manufacturer's annual retesting program and also to all qualified installers. The laboratory shall ensure that the sample being tested is within  $\pm 10$  percent of the manufacturer's specified viscosity. (8) *Specific Gravity*. The specific gravity of U-F foam resin shall be determined in accordance with section 12 and 13 of ASTM D1045-72 by the manufacturer. The manufacturer shall then submit this value to the laboratory conducting the manufacturer's annual retesting program and also to all qualified installers. The laboratory shall ensure that the sample being tested is within  $\pm 10$  percent of the manufacturer's specific gravity. (9) *pH*. The pH of U-F foam resin shall be determined by the manufacturers using a standard laboratory pH meter calibrated with standard buffer solution of 7.0 before each determination. The manufacturers shall then submit this value to the laboratory conducting the manufacturer's annual retesting program and also to all qualified installers. The laboratory shall then ensure that the sample being tested is within  $\pm 10$  percent of the manufacturer's specified value.

6. On page 63794, third column, § 456.810(d)(13)(iii), delete the last sentence of paragraph (13)(iii) and insert in lieu thereof the following: During the on-site inspection, the manufacturer shall ensure proper functioning of the installer's equipment.

7. On page 63794, third column, § 456.810(d)(13)(iv), insert after the first occurrence of the word "equipment" the words "model type"; and delete in the first sentence "the equipment manufacturer" and insert in lieu thereof "an accredited laboratory."

8. On page 63794, third column, following § 456.810(d)(13), insert a new paragraph as follows: (14) *Storage Requirements*. All U-F foam components shall be stored in a conditioned space which does not exceed 26°C (80°F) during all phases of manufacture and storage.

9. On page 63794, third column, § 456.810, remove paragraph (e) and insert in lieu thereof a new paragraph (e) as follows:

(e) *Laboratory testing*. To ensure compliance with these standards, the manufacturer shall have a continuing annual program of retesting by an independent accredited laboratory, except that in the event that there are no independent accredited laboratories to

perform a particular test, the test shall be performed by an independent laboratory. Laboratory testing must include all the material test methods specified in paragraph (f). The test values obtained by the manufacturer using the test procedures described in paragraph (d)(6), (d)(7), (d)(8), and (d)(9) shall be supplied by the manufacturer to the testing laboratory prior to laboratory testing. Laboratory results must be available for examination by the Department of Energy upon request.

10. On page 63800, third column, § 456.810(f)(7), remove the paragraph designation and replace with the following designation: (7) *Test methods for extractable methylol and aldehyde content (including formaldehyde) of resin*. Also, on page 63801, first column, revise the formula as follows:

"Percentage extractable methylol and aldehyde =  $3(A-B) D/C$ "

11. On page 63801, first column, § 456.810(f)(8), revise the first paragraph as follows:

(8) *Test method for extractable methylol and aldehyde content (including formaldehyde of fresh urea formaldehyde foam)*. The test shall be conducted on three foam specimens foamed at the manufacturer's recommended equipment setting taken from the same slab of foam and one blank. In addition, the same test shall be conducted on six additional foam specimens: three foamed at the lower tolerance limit of component ratio and three foamed at the upper tolerance limit of component ratio. These specimens shall be collected 15 minutes after foaming. Produce a cone of foam and allow it to set at ambient temperature and relative humidity for 15 minutes, but not longer than 1 hour. Each of the procedures described below must be conducted within this time frame, at 2 weeks, and again at 56 days. Samples must be held at ambient laboratory conditions of  $24 \pm 5^\circ\text{C}$  ( $75 \pm 10^\circ\text{F}$ ) and  $50 \pm 10$  percent rh in an uncovered beaker. Slice off the exterior surfaces and cut three samples for each of the test measuring about  $50 \times 50 \times 75\text{mm}$  ( $2 \times 2 \times 3$  in.) each weighing approximately 6 to 10 grams.

12. On page 63801, second column, § 456.810(f)(8)(vii) revise the formula as follows and remove the phrase ". . . the three . . ." and insert the word "all" in lieu thereof:

"Percentage extractable methylol and aldehyde" =  $3.003(A-B) D/C$ "

13. On page 63801, add a footnote to the formula set forth in § 456.810(f)(8)(vii) to read as follows:



\*\* The percentage of free aldehydes is calculated as the equivalent concentration of formaldehyde. The presence of higher molecular weight aldehydes in the foam would yield a value which is greater than the concentration of formaldehyde.

14. On page 63801, third column § 456.810(g)(1), insert a new paragraph (g)(1) as follows and renumber subsequent paragraphs thereafter and insert a new sentence after the heading *Testing Requirements* as follows:

(g) *Equipment.* (1) *Equipment requirements.* (i) Only equipment which has been recommended by the manufacturer for use with the manufacturer's product shall be used.

(ii) Only equipment which automatically recirculates and agitates resins and foaming agents continuously throughout the foaming process shall be used.

(iii) Only equipment which uses compressed bottled gas (either air or nitrogen) shall be used.

(iv) Only equipment which automatically shuts down within 10 seconds of any drop in regulated gas pressure or when a 20 percent change in component ratios occurs shall be used.

(2) *Testing Requirements.* The manufacturer shall have each model type of application equipment tested by an independent accredited laboratory (see § 456.810(e) for definition of accredited) and satisfactorily perform the test specified in paragraph (g)(2)(i)-(v) below.

15. On page 63801, third column, § 456.810(g)(1)(i), amend the reference to paragraph (g)(2)(i) to read paragraph (g)(3)(i).

16. On page 63801, third column § 456.810(g)(1)(ii), amend the reference to paragraph (g)(2)(i) to read paragraph (g)(3)(i).

17. On page 63802, first column, § 456.810(g)(1)(iv), amend the reference to paragraph (g)(2)(iii) to read paragraph (g)(3)(iii).

18. On page 63802, first column, § 456.810(g)(1)(iv), amend both references to paragraph (g)(2)(i) to read paragraph (g)(3)(i).

19. On page 63802, first column, § 456.810(g)(1)(iv), remove "alarm or" in both occurrences. Also, in the last sentence insert "the" following "because of".

20. On page 63802, first column, § 456.810(g)(1)(v), amend the reference to paragraph (g)(2)(iii) to read paragraph (g)(3)(iii).

21. On page 63802, first column, § 456.810(g)(1)(v), amend the reference to paragraph (g)(1)(iv) to read paragraph (g)(2)(iv).

22. On page 63802, first column, § 456.810(g)(2), amend the "(2)" preceding the paragraph designated *Equipment Testing Procedures* to "(3)".

23. On page 63802, first column, § 456.810(g)(2)(i), remove the phrase "alarm or".

24. On page 63802, second column, § 456.810(g)(2)(i)(E), remove the phrase "alarm or".

25. On page 63802, second column, § 456.810(g)(2)(i)(E), amend the reference to paragraph (g)(2)(iii) to read paragraph (g)(3)(iii).

26. On page 63802, second column, § 456.810(g)(2)(ii), amend the reference to paragraph (g)(2)(i) to read paragraph (g)(3)(i).

27. On page 63802, second column, § 456.810(g)(2)(ii), amend the reference to paragraph (g)(1)(v) to read paragraph (g)(2)(v).

28. On page 63802, second column, § 456.810(g)(2), at the end of the paragraph insert a new paragraph as follows:

(4) All equipment shall be inspected, refurbished and recalibrated to the original manufacturer's specifications by the manufacturer or other independent facility every 6 months. To satisfy this requirement the following must be performed:

(i) All component parts shall be thoroughly cleaned and inspected;

(ii) All physical dimensions of the equipment will be renewed to the equipment manufacturer's specifications;

(iii) All pressure gauges, indicating devices, alarms, and shutdown switches will be calibrated;

(iv) Correct operation of the equipment shall be verified.

#### § 456.909 [Amended]

29. On page 63802, third column, § 456.909(d)(7), remove paragraph (7) and insert in lieu thereof a new paragraph as follows: (7) U-F foam components must be stored in a conditioned space which does not exceed 26°C (80°F), and in addition, all manufacturer's instructions for storage and for proper methods of disposal of old or unusable components must be followed.

30. On page 63802, third column § 456.909(f)(1), remove the period at the end of the sentence and insert in lieu thereof the following: and use only equipment of a model type which has been certified by an accredited laboratory.

31. On page 63803, second column, § 456.909(g)(5), add the following two paragraphs:

(viii) Determine the pH of the U-F foam resin using a standard laboratory

pH meter calibrated with a standard buffer solution of 7.0. Ensure that the pH is within  $\pm 10$  percent the manufacturer's specified value. Do not use resin which is not within this range.

(ix) Determine the viscosity of the U-F foam resin in accordance with ASTM D2393-72. Ensure that the viscosity is within  $\pm 10$  percent of the manufacturer's specified value. Do not use resin which is not within this range.

#### B. Alternative Proposals

##### § 456.105 [Amended]

1. Sections 456.105(f)(5)-(7) are revised to read as follows:

##### § 456.105 Definitions.

\* \* \* \* \*

(f) *Energy Conservation Measures.*

\* \* \* \* \*

(5) *Ceiling Insulation.* The term "ceiling insulation" means a material, other than urea-formaldehyde foam insulation, primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof.

(6) *Wall Insulation.* The term "wall insulation" means a material, other than urea-formaldehyde foam insulation, primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

(7) *Floor Insulation.* The term "floor insulation" means a material, other than urea-formaldehyde foam insulation, primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In these case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

#### §§ 456.810 and 456.909 [Removed and Reserved]

2. Sections 456.810 and 456.909 are removed and indicated as reserved.

(FR Doc. 81-2573 Filed 1-26-81; 8:45 am)

BILLING CODE 6450-01-M

**10 CFR Part 456****[Docket No. CAS-RM-81-128]****Residential Conservation Service Program****AGENCY:** Department of Energy.**ACTION:** Notice of inquiry.

**SUMMARY:** The Department of Energy has implemented the Residential Conservation (RCS) Program pursuant to Part 1 of Title II of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat 3206 *et seq.*, as amended by the Energy Security Act (ESA), Pub. L. 96-294, 94 Stat 611 *et seq.* The purpose of the program is to encourage the installation of energy conservation measures in existing houses by residential customers of larger gas and electric utilities and home heating suppliers.

On November 7, 1979, DOE issued a Final Rule for the RCS Program (44 FR 64602). Additional rules were issued subsequently to amend portions of the Final Rule and to complete sections which were reserved in the Final Rule.

This notice of inquiry is intended to solicit from the public suggestions for new energy conservation and renewable resource measures that might be added to the RCS Program. Criteria are set forth by which DOE plans to evaluate prospective measures and procedures for submission are delineated.

**DATE:** Written responses must be received by May 27, 1981, in order to ensure their consideration.

**ADDRESSES:** For further information contact:

Philip W. Thor, Buildings Conservation Service Division, Department of Energy, Room GH-068, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9519.

Laura Rockwood, Office of General Counsel, Department of Energy, Room 6B-144, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-1660.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction.
- II. Criteria.
- III. Response procedure.

**I. Introduction**

The Department of Energy (DOE) has implemented Part 456 of Chapter II of Title 10, Code of Federal Regulations, under the requirements of Title II, Part 1, of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, as amended by the Energy Security Act (ESA), Pub. L. 96-294. Under Section (210)(11)(I) of NECPA, the Secretary has

the authority to identify by rule residential energy conservation measures (which includes renewable resource measures) in addition to those enumerated in section 210 of NECPA. (See Appendix A for a list of the current RCS measures.) It is the purpose of this notice to solicit from the public ideas and suggestions for new residential energy conservation and renewable resource measures which might be added to the RCS Program when the second Program Announcement is sent to customers in early 1983. DOE plans to use the criteria set forth in this notice to evaluate prospective measures. Any recommendation that a particular measure be included as an energy conservation or renewable measure should be submitted in the format explained below.

Each of the prospective measures will be evaluated by DOE for inclusion as an energy conservation or renewable resource measure in the RCS Program. It is DOE's intention to issue a Notice of Proposed Rulemaking to add those measures which are deemed acceptable by DOE. Where necessary for safety and/or effectiveness, DOE will also propose material and/or installation standards for the measures it would propose to add. After public comment, DOE intends to issue a Final Rule adding measures and any needed standards in time for the next major distribution of RCS Program Announcements in early 1983.

**II. Criteria**

DOE plans to utilize the following criteria when evaluating any prospective energy conservation or renewable resource measure:

(1) The measure's primary purpose should be the conservation of energy or the use of a renewable resource.

(2) The measure should have the potential to save enough energy to pay for its purchase and installation in a substantial portion of the residential buildings in at least one climate zone.

(3) Although recommendations regarding measures that provide energy savings on a regional basis are encouraged, the measure should not increase consumption of nonrenewable energy in houses in a substantial portion of the climate zone for which it is recommended.

(4) The measure should be shown to have a significant energy savings potential for the Nation if installed in houses in which it is appropriate.

(5) The measure should not involve switching from the use of one nonrenewable fuel to another.

(6) Test data or acceptable methods of calculation should be provided to

estimate the energy cost savings of the measure in individual houses.

(7) The measure should not present a significant safety, fire, or health hazard when properly installed. When current practice is not adequate to ensure the safe and effective use of the measure, the measure should be subject to industry-wide material and installation standards, or be susceptible to having standards formulated.

(8) The measure should not have an adverse environmental impact on the Nation or on the individual user when properly installed.

(9) The measure should have standards for determining its applicability in various types of residential buildings or different climate zones. That is, if the measure is not equally useful and beneficial to all houses throughout the Nation, there should be guidelines for determining when it is applicable to a particular house or in a particular locality.

(10) The measure should consist of a class of products defined by their function, such as "insulation" or "thermal doors". DOE will not consider the addition of specific products.

**III. Response Procedure**

All interested persons are invited to submit responses to DOE. Such correspondence should be mailed to:

Carol Snipes, Conservation and Solar Energy, Department of Energy, Mail Stop 6B-025, Room 1F-085, Docket Number CAS-RM-81-128, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Responses should be submitted in written form and should address all of the criteria listed above. In addition, a detailed description of the measure should be included explaining its design, operation, and function as an energy conservation or renewable resource measure. All costs associated with the measure should be included, in particular, the initial purchase price, the installation cost (if not installed by the homeowner), and the cost of operation per year. The potential fuel savings for a typical house for the measure should be included, as well as all assumptions used to obtain the projected savings. Any claims made by a manufacturer are best substantiated by showing the detailed calculations and assumptions, or by having documented evidence from an independent facility such as a nationally recognized laboratory.

Additional information should be included concerning the measure's use in the residential marketplace. In particular, the following information should be included: the expected life of the measure as predicted by any life-

cycle studies, the availability of any material or installation standards, the availability of any operation or installation instructions, the availability for purchase by homeowners (i.e., whether it is marketed nationwide or is a developing technology), and the availability of warranties on such products.

The RCS regulations, 10 CFR Part 456, may provide helpful examples to responders of applicability criteria and material and installation standards appropriate for RCS measures.

To assist DOE, responders also are requested to submit a summary data sheet with their response. The summary data sheet should include a brief statement on each of the following items:

- (1) The name of the measure and whether it conserves a nonrenewable energy resource or uses a renewable energy resource;
- (2) A brief description of the operation of the measure;
- (3) The cost of the measure, including the cost of installation and annual operation;
- (4) The projected fuel savings and assumptions upon which the projected fuel savings are based;
- (5) The expected life of the measure in number of years;
- (6) Any standards, proposed or finalized, for the measure or its installation, and a statement regarding availability of instructions for use or installation;
- (7) A statement regarding product availability and warranty availability; and
- (8) The name, address and phone number of the person submitting the recommendation and the person to contact for further information.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination, pursuant to DOE's regulations on confidentiality (10 CFR Part 1004).

Issued in Washington, D.C., January 19, 1981.

T. E. Stelson,  
Assistant Secretary, Conservation and Solar Energy.

#### APPENDIX A

The following list contains all of the present energy conservation and renewable resource measures incorporated in the RCS Program as published at 44 FR 64602, November 7, 1979.

#### Energy Conservation Measures

- (1) caulking;
- (2) weatherstripping;
- (3) furnace efficiency modifications (including replacement furnaces or boilers of the same fuel type vent dampers and automatic intermittent ignition devices on gas-fired heating systems and replacement oil burners);
- (4) replacement central air conditioners;
- (5) ceiling insulation;
- (6) wall insulation;
- (7) floor insulation;
- (8) duct insulation;
- (9) pipe insulation;
- (10) water heater insulation;
- (11) storm windows;
- (12) thermal windows;
- (13) storm or thermal doors;
- (14) heat reflective and heat absorbing window or door material;
- (15) devices associated with electric load management techniques; and
- (16) clock thermostats.

#### Renewable Resource Measures

- (1) solar domestic hot water heating systems;
- (2) active solar space heating systems;
- (3) combined active solar space heating and solar domestic hot water system;
- (4) passive solar space heating and cooling systems including direct gain glazing systems indirect gain systems solaria/sunspace systems and window heat gain and/or less retardants;
- (5) wind energy devices; and
- (6) replacement solar swimming pool heaters.

[FR Doc. 81-2572 Filed 1-20-81; 8:45 am]

BILLING CODE 6450-01-M

#### 10 CFR Part 456

[Docket No. CAS-RM-80-123]

#### Residential Conservation Service Program; Federal RCS Plan

AGENCY: Department of Energy.

ACTION: Notice of amended hearing schedule and public comment period.

**SUMMARY:** This notice amends the hearing schedule and extends the public comment period for the proposed Federal Plan for the Residential Conservation Service Program (46 FR 2522) as published in January 9, 1981. The comment period has been extended from 45 to 60 days, and the hearings have been rescheduled for the end of February, concurrent with the public hearings on the proposed rule for the Commercial and Apartment Conservation Service (46 FR 4482).

**DATES:** Comments must be received by March 10, 1981, 4:30 p.m., e.s.t., to ensure

their consideration; public hearings February 19 and 20, 1981, 9:00 a.m., Washington, D.C.; February 26 and 27, 1981, 9:00 a.m., Kansas City, Missouri; requests to speak must be received before 4:30 p.m. on February 5, 1981, Washington, D.C.; and February 12, 1981 for Kansas City, Missouri.

**ADDRESSES:** Comments and requests to speak at the Washington hearing should be addressed to Carol A. Snipes (Hearing Procedures), U.S. Department, Office Hearings and Dockets, Mail Station 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202-252-9319). Comments and requests to speak at the Kansas City hearing should be addressed to Dottie Doll, DOE Regional Office, Region VII, 324 11th Street, Kansas City, Missouri 64106 (816-374-5533). Washington hearing will be held in Room 2105, 2000 M Street, N.W., Washington, D.C. 20036. Kansas City hearing will be held in Room 302, Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth Pratt, Residential Conservation Service Program, Office of Conservation and Solar Energy, Department of Energy, Room GH-068, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-1649.

Laura Rockwood, Official of General Counsel, Department of Energy, Room GB-128, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9519.

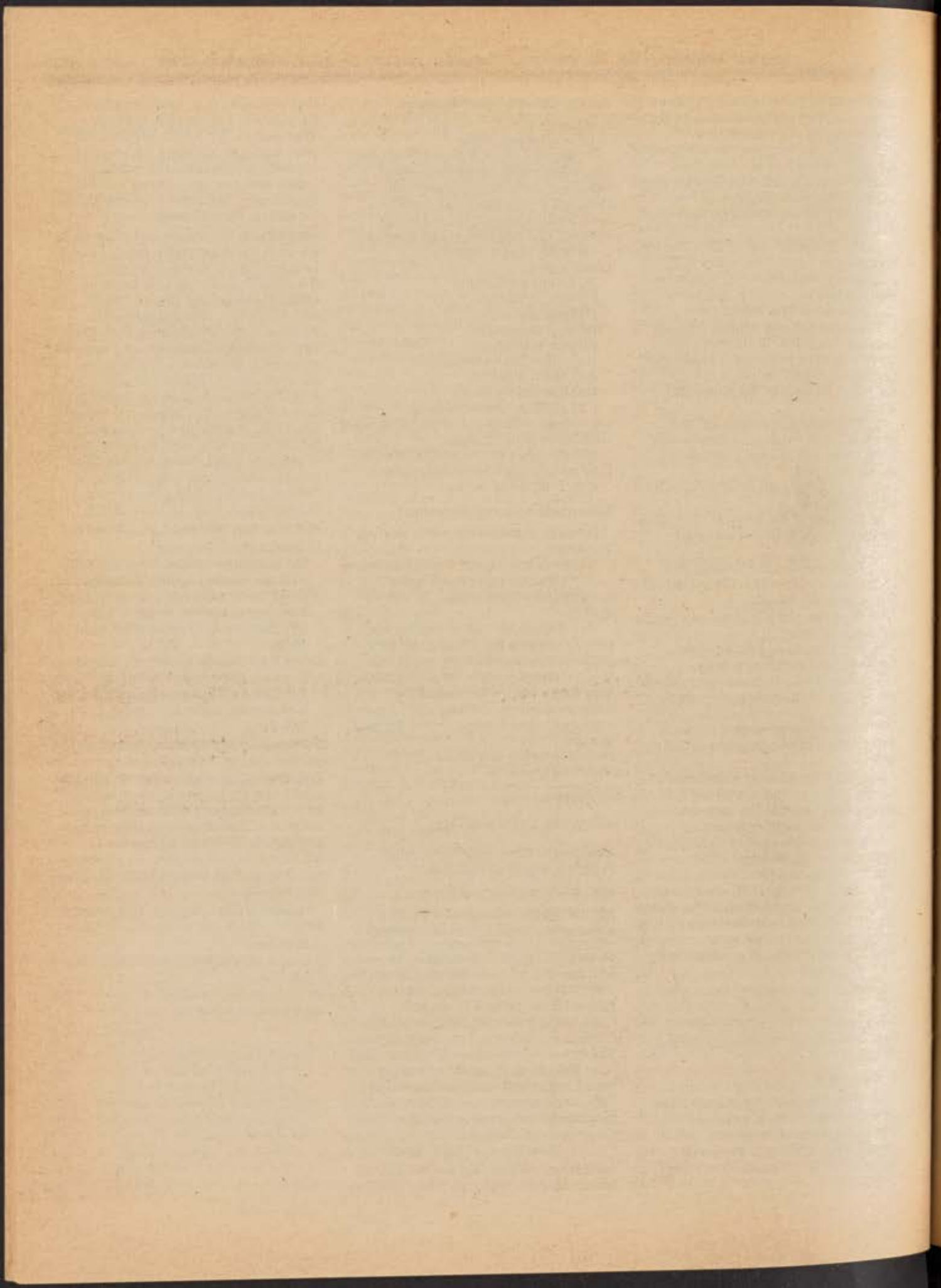
**SUPPLEMENTARY INFORMATION:** Each person who, in the Department of Energy's judgment, proposes to present relevant material and information shall be selected to be heard and shall be notified of his/her participation before 4:30 p.m. on February 12 for the Washington, D.C. hearing; and before 4:30 p.m. on February 19 for the Kansas City hearing.

Issued in Washington, D.C., January 19, 1981.

T. E. Stelson,  
Assistant Secretary, Conservation and Solar Energy.

[FR Doc. 81-2571 Filed 1-26-81; 8:45 am]

BILLING CODE 6450-01-M



# **federal register**

---

Tuesday  
January 27, 1981

---

**Part XIII**

**Department of Labor**

---

**Employment and Training Administration**

---

**Comprehensive Employment and Training  
Act; Complaints, Investigations and  
Sanctions**

## DEPARTMENT OF LABOR

Employment and Training  
Administration

## 20 CFR Parts 675 and 676

Comprehensive Employment and  
Training Act; Regulations Concerning  
Complaints, Investigations and  
Sanctions; Proposed Rulemaking

**AGENCY:** Employment and Training  
Administration, Labor.

**ACTION:** Proposed rules.

**SUMMARY:** This document proposes revisions to the rules at 20 CFR Part 676, Subpart F, concerning complaints, investigations and sanctions under the Comprehensive Employment and Training Act (Pub. L. 95-524). The purpose of this publication is to request comment on these proposed rules.

**DATES:** Comments on the proposed rules are due on or before March 30, 1981.

**ADDRESS:** Comments should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213. Attention: Robert Anderson, Administrator, Office of Comprehensive Employment Development.

**FOR FURTHER INFORMATION CONTACT:** Robert Anderson, Telephone (202) 376-6254.

**SUPPLEMENTARY INFORMATION:** On May 20, 1980, final regulations at 20 CFR Parts 675-679 for programs under the Comprehensive Employment and Training Act (CETA) were published in the *Federal Register* (45 FR 33846). That publication did not include revisions to the regulations at 20 CFR Part 676, Subpart F, concerning complaints, investigations, and sanctions under CETA, and it was stated therein that a separate proposal for Subpart F would subsequently be published.

This document constitutes the separate proposal for changes in the provisions of Subpart F. The Department considers these proposed changes necessary for the proper operation of complaint, investigation and hearing procedures under CETA. In addition to proposed substantive changes, this document contains editorial changes and corrections of typographical errors.

In order to facilitate review and comment, the following provides a brief summary of each of the principal proposed changes:

Section 676.81(d) is added to indicate that procedures for discrimination complaints and equal opportunity compliance reviews are set forth in § 676.86(g).

Section 676.82(a) is revised to clarify that either the Inspector General, the Solicitor, the Regional Administrator for ETA or the Administrative Law Judge presiding over a hearing may disclose an informant's identity where such disclosure is warranted.

Section 676.83(a)(1) is revised to clarify that the recipient's complaint procedure shall include complaints arising in connection with CETA programs operated by the recipient itself as well as by subrecipients.

Section 676.83(a)(4) is revised to clarify that the one-year limitation on the filing of a complaint applies to complaints filed pursuant to § 676.83.

In the first sentence of § 676.83(a)(5) the word "complaints" is substituted for "issues", and audit disallowance is given as an example of a complaint between a recipient and its subrecipient.

Section 676.83(a)(7) is amended to clarify that a participant who selects the § 676.83 complaint procedure is not precluded from filing a complaint under § 676.84. Section 676.83(a)(7) is also amended to clarify that a participant who files a section 676.84 complaint is not precluded from filing a complaint under § 676.83, unless otherwise prohibited by state or local law or applicable collective bargaining agreement. Similar language has been added as a new § 676.84(a)(2).

In § 676.83(c) the phrase "when requested" is deleted from the first sentence to clarify that the hearing follows the filing of the complaint without any further request by the complainant.

Section 676.83(c)(5) is amended to clarify that recipients and subrecipients shall cooperate in making available any persons under their control or employ to testify if the complainant requests that such persons testify.

Section 676.83(c)(9) is added to specify that the hearing procedure shall include a verbatim record of the proceeding.

In the second sentence of § 676.83(c)(10) (as renumbered) the word "statement" is substituted for "synopsis."

Section 676.83(c)(11) (as renumbered) is amended to specify that the recipient shall provide a final written decision by certified or registered mail, return receipt requested, within 60 days after the complaint is filed.

In the heading for § 676.84 the redundant phrase "or complaint" is deleted.

In the first and second sentences of § 676.84(a) the redundant phrase "or complaint" is deleted.

Section 676.84(b) is revised to clarify that the requirements therein concern grievance procedures.

In § 676.84(b)(2) the word "grievance" is substituted for "complaint" for consistency in terminology.

In § 676.84(b)(3) the phrase "disposition of the complaint" is changed to read "disposition of the grievance" and the phrase "within 60 days of the filing of the complaint" is changed to read "within 60 days of filing" for consistency in terminology.

Section 676.84(b)(4) is revised to clarify that the right to file a complaint with the Grant Officer is limited to complaints alleging CETA violations.

Section 676.84(b)(5) is added to clarify that if no CETA violations are alleged the complainant may, upon notification of the disposition of the complaint, pursue other non-CETA remedies.

In § 676.85(a) the word "grievance," which appears twice, is deleted to clarify that exhaustion of recipient level procedures is required whether the procedures are described as complaints, grievances or otherwise.

In the third sentence of § 676.86(a)(1) the phrase "in non-criminal matters" is added after "The final determination process". The phrases "non-criminal investigation", "or lack of informal resolution," and "contained in section 106(i) of the Act" are deleted. These changes are not substantive and are intended to simplify the language of the section.

In § 676.86(b) the heading "Contents of complaints" is changed to read "Complaints".

The first sentence in § 676.86(b)(1) (as renumbered) is revised to clarify that the place to file complaints is with the Grant Officer or, in the case of complaints alleging discrimination under section 132 of the Act, with the appropriate Regional Director, Office of Civil Rights.

Section 676.86(b)(1)(v) (as renumbered) is revised to elicit disclosure to the Grant Officer of related non-CETA proceedings, including the title or caption of the case.

In the second sentence of § 676.86(b)(2) (as renumbered) pertaining to amendments to complaints, the phrase "or omissions" is deleted as redundant.

Section 676.86(c) is amended to require the Grant Officer, upon receipt of a complaint, to issue a notice directing the recipient or subrecipient to forward a copy of the administrative file, including the hearing transcript, to the Grant Officer within 15 days of receipt of the notice.

Section 676.86(c) is amended to delete the interim time requirements for concluding the Grant Officer's investigation conducted pursuant to § 676.88(a). The phrase "within 60 days

after the filing of a complaint, or such additional time not to exceed 30 days as the Grant Officer may allow" is deleted to allow the Grant Officer more flexibility. The final determination must still be made within 120 days after the complaint is filed, except that the time may be extended with the written consent of all the parties.

Section 676.86(f) is added to clarify that if the Grant Officer or another employee of ETA takes an action under CETA, or fails to take an action required under CETA, any adversely affected party may file a complaint with the Grant Officer, or with the Assistant Secretary if the complaint is against ETA generally. The complaint shall be investigated and a final determination issued, with a right to request a hearing. These procedures may be utilized only insofar as the other procedures set forth in Subpart F are inapplicable.

Section 676.86(g), concerning discrimination complaints, is added.

Pursuant to Order 8-80 signed by the Secretary of Labor on October 28, 1980 (45 FR 74115, November 7, 1980), an Office of Civil Rights (OCR) was established in the Office of the Secretary and was delegated authority for enforcing Section 132 of CETA and other nondiscrimination requirements applicable to CETA and other programs receiving financial assistance from DOL. Specifically, OCR has authority to conduct pre- and post-award compliance reviews and complaint investigations and to issue determinations and conduct negotiations in connection therewith, including application, where necessary, of appropriate remedies and sanctions (45 FR 74115, ¶6(3)).

To further implement this authority with respect to CETA programs, the new § 676.86(g) provides that CETA discrimination complaints at the federal level will be investigated by the appropriate Regional Office of Civil Rights, with initial and final determinations of such complaints, and determinations of whether CETA recipients are in compliance with their equal opportunity obligations to be made by the Regional OCR Director rather than by the Grant Officer.

Also, since the present 29 CFR Part 31 predated and is inconsistent with a number of provisions in the 1978 CETA reauthorization (e.g., section 106), as a practical matter CETA procedures have been used increasingly for processing discrimination complaints at the federal level. To avoid confusion and possible derogation of CETA complainants' statutory rights (e.g., with respect to the availability of Administrative Law Judge hearings), § 676.86(b)(9), which refers to

the existing 29 CFR Part 31 procedure, is deleted in this proposal. New §§ 676.81(d) and 676.86(g) are added to provide for use of CETA procedures for processing discrimination complaints and conducting EO compliance reviews on an interim basis until comprehensive regulations revising 29 CFR Part 31 are published as a final rule.

Also, in addition, to race, color, religion, sex, national origin, age and handicap, citizenship is included in the proposed § 676.81(g)(1) as a prohibited basis of discrimination in the case of CETA participants. This provision simply tracks section 132(e) of the CETA statute. Reference to discrimination is on the basis of citizenship was inadvertently omitted from the current Subpart F regulations.

In § 676.87(a)(2), pertaining to the issuance of subpoenas, the adjective "investigational" is deleted, and the phrase "by the assigned Administrative Law Judge" is added at the end of the sentence for clarity.

In § 676.87(a)(3) the adjective "investigational" is deleted, and the language at the end of the second sentence, which specifies that the Administrative Law Judge may direct the office which issued a subpoena to establish a new return date, is deleted.

Section 676.88(a) is revised to indicate that the Grant Officer's initial determination shall be made upon the conclusion of a review of the entire administrative record of an investigation pursuant to § 676.88.

Section 676.88(a)(1) is revised to indicate that the determination may conclude that, based upon the entire record, there is no CETA violation.

Section 676.88(b)(1) (as renumbered) is revised to clarify that the requirements concerning the contents of initial determinations are applicable in the event the Grant Officer finds substantial evidence to support the allegation of a violation. In addition, the section is revised to clarify that the statement of the basis of the conclusion shall include factual findings and conclusions, to specify the manner in which interest costs will be assessed, and to indicate that recipients and subrecipients are included among the interested parties who should be notified of the opportunity for informal resolution.

Section 676.88(b)(2) (as renumbered) is amended to specify the contents of the initial determination where the Grant Officer makes a finding of no CETA violation. Such initial determination shall include notice of the opportunity to submit additional information within 10 days of receipt of the notice. If the information submitted

indicates there is substantial evidence to support the allegation, the Grant Officer shall, after appropriate review, issue a new initial determination.

Section 676.88(e) is revised to clarify that the 120 day period for issuing a final determination may be extended with the written consent of all parties, to specify that the 120 day period shall run from the Grant Officer's issuance of an initial audit determination in audit proceedings, and to specify that the Grant Officer's final determination shall list any modifications to the findings and conclusions in the initial determination. Language is added to indicate that where the Grant Officer determines there are no CETA violations but that there are disputed questions of fact, a hearing before an Administrative Law Judge shall be offered pursuant to § 676.88(f).

Section 676.88(f) is amended to provide that the opportunity to request a hearing does not apply to a Grant Officer's final determination dismissing the complaint where the Grant Officer finds that no CETA violations are stated or that there are no disputed questions of fact. Language is also added to provide that complainants may request a hearing after the expiration of 120 days following the filing of a complaint upon which no extensions for the issuance of a final determination have been mutually agreed. In the third sentence of § 676.88(f), for clarity, the word "issues" is substituted for "provisions", and in the third and fourth sentences the word "review" is substituted for "hearing". In addition, language is added to clarify that only alleged CETA violations raised during the recipient level proceeding or, in the case of alleged violations of recipient level procedures, at the Grant Officer level, are subject to review.

Section 676.88(g)(1) (as renumbered) is amended to require the Chief Administrative Law Judge to notify the appropriate Regional Solicitor's Office that a request for hearing has been filed.

Section 676.88(g)(2) (as renumbered) is amended to specify those items that must be included in the administrative file, to require the Grant Officer to transmit copies of the administrative file to the appropriate Regional Solicitor and to each party, and to specify that the notice of intent to participate must be filed within 30 days of receipt of the Administrative Law Judge's notice of the request for hearing.

Section 676.88(h) is amended to indicate that the recipient (and subrecipient if applicable) shall be a party to all proceedings involving its grants. Language is also added to make clear that attorneys employed by the

Solicitor's Office shall be served with all papers and may appear on behalf of the Grant Officer.

In § 676.88(i) the redundant phrase, "Whenever not otherwise eligible for a hearing," is deleted.

Section 676.89(a) is revised to emphasize that the Administrative Law Judge shall be guided to the extent practicable by the provisions of the Federal Rules of Civil Procedures governing motions.

Section 676.89(b) is amended to indicate that papers required to be served on a party shall be filed with the Office of Administrative Law Judges and shall contain certain proof of service on the parties of record.

Section 676.89(c)(2) is amended to indicate that hearings may not be consolidated where consolidation will result in undue delay or prejudice to any party.

In the first sentence of § 676.89(e) the words "shall apply" are substituted for "may be made applicable."

Section 676.89(f)(1)(ii) is revised to clarify that prehearing procedures should generally be limited to complex cases and that one of the purposes of the prehearing conference is to attempt to stipulate to undisputed facts and set forth the issues to be decided.

In the first sentence of § 676.89(f)(2)(ii) the words "may issue" are substituted for "shall make."

Section 676.90(a) is amended to indicate that in fixing the time and place of hearings, due regard shall be given to the convenience of counsel for the parties, if any.

Section 676.90(b) relating to burden of proof is replaced by a section which sets forth the standard of review applicable to hearings arising from the CETA complaint system.

Section 676.90(c) is amended to indicate that the administrative file submitted by the Grant Officer shall be part of the record before the Administrative Law Judge, subject to objection by any party. Language is also added to clarify that a transcript of the hearings shall be made available to the parties.

Section 676.90(d) allowing conforming amendments at the hearing has been deleted since it was inconsistent with the requirements in these regulations for exhaustion of recipient and Grant Officer level procedures.

Sections 676.90 (e) and (f) are renumbered (d) and (e). Section 676.90(f) (as renumbered) is revised to clarify that if a party fails to appear at a hearing, the Administrative Law Judge may nevertheless hear the remaining parties.

Section 676.91(a) is revised to indicate that the Administrative Law Judge shall

decide the necessity of post hearing briefs.

Section 676.91(c) is revised to clarify that corrective actions may include reinstatement or backpay, or both.

Section 676.91(c) is revised to clarify that the Grant Officer shall have sole authority to waive disallowed costs under § 676.88(c) and that the Secretary has the sole authority to exercise discretionary authority under sections 106(d)(2) and 121(o)(2)(C) of the Act.

Section 676.91(d) is revised to clarify that where funds otherwise payable under the Act are ordered withheld, the recipient must maintain the original level of program services.

Section 676.91(f) is revised to clarify that the decision of the Administrative Law Judge will become final agency action unless, within 30 days, the Secretary files an order with the Office of Administrative Law Judges staying the decision pending a review on the merits.

Section 676.92(a) is amended to indicate that the Grant Officer's final determination dismissing the complaint constitutes final agency action unless the Grant Officer determines that there are disputed questions of fact, in which case the opportunity for a hearing must be provided.

Section 676.92(b) is revised to clarify that judicial review must be requested not later than 60 days after receipt of the Grant Officer's dismissal or the decision of the Secretary.

Section 676.92(c) is added to indicate that the Office of Administrative Law Judges shall maintain and transmit to the appropriate U.S. Court of Appeals the record of the proceedings where an appeal is filed, except that where the Grant Officer dismisses the complaint pursuant to § 676.88(e), the Grant Officer shall transmit the record.

#### Regulatory Impact

The financial and other impact of this regulation is less than specified in DOL criteria for determining when a regulatory analysis should be made (see 44 FR 5576, January 28, 1979). Therefore, the preparation of a regulatory analysis is not required for this regulation. Also, the Secretary has certified pursuant to 5 U.S.C. 605(b) that the amendments in this document will not have a significant economic impact on a substantial number of small business entities because the regulations are primarily related to the performance of federal grant obligations by State and local governments and private non-profit agencies who are the main recipients of

CETA funds.<sup>1</sup> To the extent that private businesses employ CETA participants they are affected by the requirement that employers must operate a grievance mechanism for their employees under § 676.84. However, under § 676.84(a)(1), employers who are recipients or subrecipients need not establish new grievance mechanisms but may use existing prime sponsor procedures.

The program for which these amendments are proposed is listed in the Catalog of Federal Domestic Assistance as No. 17.232 "Comprehensive Employment and Training Programs."

Accordingly, it is proposed to amend Part 675 and Part 676, Subpart F, of Title 20 of the Code of Federal Regulations by:

#### PART 675—INTRODUCTION TO THE REGULATIONS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

##### § 675.3 [Amended]

1. Amending the table of contents for Part 676, Subpart F, in § 675.3, Table of Contents for Regulations Under CETA, as follows:

#### PART 676—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

##### Subpart F—Complaints, Investigations and Sanctions

Sec.	
676.81	Scope and purpose.
676.82	Protection of informants.
676.83	Complaint and hearing procedures at the recipient level.
676.84	Grievance procedures at employer level.
676.85	Exhaustion of recipient level procedure.
676.86	Complaints and investigation at the Federal level.
676.87	Subpoenas.
676.88	Initial and final determination; request for hearing at the Federal level.
676.89	Rules of procedure.
676.90	Hearings.
676.91	Post-hearing procedures.
676.92	Final action; judicial review.
676.93	Other authority.

2. Amending Part 676 by revising the Table of Contents entry for Subpart F to read as follows:

#### PART 676—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

<sup>1</sup> A letter of certification is filed with the original document.



**Subpart F—Complaints, Investigations and Sanctions**

Sec.

- 676.81 Scope and purpose.  
 676.82 Protection of informants.  
 676.83 Complaint and hearing procedures at the recipient level.  
 676.84 Grievance procedures at employer level.  
 676.85 Exhaustion of recipient level procedure.  
 676.86 Complaints and investigation and the Federal level.  
 676.87 Subpoenas.  
 676.88 Initial and final determination; request for hearing at the Federal level.  
 676.89 Rules of procedure.  
 676.90 Hearings.  
 676.91 Post-hearing procedures.  
 676.92 Final action; judicial review.  
 676.93 Other authority.

**Subpart F—Complaints, Investigations, and Sanctions****§ 676.81 Scope and Purpose.**

(a) *General.* This subpart establishes the procedures to receive, investigate and resolve complaints, and conduct hearings to adjudicate disputes under the Act. It governs grievance procedures at the recipient or subrecipient level, the receipt and investigation of complaints at the Federal level, the procedures for resolving audit disputes or resolving investigative findings, the rules of practice for adjudicative hearings, and the rendering of decisions pursuant to the Act. Judicial review of final action of the Department after opportunity for an administrative hearing has been exclusively established in the United States Courts of Appeals for the circuits in which the affected parties reside or transact business.

(b) *Initiation of investigations.* CETA investigations may be initiated upon the request of any person or organization or by the Department on its own initiative.

(c) *Non-CETA remedies.* Whenever any person, organization or agency believes that a recipient or subrecipient has engaged in conduct that violates the Act and that such conduct also violates the Federal or a State constitution, a Federal statute other than CETA, or a State or local law, that person, organization or agency may, with respect to the non-CETA cause of action, institute a civil action or pursue other remedies authorized under other Federal, State, or local law against the recipient or subrecipient without first exhausting the remedies in this subpart. For example, if a subrecipient believes that a prime sponsor has breached the subgrant agreement between the prime sponsor and itself, the subrecipient may institute a civil action for breach of

contract in a state court if so authorized by State law. Nothing in the Act, this paragraph, nor any other provision in Parts 675-695 of this Chapter shall:

(1) Allow any person or organization to join or sue the Secretary with respect to his or her responsibilities under CETA except after exhausting the remedies in this subpart.

(2) Allow any person or organization to file a suit which alleges a violation of CETA or these regulations without first exhausting the administrative remedies described in this subpart, or

(3) Be construed to create a private right of action with respect to alleged violations of CETA or the regulations. (sec. 106(1) and 132(d).)

(d) Procedures for discrimination complaints and equal opportunity compliance reviews are set forth in § 676.86(g).

**§ 676.82 Protection of informants.**

(a) *Informants.* Where possible the identity of any person who has furnished information relating to, or assisted in an investigation of a possible violation of the Act will be held in confidence. Where disclosure of the person's identity is essential to assure a fair determination of the issues, or where necessary to effectively accomplish responsibilities under the Act, either the Inspector General, the Solicitor, the Regional Administrator for C.E.T.A. or the Administrative Law Judge presiding over a hearing in which the matter arises, may disclose such identity upon such conditions as will promote the continued receipt of confidential information by the Department and effectuate the protections and policies stated in paragraph (b) of this section.

(b) *Discriminatory discharge prohibited.* No person, organization or agency may discharge, or in any other manner discriminate or retaliate against any person, or deny to any person a benefit to which that person is entitled under the provisions of the Act or the regulations in Parts 675-695 of this Chapter because such person has filed any complaint, instituted or caused to be instituted any proceeding under or related to the Act, has testified or is about to testify in any such proceeding or investigation, or has provided information or assisted in an investigation (sec. 106(f)(1)).

**§ 676.83 Complaint and hearing procedures at the recipient level.**

(a) *Policy.* (1) Each recipient shall establish and maintain a procedure for resolving any complaint alleging a violation of the Act, regulations, grant or other agreements under the Act,

including any complaint arising in connection with the CETA programs operated by the recipient or its subrecipients. Such complaint procedures must meet the requirements of this section. The complaint procedure shall provide for final resolution of complaints within 60 days after filing the complaint. Where existing complaints or grievance procedures include the elements set forth in this section, recipients may adopt such mechanism as, or as part of, their CETA procedure.

(2) Participants shall be provided, upon enrollment into employment or training, with a written description of the complaint procedures including notification of their right to file a complaint and instructions on how to do so. Recipients should designate an individual to monitor the operation of the complaint procedures, to ensure that complaints and related correspondence are logged and filed, to ensure that assistance is available for properly filing complaints, and to ensure the availability, coordination, and promptness of all elements of the procedures. Upon filing a complaint, and at each stage thereafter, each complainant shall be notified in writing of the next step in the procedure.

(3) Complaints may be brought by any individual or organization including, but not limited to, program participants, subrecipients, contractors, staff of the recipient or subrecipient, applicants for participation or financial assistance, labor unions, and community-based organizations (sec. 106(a)(1)).

(4) With the exception of complaints alleging fraud or criminal activity, the filing of a complaint pursuant to this section must be made within one year of the alleged occurrence (sec. 106(a)(1)).

(5) The recipient may delegate the authority to operate and maintain the complaint and hearing procedure to its subrecipients except for complaints between the recipient and its subrecipients (e.g. audit disallowances), complaints involving more than one of its subrecipients, or complaints directly involving the operations or responsibilities of the recipient. Where the procedure is delegated, the recipient may provide for an appeal to itself from the decision of the subrecipient or the recipient may provide that the subrecipient's decision is the final decision of the recipient. Where the procedure is delegated, the recipient shall ensure that the procedures specified in this section are followed and a decision issued promptly within 60 days after a complaint is filed.

(6) In any case where the alleged violation of the Act or regulations is also

an alleged violation of another law, regulation or agreement, nothing in this section shall preclude an individual or an organization from filing a complaint or grievance under such other law or agreement with respect to the non-CETA cause of action, as well as filing a complaint under CETA.

(7) When a participant is an employee of a recipient or subrecipient and alleges that an occurrence constitutes a violation of the Act, regulations, grant, or other agreements under the Act, as well as a violation of the terms and conditions of employment under a state or local law or a collective bargaining agreement, the participant may pursue the complaint and hearing procedures in this section, or the applicable grievance procedures under the state or local law or the collective bargaining agreement, pursuant to § 676.84. A participant who selects the procedures provided in this section is not precluded from filing a complaint under § 676.84. A participant who selects the procedure in § 676.84, unless otherwise prohibited by state or local law, or applicable collective bargaining agreement, is not precluded from filing a complaint under this section (sec. 106(a)).

(8) The complaint procedures shall provide that the identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the Act shall be kept confidential to the extent possible, consistent with a fair determination of the issues. The above sentence shall also apply to complaints filed with the recipient against the subrecipient.

(b) *Complaint procedures.* The complaint resolution procedure shall include:

(1) Opportunity to file a complaint. All complaints shall be in writing.

(2) Opportunity for informal resolution of the complaint.

(3) Written notification of an opportunity for a hearing when an informal resolution has not been accomplished. The notice shall state the procedures for requesting a hearing and shall describe the elements in the hearing procedures including those set forth in paragraph (c) of this section.

(4) Opportunity to amend the complaint prior to a hearing.

(5) Opportunity for a hearing pursuant to paragraph (c) of this section within 30 days of filing the complaint.

(6) A final written decision to the complainant which shall be made within 60 days of the filing of the complaint and shall include:

- (i) The reason(s) for the decision.
- (ii) A statement that the procedures delineated in this section have been completed.

(iii) Notice of the right to file a complaint with the Grant Officer pursuant to § 676.86 of this subpart where any party disagrees with the decision.

(c) *Hearing procedure.* A hearing shall be provided within 30 days after filing a complaint. The hearing procedure shall include:

(1) Written notice of the date, time and place of the hearing, the manner in which it will be conducted, and the issues to be decided. Other interested parties may apply for notice. Such other interested party is a person or organization potentially affected by the outcome. The notice to other interested parties shall include the same information furnished to the complainant and shall further state whether such interested parties may participate in the hearing and if applicable, the method by which they may request such participation.

(2) Opportunity to withdraw the request for hearing in writing before the hearing.

(3) Opportunity to request rescheduling of the hearing for good cause.

(4) Opportunity to be represented by an attorney or other representative of the complainant's choice.

(5) Opportunity to bring witnesses and documentary evidence. Recipients or subrecipients shall cooperate in making available any persons under their control or employ to testify, if such persons are requested to testify by the complainant.

(6) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for the recipient or its subrecipient in the ordinary course of business.

(7) Opportunity to question any witnesses or parties.

(8) The right to an impartial hearing officer.

(9) A verbatim record of the proceeding.

(10) A written decision from the hearing officer to the complainant(s) and any other interested parties within 60 days of the filing of the complaint. This period may be extended with the written consent of all of the parties for good cause. The written decision shall include a statement of facts, a statement of reasons for the decision and a statement of remedies to be applied.

(11) Where a complaint procedure provides for a recipient's review of the hearing officer's decision, the recipient shall provide a final written decision to the complainant(s), and any other parties, by certified or registered mail, return receipt requested, as provided in paragraph (c)(10) of this section within

60 days after the complaint is filed.

(12) Where local law or other personnel rules require procedures in addition to those specified above, similarly employed CETA participants shall be notified of their right to use the same procedures (Sec. 122(k)).

**§ 676.84 Grievance or complaint procedures at employer level.**

(a) *Policy.* (1) Whenever the recipient or subrecipient is an employer, it shall continue to operate or shall establish and maintain for its participants a grievance procedure relating to the terms and conditions of CETA employment. The employer who does not have a grievance procedure may use the complaint procedure of the recipient or subrecipient under § 676.83 (sec. 106(a)(2)).

(2) A participant who elects the procedure in this section, unless otherwise prohibited by State or local law or applicable collective bargaining agreement, is not precluded from filing a complaint under § 676.83.

(b) *Minimum requirements.* Those employers who do not utilize the complaint procedures in § 676.83, shall establish or maintain grievance procedures which shall provide at a minimum:

(1) Notice, upon enrollment into employment or training, of the scope and availability of such procedures.

(2) Notice, at the time the grievance is filed, of the procedures under which the grievance is being processed.

(3) Written notification of the disposition of the grievance and the reasons therefore, which shall be issued within 60 days of filing unless the grievance procedure or the collective bargaining agreement specifically provides other limits.

(4) Written notification of the right to file a complaint alleging violations of CETA with the Grant Officer from the decision issued, pursuant to § 676.86.

(5) If no violation of the Act, regulations, grant, or other agreements under the Act is alleged, the complainant, upon receipt of written notification of the disposition of the grievance may pursue any other remedy authorized under other Federal, State or local law.

(c) *Equal benefits.* Where local law or other personnel rules require procedures, in addition to those specified in paragraph (b) above, for any adverse action including termination of employment, similarly employed CETA participants shall be notified of their right to use the same procedures (sec. 122(k)).

(d) *Private for profit employer grievance procedures.* Nothing in this section shall require a private for profit

employer to establish a new grievance procedure or to modify an existing procedure as a condition of participating in programs for the training and hiring of participants under the Act. If a private for profit employer does not have a grievance procedure for its employees regarding the terms and conditions of employment the CETA employees may use the complaint procedures specified in § 676.83

[44 FR 20002, Apr. 3, 1979; 44 FR 28654, May 15, 1979]

**§ 676.85 Exhaustion of recipient level procedure.**

(a) *Exhaustion required.* No complainant subject to the procedures specified in either § 676.83 or § 676.84 may file a complaint with the Grant Officer until the recipient level procedures have been exhausted.

(b) *Exhaustion exceptions.* Complainants who have not exhausted the procedures at the recipient level may file the complaint at the federal level, and the Grant Officer shall accept such complaint if he or she determines that:

- (1) The recipient or subrecipient has not acted within the time frames specified in § 676.83 and § 676.84; or
- (2) The recipient's or subrecipient's procedures are not in compliance with § 676.83 or 676.84, whichever is applicable; or
- (3) An emergency situation exists.

**§ 676.86 Complaints and investigations at the Federal level.**

(a)(1) *General; final determination of substantial evidence.* Where local administrative remedies have been exhausted, section 106(b) of the Act requires that a final determination of the complaint shall be made within 120 days after the Grant Officer receives the complaint. The Grant Officer's resolution pursuant to section 106(i)(1) of the Act constitutes the "final determination" required to be accomplished within the 120 days specified in section 106(b) of the Act. The final determination process in non-criminal matters consists of the determination of substantial evidence (either supporting or not supporting the allegations of the complaint or the belief that a recipient or subrecipient is failing to comply with the requirements of the Act or the regulations), and the procedures regarding notice, informal resolution, and notice of opportunity for hearing is established in § 676.88 below.

(2) *Final action distinguished.* Section 107 of the Act provides for judicial review of "final action" with respect to disapproval of a prime sponsor's "comprehensive employment and training plan under section 104 of the

Act," or "final action" taken with respect to any recipient in the nature of a sanction under section 106. Such "final action" is defined in § 696.91(f) and is different than "final determination" as defined in paragraph (a)(1) of this section because, except in the case of a Grant Officer's final determination dismissing the complaint in accordance with § 676.88(e) where there are no disputed questions of fact, the opportunity for a hearing is provided upon receipt of the final determination under § 676.88(f). The length of the hearing process is subject to the actions of the parties requesting the hearing and the complexity of the issues being heard.

(b) *Complaints.* (1) Every complaint shall be filed in writing before the commencement of any investigation or corrective action shall be required. The complaints will be filed with the Grant Officer or, in the case of complaints alleging discrimination under section 132, with the Regional Director, Office of Civil Rights (OCR). However, a complaint filed with either the Grant Officer or the Regional OCR Director shall be deemed properly filed and shall be referred (as necessary) to the appropriate office. The complaint shall be filed only after local remedies have been exhausted and no later than 30 days from the date of receipt of the written decision or notice required by § 676.83 or § 676.84. The complaint should contain the following:

(i) The full name, telephone number (if any), and address of the person making the complaint.

(ii) The full name and address of the respondent (the recipient, or subrecipient or person against whom the complaint is made).

(iii) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.

(iv) Where known, the provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated.

(v) A statement disclosing whether proceedings involving the subject of the complaint have been commenced or concluded before any federal, state or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case.

(vi) A copy of the final decision of the recipient or subrecipient issued pursuant to § 676.83 or § 676.84 of this subpart.

(2) A complaint will be considered to have been filed when the Grant Officer receives from the complainant a written statement sufficiently precise to both identify those against whom the allegations are made and to fairly afford the respondent an opportunity to

prepare a defense. A complaint may be amended to cure defects or omissions, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date.

(3) A complaint once filed may be withdrawn only with the consent of the Grant Officer. If the complainant fails to cooperate or is unavailable, the complaint may be dismissed upon reasonable notice to the last known address of the complainant.

(c) *Investigation of complaints.*

Whenever the Grant Officer receives a complaint filed in accordance with sections (a) and (b) above, the complaint shall be investigated if it alleges that any person, recipient or subrecipient has failed to comply with the requirements of the Act, regulations, grant or other agreements under the Act. The Grant Officer shall promptly issue a notice to the recipient or subrecipient which shall include a copy or summary of the complaint and which shall direct the recipient or subrecipient to forward a copy of the complete administrative file, including a copy of the certified verbatim transcript of the hearing, within 15 days of receipt of such notice to the Grant Officer. Such investigation shall be completed and a conclusion made pursuant to § 676.88(e) within 120 days of the filing of the complaint, except that the time may be extended with the written consent of all the parties.

(d) *Audit reports.* Upon receipt of a final audit report the Grant Officer will promptly transmit the audit report to the recipient and/or subrecipient for a comment period not to exceed 30 days, or for such additional time as the Grant Officer may allow. Within 30 days after the end of the comment period the Grant Officer shall make his initial determination pursuant to § 676.88(a).

(e) *Onsite review and other bases for investigation.* If after an onsite review, monitoring visit, review of reports, data or other information, the Grant Officer has reason to believe that a recipient or subrecipient is failing to comply with the requirements of the Act, regulations, grant or other agreements under the Act, the Grant Officer or other designated authority shall investigate the matter (sec. 106(b)).

(f) *Complaints against DOL.* If a Grant Officer or other employee of ETA takes an action under CETA, or fails to take an action required under CETA, any adversely affected recipient, subrecipient or person may file a complaint in accordance with the requirements of § 676.86(b) with the appropriate Grant Officer, or the Assistant Secretary if the complaint is against ETA generally, and such

complaint shall be investigated and a final determination issued pursuant to § 676.88(e), with a right to request a hearing pursuant to § 676.88(f). These procedures may be utilized only if the procedures found at §§ 676.83, 84, 85, 86, and 88 are otherwise inapplicable.

(g) *Complaints alleging discrimination and equal opportunity compliance reviews.* (1) The provisions of this subpart shall apply to complaints brought under section 132 alleging discrimination on the basis of race, color, religion, sex, national origin, age, handicap or citizenship (in the case of participants), provided however, that:

(i) After exhaustion of recipient level procedures as provided in § 676.85, such complaints which are unresolved may be filed at the federal level with the appropriate Regional Director, Office of Civil Rights, who shall conduct investigations and make initial and final determinations with the same power and authority as that delegated to the Grant Officer in § 676.85 through 676.88 for the receipt, investigation and determination on non-equal opportunity complaints.

(ii) When a complaint at the federal level alleges both discrimination and other violations, those portions of the complaint alleging discrimination shall be handled by the appropriate Regional Director, Office of Civil Rights, and those portions of the complaint alleging other violations shall be handled separately in accordance with the procedures in the following sections of this subpart and a separate decision issued: *Provided*, That any hearings and adjudications may be joined.

(2) The Directors of the Regional Office of Civil Rights may undertake equal opportunity (EO) compliance reviews and are authorized to make initial and final determinations with respect to the EO compliance status of recipients and subrecipients.

(h) *Other investigations.* (1) The Assistant Secretary for Employment and Training may, for purposes of making any investigation, assign a single complaint or classes of complaints to the Office of Investigation and Compliance of the Employment and Training Administration, under such conditions as may be appropriate.

(2) The Assistant Secretary for Employment and Training may, by agreement with the Office of the Inspector General, or the Office of the Inspector General may pursuant to the Inspector General Act of 1978, Pub. L. 95-492, 92 Stat. 1101, assume responsibility for any investigation arising under CETA.

(i) *Utilizing other services.* With the consent and cooperation of state

agencies charged with the administration or enforcement of state laws, the Secretary may elect for the purpose of carrying out this subpart and section 133 of the Act, to utilize the services of state and local agencies and their employees, and notwithstanding any other provision of law, may reimburse, in whole or in part, such state and local agencies and their employees for services rendered for such purposes (sec. 106(h)).

(j) *Criminal investigations.* Notwithstanding any other provision of this subpart, investigation by the Department of any matter concerning a potential federal criminal violation shall be conducted as the Inspector General shall direct pursuant to the powers granted by the Inspector General Act of 1978, Public Law 95-452, 92 Stat. 1101.

#### § 676.87 Subpoenas.

(a) *Subpoenas in investigations.* (1) The Assistant Secretary for Employment and Training may issue a subpoena directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence, or both, relating to any matter arising under the Act being investigated. The Solicitor, the Associate Solicitor for Employment and Training Legal Services or the Regional Solicitors, for good cause shown, may extend the time prescribed for compliance with such subpoenas (section 133(a)(3)).

(2) Any motion to limit or quash any investigational subpoena shall be filed with the Chief Administrative Law Judge within 10 days after service of the subpoena, or, if the return date is less than 10 days after service of the subpoena, within such other time as may be allowed by the assigned Administrative Law Judge.

(3) The timely filing of a motion to limit or quash any investigational subpoena shall stay the requirement of a return on the portion challenged. If the Administrative Law Judge has not ruled upon the motion by the return date, or if the Administrative Law Judge rules subsequent to the return date, and the ruling denies the motion in whole or in part, the Administrative Law Judge shall specify a new return date.

(4) All motions to limit or quash subpoenas, and the responses thereto, shall be part of the public record of the Office of the Administrative Law Judges except as otherwise ordered or provided under these regulations.

(b) *Noncompliance.* (1) In cases of failure to comply with compulsory processes, appropriate action may be initiated including actions for

enforcement, forfeiture, penalties or criminal actions.

(2) The Solicitor of Labor, with the consent of the Attorney General, may:

(i) Institute on behalf of the Secretary an enforcement proceeding in connection with the failure or refusal of a person, partnership, corporation, recipient or other entity to comply with or to obey a subpoena if the return date or any extension thereof has passed; or

(ii) Request on behalf of the Secretary the institution of civil actions, as appropriate, if the return date or any extension thereof has passed including seeking civil contempt in cases where a court order enforcing compulsory process has been violated.

#### § 676.88 Initial and final determination; request for hearing at the Federal level.

(a) *Initial determination.* Upon the conclusion of a review of the entire administrative record of an investigation conducted pursuant to § 676.86, or after the conclusion of the comment period for audits provided in § 676.86, the Grant Officer shall make an initial determination of the matter in controversy including the allowability of questioned costs or activities. Such determination shall be based upon the requirements of the Act, regulations, grants or other agreements, under the Act. The determination may conclude either:

(1) That based upon the entire record there is no violation of the Act, regulations, grants or other agreements under the Act.

(2) That there is substantial evidence to support the allegation, or finding of questioned costs or activities.

(b) *Contents of Initial determination.* (1) In the event that the Grant Officer makes a finding that there is substantial evidence to support the allegation of a violation the initial determination shall: (i) be in writing, (ii) state the basis of the determination, including factual findings and conclusions, (iii) specify the costs or activities disallowed, (iv) specify the corrective actions and/or sanctions proposed (interest costs shall be assessed at the rate periodically set forth by the Assistant Secretary for Administration and Management and shall be computed from the date of violation for back pay awards, and from 30 days after final agency action establishing the debt for audit disallowances), and (v) give notice of an opportunity for informal resolution of the matters as necessary to the appropriate parties, which should include all interested parties specified by the Grant Officer. (2) In the event that the Grant Officer makes a finding of no violation the initial determination

shall: (i) Be in writing, (ii) state the bases of the determination (factual findings and conclusions), and (iii) give notice of the opportunity to present additional information within 10 days of receipt of the initial determination. If the information submitted indicates that there is substantial evidence to support the allegation, the Grant Officer shall after appropriate review under § 676.86(c), issue a new initial determination. (3) The initial determination shall be mailed by certified mail return receipt requested to the parties and interested parties.

(c) *Allowability of certain questioned costs.* In any case in which the Grant Officer determines that there is sufficient evidence that funds have been misspent, the Grant Officer shall disallow the costs, except that costs associated with ineligible participants and public service employment programs may be allowed when the Grant Officer finds:

(1) The activity was not fraudulent and the violation did not take place with the knowledge of the recipient or subrecipient; and

(2) Immediate action was taken to remove the ineligible participant; and

(3) Eligibility determination procedures, or other such management systems and mechanisms required in these regulations, were properly followed and monitored; and

(4) Immediate action was taken to remedy the problem causing the questioned activity or ineligibility; and

(5) The magnitude of questioned costs or activities is not substantial.

(d) *Informal resolution.* The Grant Officer shall not revoke a recipient's grant, in whole or in part, nor institute corrective action or sanctions against a recipient without first providing the recipient with an opportunity to informally resolve those matters contained in the Grant Officer's initial determination. If the matters are informally resolved the Grant Officer shall notify the parties in writing of the nature of the resolution, and may close the file (sec. 106(i)(1)).

(e) *Final determination.* If all the parties and the Grant Officer cannot informally resolve any matter pursuant to paragraph (d), the Grant Officer shall, not later than 120 days (except the time may be extended with the written consent of all the parties) after the filing of the complaint or receipt of an investigation report in the absence of a complaint, or after the issuance of an initial audit determination in audit proceedings pursuant to § 676.86(d), provide each party with a final written notice in duplicate by certified mail, return receipt requested, that (1)

indicates that efforts to informally resolve matters contained in the initial determination pursuant to paragraph (a) have been unsuccessful, (2) lists those matters upon which the parties continue to disagree, (3) lists any modifications to the factual findings and conclusions set forth in the initial determination, (4) lists any sanctions, and required corrective actions, including any other alteration or modification of the plan, grant, agreement or program intended by the Grant Officer, and (5) informs the parties of their opportunity to request a hearing pursuant to these regulations. If it is determined in the final notice that the complaint does not state a violation of the Act, regulations, grants or other agreements under the Act, the Grant Officer shall dismiss the complaint. Such dismissal shall constitute final agency action unless the Grant Officer determines that there are disputed questions of fact, in which case a hearing before an Administrative Law Judge shall be afforded pursuant to § 676.88(f). In such case(s) the final determination shall notify the parties of the opportunity to request a hearing in accordance with § 676.88(f).

(f) *Request for hearing.* Within 10 days of receipt of the Grant Officer's final determination, except those determinations dismissing the complaint without an opportunity to request a hearing or on the expiration of 120 days of the filing of a complaint with the Grant Officer upon which no extensions have been mutually agreed, any affected recipient, subrecipient or complainant may mail a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Room 700, Vanguard Building, 1111 20th Street, N.W., Washington, D.C. 20036, with a copy to the Grant Officer. The request for hearing shall be mailed by certified mail return receipt requested not later than 10 days after receipt of the Grant Officer's final determination and shall be considered filed upon receipt at the Office of the Administrative Law Judges. The request for hearing shall be accompanied by a copy of the Grant Officer's final determination, if issued, and shall specifically state those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations, grants or other agreements under the Act fairly raised in recipient level proceedings under §§ 676.83 or 676.84 or alleged violations of recipient level procedures fairly

raised before the Grant Officer are subject to review.

(g) *Notification of filing.* (1) Upon the receipt of a request for hearing the Chief Administrative Law Judge shall promptly notify the Grant Officer, the Associate Solicitor for Employment and Training Legal Services, the appropriate Regional Solicitor's Office and each party and party in interest named in the Grant Officer's final determination by certified mail, return receipt requested, that the request has been filed and the date of filing. Such notice shall include a copy of the Grant Officer's determination and the request for hearing. (2) Within 30 days of receipt of such notice the Grant Officer shall submit to the Administrative Law Judge an administrative file consisting of all pertinent documents tabbed and containing an index listing the documents. The administrative file shall at least contain the Grant Officer's determinations, all pertinent correspondence, and a copy of the record in any recipient level proceedings. The Grant Officer shall simultaneously transmit one copy of the administrative file to the Associate Solicitor for Employment and Training Legal Services, Room N-2101, 200 Constitution Avenue N.W., Washington, D.C. 20210, one copy to the appropriate Regional Solicitor and shall retain one copy. (3) Within 30 days of receipt of the foregoing notice from the Office of Administrative Law Judges each party or party in interest shall file a notice of intent to participate with the Office of the Chief Administrative Law Judge upon such terms as the Administrative Law Judge assigned the case shall order.

(h) *Automatic participation.* The Grant Officer shall be party to all proceedings. The recipient (and subrecipient if applicable) shall be a party to all proceedings involving its grants. Attorneys employed by the Solicitor of Labor shall be served with all papers and may appear on behalf of the Grant Officer.

(i) *Discretionary hearing.* An opportunity for a hearing may also be extended when the Assistant Secretary determines that fairness and the effective operation of CETA programs would be furthered.

(j) *Emergency sanctions.* In emergency situations as determined by the Assistant Secretary, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program the Assistant Secretary may immediately terminate or suspend a grantee's authority to obligate funds, in whole or in part and withdraw unexpended funds and make alternative temporary arrangements to carry out the

grant program. Within 30 days after such termination or suspension the Assistant Secretary shall notify the grantee of the reason for the action and provide an opportunity to request a hearing (sec. 106(e)).

#### § 676.89 Rules of procedure.

(a) *Applicability of the Federal Rules of Civil Procedure.* On any procedural question not regulated by this subpart, the Act, or the Administrative Procedure Act, the Administrative Law Judge shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure, including the rules governing motions and intervention.

(b) *Filing.* After the request for hearing, a copy of all papers required to be served on a party shall be filed with the Office of Administrative Law Judges and served upon the parties of record and shall contain proof of such service. The filing of papers with the Office of Administrative Law Judges, as required by these rules, shall be made by filing them with the clerk, except that the Administrative Law Judge may permit the papers to be filed, in which event he or she shall note thereon the filing date and forthwith transmit them to the Clerk.

(c) *Consolidated or joint hearings.* (1) In cases in which the same or related facts are asserted to constitute noncompliance with these regulations and the regulations of one or more other federal departments or agencies, the Administrative Law Judge may, by agreement with such other departments or agencies, provide for the conduct of consolidated or joint hearings conducted in accordance with these rules.

(2) Upon motion of any party, and for good cause shown, the Chief Administrative Law Judge may order the consolidation of hearings in which similar facts and legal issues are present and where consolidation will not result in undue delay or prejudice to any party.

(d) *Amicus curiae.* A brief of an amicus curiae may be filed by leave of the Administrative Law Judge granted upon motion, or on the request of the Administrative Law Judge, except that consent or leave shall not be required when the brief is presented by an officer or agency of the United States, or by a state, territory or commonwealth. The amicus curiae shall not participate in the conduct of the hearing, including the presentation of evidence and the examination of witnesses.

(e) *Discovery.* The provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Courts, Title V, 28 U.S.C., Rules 26 through 37, shall apply in any

proceeding conducted under these regulations to the extent that the Administrative Law Judge concludes upon application that their use would contribute to the just, speedy, and inexpensive determination of the proceeding. A subpoena necessary to secure the attendance of a witness at a deposition (including the production of documents or things) shall be obtained and issued as provided in § 676.90(a) of these regulations.

(f) *Prehearing procedures.* In certain complex cases, the Administrative Law Judge may use prehearing procedures including: (1) *Prehearing conference.* Prehearing conferences may be scheduled by the Administrative Law Judge upon reasonable notice in advance of the hearing in order to permit time in which to complete any prehearing stipulation. The purpose of this conference is to make a good faith effort to:

- (i) Discuss the possibility of settlement;
- (ii) Stipulate to undisputed facts and set forth the issues to be decided;
- (iii) Examine all exhibits or documents and other items of tangible evidence to be offered by any party at the hearing;
- (iv) Exchange the names and addresses of all witnesses; and
- (v) Prepare a prehearing stipulation.

(2) *Prehearing agreement.* (1) Alternatively, the Administrative Law Judge may enter an order requiring the parties to prepare a proposed prehearing order setting forth the issues to be heard, the stipulated and disputed facts, the anticipated witnesses and evidence to be presented, and any other matter deemed appropriate.

(ii) The Administrative Law Judge may issue an order which recites the action taken at the conference, or pursuant to any prehearing agreement, which limits the issues to those not disposed of by admissions or agreements. The order, when entered, shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.

#### § 676.90 Hearings.

(a) *Time and place.* Hearings shall be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to the parties. Due regard shall be given to the convenience of the parties and their Counsel, if any, and the witnesses in selecting a place for the hearing. Subpoenas necessary to secure the attendance of witnesses and the production of documents or things shall be obtained from the Office of the Administrative Law Judges and shall be issued pursuant to the authority

contained in section 133(a)(3) of the Act incorporating 15 U.S.C. § 49.

(b) *Standard of Review.* In all cases arising under § 676.86(a) the Administrative Law Judge shall review the Administrative File submitted in accordance with § 676.88(a) and the request for hearing and shall determine whether there has been a full and fair hearing at the recipient level and whether there are any substantial factual issues unresolved. If the Administrative Law Judge determines that these two conditions are met, the case shall be decided upon the record and upon such briefs as the parties may submit. The Administrative Law Judge shall determine from the record whether there exists substantial evidence to uphold the decision of the Grant Officer. If the Administrative Law Judge determines that either of the two conditions is not met, he shall hold a hearing. Nothing in this subsection shall be construed to limit the right of the parties to seek a dismissal of the request for hearing or to seek summary judgment.

(c) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules and principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, shall be applied where reasonably necessary by the Administrative Law Judge conducting the hearing. The administrative file submitted by the Grant Officer shall be part of the record, subject to objection by any party. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties. A transcript shall be made of the oral evidence presented at the hearing which shall be made available to the parties. Copies of all exhibits introduced at the hearing and of stipulations of the parties shall be maintained as part of the record. All decisions shall be based upon the hearing record and written findings shall be made.

(d) *Non-appearance of parties.* If a party fails to appear at a hearing the Administrative Law Judge may, nevertheless, hear the remaining parties, or may decide the cause on the briefs or dismiss the cause.

(e) *Record for decision.* The transcript of testimony, exhibits and all papers and requests filed in the proceedings including rulings and any proposed findings of fact and conclusions of law, shall constitute the exclusive record for decision.

**§ 676.91 Post-hearing procedures.**

(a) *Post-hearing briefs; findings and conclusions.* The Administrative Law Judge shall determine the necessity of and fix the time for filing post hearing briefs, which may contain proposed findings of fact and conclusions of law and, if permitted, reply briefs. Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

(b) *Decision.* After the time for submission of any post-hearing briefs has expired, the Administrative Law Judge shall render a decision adjudicating the cause. A copy of the decision shall be served upon all parties and each amicus curiae, if any.

(c) *Contents of decisions.* The decision of the Administrative Law Judge shall state the factual and legal bases for the decision and shall state the relief to be ordered. The Administrative Law Judge shall have the full authority of the Secretary in ordering relief, including direct action against the subrecipients as authorized by section 106(d)(1) of the Act, provided that the Grant Officer shall have sole discretion to make the determinations provided for in § 676.88(c). Orders for relief may provide for suspension or termination of, or refusal to grant or continue federal financial assistance in whole or in part, and may contain such terms, corrective action, (including reinstatement or backpay, or both), conditions, sanctions reallocations, and other provisions as are consistent with and will effectuate the purposes of the Act and regulations issued thereunder, including provisions designed to insure that no federal financial assistance will thereafter be extended under such program unless and until the prime sponsor, recipient or subrecipient corrects its noncompliance and makes satisfactory assurance that it will fully comply with the Act and regulations. The authority granted the Secretary to consider special circumstances pursuant to sections 106(d)(2) and 121(o)(2)(C) of the Act is reserved, and application for such special consideration shall be made from a recommended decision of the Administrative Law Judge to the Secretary, which authority will be exercised pursuant to § 676.91(f).

(d) *Adjustments in payments.* Where it appears after a hearing pursuant to this subpart that program funds have been expended in violation of the Act, the regulations, grant, or other agreements under the Act, the Administrative Law Judge may direct, in order to prevent further unauthorized

expenditures, that unexpended funds be returned or that funds otherwise payable under the Act be withheld in order to recover any amount expended for unauthorized purposes in any fiscal year. When funds are ordered withheld the recipient shall neither reduce program operations, nor reduce compensation to any participant, or otherwise expand less than those sums called for in the grant. Any such reduction in expenditures may be deemed sufficient cause for emergency termination (sec. 106(g)).

(e) *Termination of grant.* When the final decision terminates the grant in whole or in part after hearing pursuant to this subpart, the final decision shall specify the extent of termination and the date upon which such termination becomes effective. Upon receipt of this notice, the recipient shall:

(1) Discontinue further commitments of grant funds to the extent that they relate to the terminated portion of the grant.

(2) Promptly cancel all subgrants, agreements and contracts utilizing funds under this grant to the extent that they relate to the terminated portion of the grant.

(3) Settle, with the approval of the Secretary, all outstanding claims arising from such termination.

(4) Submit, within a reasonable period of time, after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the grant.

(f) *Final decision.* The decision of the Administrative Law Judge shall become the final decision of the Secretary and final agency action unless, within 30 days, the Secretary files an order with the Office of Administrative Law Judges staying the decision pending a review on the merits. The decision by the Secretary on review shall be final agency action when filed with the Office of Administrative Law Judges.

(g) *Alternative provision of services.* If the final decision specifies suspension or termination of the grant the Grant Officer shall determine how services shall be maintained in the recipients area. As part of the determination, the Grant Officer shall determine whether any funds shall be reallocated to the state or to another recipient to serve the area formerly served by the terminated or suspended recipient. The Grant Officer may also consider the desirability of providing direct federal services to the area through appropriate means (sec. 102).

**§ 676.92 Final action; judicial review.**

(a) *Final action.* The final decision of the Secretary, or the Grant Officer's final determination dismissing the complaint where no hearing is offered pursuant to § 676.88(e), constitutes final action within the meaning of the Act and the Administrative Procedure Act, 5 U.S.C. § 704.

(b) *Judicial review.* Judicial review of final action must be filed not later than 60 days after receipt of the Grant Officer's dismissal or the decision of the Secretary in accordance with section 107 of the Act.

(c) *Transmittal of record.* The Office of Administrative Law Judges shall maintain and transmit to the appropriate United States Court of Appeals the record of the proceedings, where an appeal is taken from final agency action, as directed by the Secretary and as required by the appropriate Federal rules, except for final determinations of the Grant Officer dismissing the complaint pursuant to § 676.88(e) in which case the Grant Officer, after review by the Regional Solicitor, shall transmit the record as provided above.

**§ 676.93 Other authority.**

Nothing contained in this subpart shall be deemed to prejudice the separate authority of other law enforcement officials to pursue remedies and sanctions available outside the Act. Nothing in this subpart shall be deemed to reduce the responsibility and full liability of the prime sponsors and other recipients.

(Sec. 126 of the Comprehensive Employment and Training Act (Pub. L. 95-524, 92 Stat. 1909, (29 U.S.C. 801 *et seq.*))

Signed at Washington, D.C., this 19th day of January, 1981.

Ray Marshall,  
Secretary of Labor.

[FR Doc. 81-2465 Filed 1-19-81; 5:09 pm]

BILLING CODE 4510-30-M

Just Released. Order yours now!

# Privacy Act Issuances, 1979 Compilation

Quantity	Volume	Price	Amount
_____	Volume I (Agriculture; Commerce; Defense (Part I))	\$ 9.50	\$ _____
_____	Volume II (Defense (Part II); Energy; Health, Education, and Welfare; Housing and Urban Develop- ment; Interior)	10.00	_____
_____	Volume III (Justice; Labor; State; Transportation; Treas- ury; independent agencies (A-C))*	9.50	_____
_____	Volume IV (Independent agencies (E-Z))*	10.00	_____
_____	Volume V (Research Aids)	4.00	_____
	<b>Total Order</b>		<b>\$ _____</b>

\*See the June 1980 Federal Register Index for the list of independent agencies in each volume.

PLEASE DO NOT DETACH

**Mail Order Form to:**

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

Enclosed find \$ \_\_\_\_\_ (check or money order) or charge to my Deposit Account

No. \_\_\_\_\_ Please send me \_\_\_\_\_ copies of:

FOR USE OF SUPT. DOCS.	
_____	Enclosed
_____	To be mailed
_____	later
_____	Subscription
_____	Refund
_____	Postage
_____	Foreign Handling

PLEASE FILL IN  
MAILING LABEL  
BELOW

Name \_\_\_\_\_  
Street address \_\_\_\_\_  
City and State \_\_\_\_\_ ZIP Code \_\_\_\_\_

FOR PROMPT SHIPMENT, PLEASE PRINT OR TYPE ADDRESS ON LABEL BELOW, INCLUDING YOUR ZIP CODE

SUPERINTENDENT OF DOCUMENTS  
U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID  
U.S. GOVERNMENT PRINTING OFFICE  
375  
SPECIAL FOURTH-CLASS RATE  
BOOK

Name \_\_\_\_\_  
Street address \_\_\_\_\_  
City and State \_\_\_\_\_ ZIP Code \_\_\_\_\_