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Friday
May 25, 1979

Highlights

Briefings on How To Use the Federal Register—See announcement in the Reader Aids Section at the end of this issue.

30311 **Foreign Intelligence Electronic Surveillance** Executive order

30388 **Special Supplemental Food Program for Women, Infants and Children** USDA/FNS announces availability of funds for demonstration and evaluation projects

30351 **Child Nutrition Program** USDA/FNS proposes change in required method of announcing eligibility criteria for free and reduced price meals and free milk in schools; comments by 6-25-79

30594 **Migrant and Other Seasonally Employed Farmworkers** Labor/ETA adopts rules implementing program under Comprehensive Employment and Training Act; effective 5-25-79; comments by 7-24-79 (Part VI of this issue)

30341 **Medicaid Program** HEW/HCFA adds new State plan requirement for timely processing of claims from certain practitioners; effective 8-23-79

30382 **Medicaid Program** HEW/HCFA proposes rules regarding reimbursement for eyeglasses and hearing aids; comments by 7-24-79

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Highlights

30640 **Severely Disabled Individuals** HEW/HDSO announces availability of fiscal year 1979 grant funds for special projects; applications by 7–13–79 (Part IX of this issue)

30636 **Metric Education Program** HEW/OE proposes to revise regulations governing grants; comments by 7–9–79 (Part VIII of this issue)

30540 **Women's Educational Equity** HEW/OE proposes regulations governing grant and contract awards; comments by 7–24–79 (Part III of this issue)

30644 **Protection of Human Subjects** HEW/Sec'y issues notice of report and recommendations concerning implications of advances in biomedical and behavioral research; comments by 8–23–79 (Part X of this issue)

30528 **Educational Appeal Board** HEW/OE issues interim final regulations regarding establishment and governing conduct of proceedings; comments by 7–24–79 (Part II of this issue)

30650 **Age Discrimination in Employment** Labor/W&H amends Interpretative Bulletin with respect to employee benefit plans; effective 5–25–79 (Part XI of this issue)

30610 **Surface Mining Reclamation and Enforcement** Interior/SMRE adopt final rules for initial regulatory program; effective 6–25–79 (Part VII of this issue)

30323 **Natural Gas** DOE/FERC issues special rules authorizing transportation for purpose of displacing fuel oil; effective 5–17–79

30461 **Improving Government Regulations** Justice publishes final report on implementing Executive Order No. 12044

30316 **Farm Credit System** FCA amends rules on loan policies and operations of member institutions; effective 4–4–79

30500 **Sunshine Act Meetings**

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30540 **Part III, HEW/OE**
30554 **Part IV, Labor/ESA**
30590 **Part V, Interior/BLM**
30594 **Part VI, Labor/ETA**
30610 **Part VII, Interior/SMRE**
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30640 **Part IX, HEW/HDSO**
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Presidential Documents

Title 3—

The President

Executive Order 12139 of May 23, 1979

Foreign Intelligence Electronic Surveillance

By the authority vested in me as President by Sections 102 and 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802 and 1804), in order to provide as set forth in that Act for the authorization of electronic surveillance for foreign intelligence purposes, it is hereby ordered as follows:

1–101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)), the Attorney General is authorized to approve electronic surveillance to acquire foreign intelligence information without a court order, but only if the Attorney General makes the certifications required by that Section.

1–102. Pursuant to Section 102(b) of the Foreign Intelligence Act of 1978 (50 U.S.C. 1802(b)), the Attorney General is authorized to approve applications to the court having jurisdiction under Section 103 of that Act to obtain orders for electronic surveillance for the purpose of obtaining foreign intelligence information.

1–103. Pursuant to Section 104(a)(7) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)), the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by Section 104(a)(7) of the Act in support of applications to conduct electronic surveillance:

(a) Secretary of State.

(b) Secretary of Defense.

(c) Director of Central Intelligence.

(d) Director of the Federal Bureau of Investigation.

(e) Deputy Secretary of State.

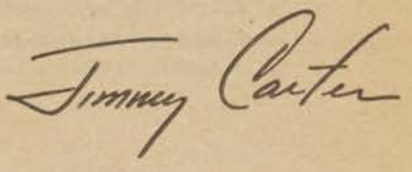
(f) Deputy Secretary of Defense.

(g) Deputy Director of Central Intelligence.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President with the advice and consent of the Senate.

1–104. Section 2–202 of Executive Order No. 12036 is amended by inserting the following at the end of that section: "Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act as well as this Order.".

1–105. Section 2–203 of Executive Order No. 12036 is amended by inserting the following at the end of that section: "Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 shall be conducted in accordance with that Act as well as this Order.".



THE WHITE HOUSE,
May 23, 1979.

[FR Doc. 79–16621
Filed 5–23–79; 3:30 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department; Revision

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document transfers the administration of certain programs under the Assistant Secretary for Rural Development to reflect the recently announced Presidential rural communication initiative. The Rural Electrification Administration will administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) with respect to financing for community antenna television services or facilities.

EFFECTIVE DATE: May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Joseph Vellone, Assistant Administrator-Administration, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–3863.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Governmental and Public Affairs

1. Section 2.23 is amended by revising paragraph (a)(1)(i) and adding a new paragraph (c)(3) as follows:

§ 2.23 Delegations of authority to the Assistant Secretary for Rural Development.

* * * * *

(a) *Related to farmers home activities.*
(1) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except (i) with respect to loans for rural electrification and telephone facilities and service and financing for community antenna television services or facilities delegated to the Assistant Secretary for Rural Development in paragraphs (c)(2) and (c)(3) of this section; * * *

* * * * *

(c) *Related to rural electrification, telephone and community antenna television service.*

* * * * *

(3) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) with respect to financing for community antenna television services or facilities.

* * * * *

Subpart I—Delegations of Authority by the Assistant Secretary for Rural Development

2. Section 2.70 is amended by revising paragraph (a)(1) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(1) Administration of the Consolidated Farm and Rural Development Act (Act) except (i) financing under section 306(a)(1) of the Act, 7 U.S.C. 1926(a)(1), of any rural electrification or telephone systems or facilities other than supplemental and supporting structures if they are not eligible for Rural Electrification Administration financing; (ii) financing for community antenna television services or facilities; (iii) the authority contained in section 342 of the Act, 7 U.S.C. 1013a; and (iv) the authority contained in section 306(a)(13) of the Act, 7 U.S.C. 1926(a)(13). This delegation includes the authority to collect, service, and liquidate loans made or insured by the Farmers Home Administration or its predecessor agencies, the Farm Security Administration, the Emergency Crop and Feed Loans Offices of the Farm Credit Administration, the Resettlement Administration, and the Regional Agricultural Credit Corporation of Washington, D.C.

* * * * *

3. Section 2.72 is amended by revising paragraph (a)(2) to read as follows:

§ 2.72 Administrator, Rural Electrification Administration.

(a) *Delegations.* * * *

(2) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) with respect to financing for community antenna television services or facilities.

* * * * *

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subpart C.

Dated: May 22, 1979.

Bob Bergland,
Secretary of Agriculture.

For Subpart I.

Dated: May 22, 1979.

Alex P. Mercure,
Assistant Secretary for Rural Development.

[FR Doc. 79-16510 Filed 5-24-79; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 200]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period May 27–June 2, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: May 27, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the

marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. 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 recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectutate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on May 22, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.500 Lemon Regulation 200.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period May 27, 1979 through June 2, 1979, is established at 285,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: May 23, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-16719 Filed 5-24-79; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 561, and 563

[No. 79-296]

Investment in Farmers Home Administration Rural Housing Program Guaranteed Loans

Dated: May 17, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Bank Board amends its regulations to authorize Federal savings and loan associations to invest in Farmers Home Administration (FmHA) Rural Housing Program guaranteed loans on terms acceptable to the guaranteeing agency under certain conditions. The amendments also authorize all institutions insured by the Federal Savings and Loan Insurance Corporation to invest in the FmHA loans with loan-to-value ratios exceeding 90 percent of value without the usual requirement of private mortgage insurance or special reserves.

EFFECTIVE DATE: May 24, 1979.

FOR FURTHER INFORMATION, CONTACT: Lois G. Jacobs, Attorney, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Telephone number (202) 377–6466.

SUPPLEMENTARY INFORMATION: On January 21, 1979, the Federal Home Loan Bank Board, by Resolution No. 79–62 (44 F.R. 5899–5900), proposed amendments to authorize investment in Farmers Home Administration (FmHA) Rural Housing Program guaranteed loans, subject to specified limitations. The Bank Board received comments from eight Federal savings and loan associations and five trade associations, all favoring the proposal; five commenters proposed modifications to the proposal discussed below.

The Bank Board proposed to amend 12 CFR 545.6–7(b) by adding FmHA Rural Housing Program guaranteed loans to the second sentence of that provision containing a list of loan investments with specific percentage limitations. One commenter pointed out that the third sentence of 12 CFR 545.6–7(b) allows associations to reallocate loans to other categories or release them from percentage-of-assets limitations when they become eligible for another category or release. The commenter suggested that the Bank Board accord the same flexibility to FmHA loans. The Bank Board agrees with this suggestion and has revised the final regulation accordingly.

One commenter questioned whether the investment category proposed for FmHA loans would be separate from the 25% of assets category in 12 CFR 545.6–1(a)(5)(ii) for loans in excess of 90% of value. The Bank Board intends that loans made under the program are separate from the 25% of assets category for loans in excess of 90% of value and has amended 12 CFR 545.6–27 to clarify this.

Proposed 12 CFR 545.6–27 has also been restructured slightly and revised in its final form in response to three comments regarding the proposed investment limitation. Two commenters suggested that the "½-of-net-worth" limitation was too restrictive and that the Bank Board should remove it. A new association pointed out that, since it did not yet have any net worth, it would be precluded from participation in the program. The Bank Board reminds Federal associations that the proposed "½-of-net-worth" is the limitation on investment in the *non-guaranteed* portion of FmHA loans. It believes this limitation allows adequate investment power for most associations and should be retained. However, the Bank Board recognizes the problem for young associations and has revised the regulation to allow Federal associations to invest *the greater* of one-half of net worth *or* 2.5 percent of assets in the aggregate outstanding balance of the non-guaranteed portions of all loans made or purchased under authority of 12 CFR 545.6–27.

One commenter was concerned by the cross-reference to § 545.6–27 in proposed 12 CFR 545.8(a)(1)(v). The proposed amendment was intended to authorize FmHA guaranteed repair loans with maturities exceeding 15 years, yet appeared to tie them specifically to first-lien residential loans. The language of § 545.8 has been clarified to remove this unintended ambiguity.

Three commenters requested that FmHA Small Business and Industry loans be given regulatory treatment similar to that proposed for FmHA Rural Housing Program loans; two commenters further urged similar regulatory treatment for Small Business Administration loans. The Bank Board is presently studying possible revision of its regulations to accommodate these commercial lending programs. However, at the present time, the new authority is limited to residential loans.

One commenter discussed the possibility of fitting FmHA loans into the "Loans in excess of 90% of value" category in 12 CFR 545.6–1(a)(5), once the loan is written down to 95% loan-to-

value ratio, by purchase of private mortgage insurance to cover the non-guaranteed portion of the loan. The Bank Board is advised by staff of the FmHA that its regulations (7 CFR 1980.324(c)) prohibit that action:

(c) *All collateral must secure entire loan.* All collateral must secure the entire loan. * * * The lender cannot take separate collateral to secure only that portion of the loan or loss not covered by the guarantee. This also includes but is not limited to mortgage insurance, which, if obtained, must protect both the guaranteed and unguaranteed portions of the loan.

The FmHA guaranteed loan program embodies three types of participation: down payment by the applicant; lender's risk in the non-guaranteed portion of the loan; and the guaranteeing agency's risk in the guaranteed portion. FmHA believes the shared risk is an essential element in the program, because each participant retains an on-going interest in the repayment of the loan so long as risk is shared. The Bank Board defers to FmHA on this point and adopts the regulations as proposed regarding it.

The Bank Board finds that publication of the amendments for the 30-day period in 5 U.S.C. § 553(d) and 12 CFR 508.14 is not necessary or in the public interest, because these amendments relieve restriction and authorize participation in a lending program which will be beneficial both to savings and loan associations and the communities they serve.

Accordingly, the Bank Board amends 12 CFR Parts 545, 561 and 563 by adding a new § 545.6–27 and amending §§ 545.6–7(b), 545.8(a)(1)(v), 561.15(b), 561.17(a), and 563.9–7(b), as described below.

1. The second sentence of paragraph 545.6–7(b) is amended by deleting the last "and" and inserting immediately before the period at the end the following: ", and § 545.6–27 (Farmers Home Administration Rural Housing Program guaranteed loans)"; the third sentence of paragraph 545.6–7(b) is amended by deleting "or" before "545.6–18" (in both places in the sentence) and adding ", or 545.6–27" after "545.6–26" so that the beginning of the paragraph reads as follows:

§ 545.6–7 Percentage limitations on real estate loan investments.

* * * * *

(b) *Percentage limitations for specific types of loans.* Real estate loan investments made under sections which contain specific percentage limitations shall be subject to those limitations. Sections which contain specific limitations are: § 545.6–14 (land acquisition and development loans), § 545.6–16 (loans for housing for the aging), § 545.6–18 (urban renewal loans), § 545.6–20 (Foreign Assistance Act loans), § 545.6–3(c) (developed building lot loans), § 545.6–1(a) (4) and (5) (loans on single-family or two-family dwellings in excess of 80 percent of value), § 545.6–1(a)(3)(ii) (loans to facilitate trade-in or exchange of homes), § 545.6–26 (non-conforming secured loans), and § 545.6–27 (Farmers Home Administration Rural Housing Program guaranteed loans). However, whenever the terms of a loan investment under §§ 545.6–16, 545.6–18, 545.6–26 or 545.6–27 meet the requirements for a loan under § 545.6–1, the loan may be released from the percentage-limitation category in §§ 545.6–16, 545.6–18, 545.6–26, or 545.6–27 and allocated within an applicable percentage-limitation category in paragraph (c) of this section or released from allocation to any percentage-limitation category if it is a loan specified under paragraph (a) of this section * * *

* * * * *

2. New § 545.6–27 is added as follows:

§ 545.6–27 Farmers Home Administration rural housing program guaranteed loans.

(a) *General.* A Federal association may invest in first-lien loans on residential real estate in its regular lending area guaranteed under the Farmers Home Administration (FmHA) Rural Housing Program without regard to the requirements of § 545.6–1(a)(5) of this Part.

(b) *Limitations.* (1) FmHA shall guarantee at least 80 percent of the principal amount and accrued interest of each loan made under the program.

(2) The loan terms must be acceptable to FmHA.

(3) An association may invest up to the greater of 2.5 percent of its assets or one-half of its net worth in the aggregate outstanding balance of the non-guaranteed portions of all loans made under the program and held by the association.

(c) *Record keeping.* A Federal association shall maintain records to verify compliance with the requirements for each investment made under this section including the loan note guarantee, lender's agreement, and documentation that the investment limitation has not been exceeded.

3. The first sentence of § 545.8(a)(1)(v) is amended by inserting immediately before the period at the end the following: "; except that if the principal and accrued interest of a loan are at least 80 percent guaranteed by the Farmers Home Administration under 7 CFR 1980.301, *et. seq.* the loan is repayable on terms acceptable to the guaranteeing agency", so that the entire sentence reads as follows:

§ 545.8 Loans without requirement of security.

(a) * * *

(1) * * *

(v) The loan is repayable in equal weekly, bi-weekly, monthly, bimonthly, or quarterly installments with the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 15 years and 32 days from such date; except that if the principal and accrued interest of a loan are at least 80% guaranteed by the Farmers Home Administration under 7 CFR 1980.301, *et. seq.* the loan is repayable on terms acceptable to the guaranteeing agency * * *

* * * * * *

4. Paragraph 561.15(b) is revised to read as follows:

§ 561.15 Scheduled items.

* * * * *

(b) 20 percent of slow loans which are insured or guaranteed, or secured by a first lien on low-rent housing; 20 percent of guaranteed obligations upon which one or more interest payments due have not been paid; and 100% of the unguaranteed portion of slow loans which are Farmers Home Administration Rural Housing Program loans under 7 CFR 1980.301 *et. seq.*

* * * * *

5. In paragraph 561.17(a), the penultimate "and" is removed and immediately before the period at the end the following is inserted: ", and less the guaranteed portion of loans which are Farmers Home Administration Rural Housing Program loans under 7 CFR 1980.301 *et. seq.*, to read as follows:

§ 561.17 Specified assets.

(a) The term "specified assets" means the total assets of an insured institution less the institution's assets which qualify as liquid assets, as defined in paragraph (g) of § 523.10 of this chapter, or would so qualify except for the maturity limitations contained in such paragraph or the pledged status of such assets, other obligations fully guaranteed as to principal and interest by the United States (including such obligations held subject to a repurchase agreement) and accrued interest thereon, obligations of, or participations or other instruments fully guaranteed as to principal and interest by, the Federal Home Loan Mortgage Corporation,

Federal Home Loan Bank stock, prepaid Federal Savings and Loan Insurance Corporation premiums, loans secured by obligations referred to in subparagraphs (2) and (3) of paragraph (g) of § 523.10 of this chapter without regard to the maturities of such obligations, loans in process, loans on the security of the institution's checking and savings accounts, investments (other than in capital stock) in other institutions insured by the Federal Savings and Loan Insurance Corporation and in institutions insured by the Federal Deposit Insurance Corporation, less 80 percent of the institution's actual investments in insured loans, guaranteed loans, loans which are secured by a first lien on low-rent housing, and guaranteed obligations, and less the guaranteed portion of loans which are Farmers Home Administration Rural Housing Program loans under 7 CFR 1980.301 *et. seq.*

* * * * *

6. In paragraph 563.9–7(b) immediately before the period at the end the following is inserted: ", or to investment in Farmers Home Administration Rural Housing Program guaranteed loans complying with § 545.6–27 of this Chapter", so that it reads as follows:

§ 563.9–7 Loans in excess of 90 percent of value.

* * * * *

(b) This section does not apply to single-family-dwelling or two-family-dwelling loans to facilitate the sale of real estate owned described in § 561.15(d) of this subchapter, or to investment in Farmers Home Administration Rural Housing Program guaranteed loans complying with § 545.6–27 of this Chapter.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79–16415 Filed 5–24–79; 8:45 am]

BILLING CODE 6720–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration, by its Federal Farm Credit Board, took final action to amend its general rules dealing with the loan policies and operations of the institutions of the Farm Credit System. The amendments (1) require the banks for cooperatives to submit for FCA approval any modifications or supplements to existing loan participation agreements which affect such things as capitalization of loans, interest rates, or risk sharing, and (2) provide the banks for cooperatives greater flexibility to determine applicable loan servicing policies for participation loans.

EFFECTIVE DATE: April 4, 1979.

FOR FURTHER INFORMATION CONTACT: Sanford A. Belden, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza E., S.W., Washington, DC 20578 (202–755–2181).

SUPPLEMENTARY INFORMATION: By notice published in the **Federal Register** on December 26, 1978 (43 FR 60173), interested persons were afforded the opportunity to file written comments or suggestions on these amendments. No substantive comments were received. The proposed amendments were adopted by the Federal Farm Credit Board as written.

The amendments (1) assure that the terms of a loan participation agreement will not be materially changed through subsequent modifications or agreements without FCA approval, and (2) allow the banks for cooperatives to provide in a participation agreement for loan servicing policies, other than the policies currently provided for in the regulations, to be applicable to participation loans.

Chapter VI of Title 12 of the Code of Federal Regulations is amended by revising §§ 614.4334 and 614.4510 (c) as follows:

Part 614—Loan Policies and Operations

§ 614.4334 Banks for cooperatives.

A district bank for cooperatives shall first offer to the Central Bank for Cooperatives a participation in loans to a borrower when such loans exceed the lending limit of the bank. With the concurrence of the Central Bank, participations in loans in excess of a bank's lending limit may also be offered initially to other banks for cooperatives, then to commercial banks or other financial institutions. A bank for cooperatives may offer a paticipation to other banks for cooperatives in loans which are less than its lending limit; however, when total loans to such borrowers exceed the lending limit of the bank, further loans must first be offered to the Central Bank. Loans in excess of the lending limit established by the Farm Credit Administration for the banks for cooperatives on a consolidated basis may be made only when such excess amounts are sold as participations to a commercial bank or other financial institution. The form and terms of each participation agreement shall be subject to Farm Credit Adminstration approval. In addition, supplemental agreements and modifications to existing agreements which directly affect capitalization, interest, and other items identified by the Farm Credit Administration shall be subject to Farm Credit Administration approval. Pro rata loss sharing arrangements which extend loan risk beyond established lending limits shall also require Farm Credit Administration approval. The names of participants, amounts, and dates shall not require approval.

§ 614.4510 General.

* * * * *

(c) The loan servicing policies of a bank for cooperatives shall be applicable to loans made by it individually and, except as otherwise provided for in a formal participation agreement or any agreement arising pursuant thereto, to loans in which other lenders, including other banks for cooperatives, participate.

(Secs. 5.9, 5.12, 5.18, 85 Stat. 619, 620, 621).

C. K. Cardwell,

Acting Governor, Farm Credit Administration.

[FR Doc. 79–16393 Filed 5–24–79; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

15 CFR Part 368

Update of Regulations on U.S. Imports

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final Rule.

SUMMARY: This rule amends 15 CFR Part 368 by making the necessary changes to conform the CFR and the Department's *Export Administration Regulations.* Revisions in form numbers and changes in organizational titles due to reorganizations account for the majority of changes made to this part.

EFFECTIVE DATE: May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Dale Snell, Chief, Management Services Branch, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. 202–377–2440).

SUPPLEMENTARY INFORMATION: It has been determined that this regulatory revision is "not significant" within the meaning of Department of Commerce Administrative Order 218–7 (44 FR 2082 *et seq.*, January 9, 1979) and Industry and Trade Administration Administrative Instructions 1–6 (44 FR 2093 *et seq.*, January 9, 1979), which implement Executive Order 12044 (43 FR 12661 *et seq.*, March 23, 1978), "Improving Government Regulations". Accordingly, the Export Administration Regulations (15 CFR Part 368 *et seq.*) is amended as follows:

§ 368.1 Effect of regulation.

(a) *Representations and Commodities Covered.* (1) *General.* The United States and a number of other countries have undertaken to increase the effectiveness of their respective controls over international trade in strategic commodities by means of an import certificate/delivery verification (IC/DV) procedure. This procedure provides that, where required by the exporting country with respect to a specific transaction, the importer certifies to the government of the importing country that he will import specific commodities into the economy of that country and will not reexport such commodities except in accordance with the export control regulations of that country. The government of the importing country, in turn, certifies that such representations have been made.

(2) *Commodities covered and administering U.S. Agencies.* (i) *Office of Export Administration.* The Office of Export Administration will receive from importers in the United States the representations regarding the intended destination of commodities and will provide a certification that such representations have been made (*a*) for commodities under the export control jurisdiction of the Office of Export Administration that are identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (§ 399.1); (*b*) by agreement with the Nuclear Regulatory Commission or the Department of Energy for nuclear equipment and materials under the export licensing jurisdiction of these agencies (see § 370.10(e)); and (*c*) by agreement with the U.S. Treasury Department for commodities on the U.S. Munitions List (22 C.F.R. Part 121) that do not appear on the more limited U.S. Munitions Import List (26 C.F.R. Part 180).

(ii) *Treasury Department.* The U.S. Treasury Department, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20224, administers similar procedures with respect to arms, ammunition, and implements of war as enumerated in the U.S. Munitions Import List (26 C.F.R. Part 180).

(iii) *State Department.* The U.S. Department of State, Office of Munitions Control, Washington, D.C. 20520, administers similar procedures with respect to *triangular* transactions involving any part of the U.S. Munitions List. (See § 368.2(a)(8) below for a description of triangular Import Certificates issued by the U.S. Department of Commerce.)

(b) *Exports.* Comparable procedures with respect to exports from the United States are described in Part 375.

§ 368.2 International import certificate.

(a) *Procedure.* (1) *General.* Where a person in the United States purchases or expects to receive commodities from one of the foreign countries participating in the IC/DV procedure and is required by the government of the exporting country to furnish an Import Certificate, he shall use the Form ITA–645P/ATF–4522/DSP–53, International Import Certificate and accompanying Form DIB–646, International Import Certificate Cross-Reference Card, showing his name and address. All items on the International Import Certificate are required to be completed. The forms shall be sent to the Office of Export Administration, or the nearest District Office listed in § 368.2(a)(2), in triplicate for commodities on the Commodity Control List; and in quadruplicate for atomic energy commodities. Representations by the importer that the commodities will be entered into the United States do not preclude the temporary unloading of the commodities in a foreign trade zone for subsequent entry into the economy of the United States.

(2) *Where to file.* Except as noted in paragraphs (4) and (5) below, all requests for certification and validation of International Import Certificates or requests to amend such Certificates may be filed with the Office of Export Administration (Room 1617M), U.S. Department of Commerce, Washington, D.C. 20230, or with any of the following District Offices of the U.S. Department of Commerce:

Boston	New Orleans
Buffalo	New York
Chicago	Philadelphia
Cincinnati	Phoenix
Cleveland	Pittsburgh
Dallas	Portland, Oreg.
Detroit	St. Louis
Houston	San Francisco
Los Angeles	Savannah
Miami	Seattle

(3) *Presentation and validation.* The International Import Certificate may be presented for validation either in person or by mail. The validated form will be returned to the U.S. importer and dispatched by him to the foreign exporter or otherwise disposed of in accordance with the regulations of the exporting country.

(4) *Foreign excess property.* Where foreign excess property imported into the United States is involved, a request for certification and validation of an International Import Certificate shall be submitted in triplicate directly to the Office of Export Administration. However, if a request for such certification of Form ITA–645P is made at the same time as an Application for Foreign Excess Property Import Determination, Form DIB–302P, both forms may be sent together to the Foreign Excess Property Officer (Room 6892), Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, who will refer the Form ITA–645P to the Office of Export Administration for action. A request for an International Import Certificate for foreign excess property requires the following special information:

(i) *Exporter* (Item 2). Name and address of the person or firm in the exporting country who is handling the transaction for the U.S. importer, or the importer's name and the name and address of the U.S. military disposal installation from which the commodities were obtained; and

(ii) *Description of goods* (Item 3). A complete description of the commodity(ies) being imported, as well as the Contract Number and lot numbers, and the name and address of the U.S. military disposal installation if this has not been entered in Item 2.

(iii) *Approval code.* When approved, the International Import Certificate number covering the foreign excess property will be suffixed by the code "USMS."

(5) *Certain U.S. Munitions List Commodities.* For commodities on the U.S. Munitions List that do not appear on the more limited U.S. Munitions Import List, a request for certification and validation of an International Import Certificate shall be submitted, in triplicate, directly to the Office of Export Administration.

(6) *Validity period.* (i) The International Import Certificate must be submitted to the foreign government within six months from the date of certification by the U.S. Department of Commerce. The expiration of this six-month period in no way affects the responsibility of the importer to fulfill the commitments made in obtaining the Certificate.

(ii) Where the validity period of a Certificate has expired before its presentation to the foreign government and an extension is desired, the U.S. importer should apply for a new Certificate. (See § 368.2(a)(12)(ii) below for unused Certificates.)

(7) *Statements and representations.* All statements and representations made in an International Import Certificate, and in any amendment thereto, shall be deemed to be continuing in nature until the transaction described in the Certificate is completed and the commodities are delivered into the economy of the importing country. Any change of fact or intention in regard to the transaction set forth in the Certificate shall be promptly disclosed to the Office of Export Administration by the U.S. importer by presentation of an amended Certificate that sets forth all the changes and is accompanied by the original Certificate bearing the certification of the Office of Export Administration. If the original Certificate has been transmitted by the U.S. importer to his foreign exporter, the importer shall, wherever possible, obtain the original Certificate prior to applying for an amendment. Where the original Certificate is unobtainable because the foreign exporter has surrendered it to his government, or for any other valid reason, the importer shall submit a written statement giving his reasons for failure to submit the original Certificate.

(8) *Triangular transaction* (commodities not entering the United States). In accordance with international practice, the government office issuing the International Import Certificate will, upon request, stamp the Certificate with a triangular symbol as notification to the government of the exporting country that the importer is uncertain whether the commodities will be imported into the United States or that he knows the commodities will not be imported into the United States, but that, in any case, the commodities will not be delivered to any other destination except in accordance with the U.S. Export Administration Regulations. A triangular Certificate will not be issued covering foreign excess property sold abroad by the U.S. Department of Defense. The triangular symbol on a Certificate is not, in and of itself, an approval by the Office of Export Administration to transfer or sell commodities to a foreign consignee. (See § 368.2(a)(9) below for method of obtaining such approval.)

(9) *Approval of shipment, transfer, or sale of commodities to a foreign consignee before delivery under International Import Certificate.* (i) The written approval of the Office of Export Administration is required *before* commodities covered by a U.S. International Import Certificate, whether or not bearing a triangle, may be shipped to a destination other than the United States or Canada or sold to a foreign purchaser, and *before* title to or possession of such commodities may be transferred to a foreign transferee.[1] This requirement does not apply *after* the commodities have been delivered in accordance with the undertaking set forth in the Certificate.

(ii) Where prior approval is required, a letter requesting authorization to release the shipment shall be submitted to the Office of Export Administration (Room 1617M), U.S. Department of Commerce, Washington, D.C. 20230. The letter shall contain the International Import Certificate number; date issued; location of the issuing office; names,

[1] The attention of U.S. purchasers is directed to the Transaction Control Regulations of the U.S. Treasury Department (Title 31 of the Code of Federal Regulations, sections 505.01 et seq.) These Regulations prohibit persons within the United States, and subsidiaries and branches of U.S. firms located abroad, from purchasing or selling, or arranging the purchase or sale, without a Treasury Department license, of certain strategic merchandise located in any foreign country when the transaction involves a shipment of such merchandise from any foreign country to Country Group Q, W, Y, or Z (except Cuba, for which the Cuban Assets Control Regulations mentioned below restrict shipments to Cuba). The merchandise subject to this Regulation is identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (§ 399.1) or is of a type, the unauthorized exportation of which from the United States is prohibited by regulations issued under section 414 of the Mutual Security Act of 1954, as amended (68 Stat. 848, 22 U.S.C. 1934), relating to arms, ammunition, and implements of war or under Sections 53(a), 62, 82(c), 103 and 104 of the Atomic Energy Act of 1954, as amended (68 Stat. 930, 932, 935, 936, 937; 42 U.S.C. 2073 (a), 2092, 2112(c), 2133, 2134), relating to atomic energy facilities or materials for use for non-military purposes. A Treasury Department general license (§ 505.31) authorizes transactions otherwise prohibited by the Regulations with respect to shipments of such merchandise from COCOM member countries to countries other than North Korea, Vietnam, Cambodia, and Cuba, provided the shipment has been licensed by the exporting country. The People's Republic of China was included in this general license by amendment dated February 16, 1972.

The attention of purchasers is also directed to the Foreign Assets Control Regulations and the Cuban Assets Control Regulations of the U.S. Treasury Department (Title 31 of the Code of Federal Regulations, sections 500.101 et seq. and 515.101 et seq.). These regulations prohibit persons subject to the jurisdiction of the United States from engaging in any unlicensed transactions with North Korea, Vietnam, Cambodia, Cuba, or nationals thereof, or in any unlicensed transactions involving property in which North Korea, or nationals thereof, have or have had any interest, direct or indirect, since December 17, 1950; in which Vietnam or nationals thereof, have or have had any interest, direct or indirect, since May 5, 1964; in which Cuba or nationals thereof, have or have had any interest, direct or indirect, since July 8, 1963; in which Cambodia or nationals thereof, have or have had any interest, direct or indirect, since April 17, 1975; or in which Vietnam or nationals thereof, have or have had any interest, direct or indirect, after noon, E.D.T. April 30, 1975. These regulations also prohibit persons subject to the jurisdiction of the United States from engaging in any unlicensed transactions with respect to merchandise outside the United States if such merchandise is of North Korean, Vietnamese, Cambodian, or Cuban origin. Similiar restrictions in the Foreign Assets Control Regulations formerly in effect with respect to the People's Republic of China and nationals thereof have been removed except with respect to transactions in strategic merchandise of U.S.-owned and controlled foreign firms, and U.S. citizens residing abroad. (See above for description of general license.) It should be noted that assets in the United States of the People's Republic of China and its nationals which were blocked as of May 7, 1971, remain blocked, notwithstanding the above-mentioned changes in the Treasury's Foreign Assets Control and Transaction Control Regulations.

A Statement of Licensing Policy in the Cuban Assets Control Regulations provides that licenses are issued for certain trade transactions with Cuba by U.S.-owned or controlled firms in third countries where the law or policy of the country requires or favors trade with Cuba, except that some classes or transactions will not be authorized. The latter include transactions involving strategic commodities; U.S.-origin technical data, (other than maintenance data); U.S.-origin parts and components, unless authorized by the Commerce Department; the reexportation to Cuba of any U.S.-origin spares, unless authorized by Commerce; U.S.-dollar accounts; or any financing or extension of credit, except on short-term conditions normal and appropriate for the commodity involved.

The Rhodesian Sanctions Regulations of the U.S. Treasury Department (Title 31 of the Code of Federal Regulations, sections 530.101 et seq.) also contain restrictions of interest to U.S. purchasers. These Regulations prohibit, unless licensed, the importation of merchandise of Rhodesian origin, transfers of property which involve merchandise outside the United States that is of Rhodesian origin or which is destined to Southern Rhodesia or to or for the account of business nationals thereof; other transfers of property to or on behalf of or for the benefit of any person in Rhodesia; and the importation of ferrochrome produced in any country form chromium ore or concentrates of Rhodesian origin. U.S.-owned or controlled foreign firms (except Rhodesian firms) are not subject to the Regulations. However, this exemption does not extend to U.S. citizens or residents who are officers or directors of foreign firms.

A general license in the Rhodesian Sanctions Regulations authorizes importations of materials listed under the Strategic and Critical Materials Stockpiling Act so long as importation of such materials from any communist country is not prohibited.

Any questions concerning the Transaction Control Regulations, the Foreign Assets Control Regulations, the Cuban Assets Control Regulations, or the Rhodesian Sanctions Regulations should be submitted to the Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, D.C. 20220.

addresses, and identities of all parties to the complete transaction; and the quantity, dollar value, and description of the commodity. The letter shall be accompanied by an International Import Certificate, and ultimate consignee statement, or other documentation required by the Export Administration Regulations for the country of ultimate destination, as provided for license applications in §§ 375.1, 375.2, 375.3, 375.4 and 375.5. Where none of these sections applies to the transaction, the letter shall include the intended end-use of the commodities.

(iii) Where the letter request is approved and is supported by a foreign import certificate (other than a Swiss Blue Import Certificate), no further approval from the Office of Export Administration is required for the purchaser or transferee to resell or again transfer the commodities. However, where the Office of Export Administration approves a request that was *not* supported by a foreign import certificate, the person to whom approval is granted is required to inform the purchaser or transferee, in writing, that the commodities are to be shipped to the approved destination *only* and that not other disposition of the commodities is permitted without the approval of the Office of Export Administration. (Authority to further resell or transfer the commodities does not relieve any person from complying with foreign laws. See § 373.1(b).)

(iv) If the transaction is approved, a validated letter of approval will be sent to the U.S. purchaser for retention in his records. Where a Delivery Verification Certificate or other official government confirmation of delivery is required, the letter will so indicate.

(v) If the commodities covered by an International Import Certificate have been imported into a destination other than the United States and the foreign exporter of the commodities requests a Delivery Verification Certificate, the person who obtained the International Import Certificate shall obtain a Delivery Verification Certificate from the person to whom the commodities were delivered in the actual importing country. (If a Delivery Verification Certificate is unobtainable, other official government confirmation of delivery shall be obtained.) The Delivery Verification Certificate or other official government confirmation of delivery shall be submitted to the Office of Export Administration together with an explanatory letter giving the Import Certificate number, date issued, and location of issuing office. The Office of Export Administration will then issue a Delivery Compliance Notice, Form DIB–6008, in two copies, the original of which shall be forwarded to the country of origin in order to serve as evidence to the exporting country that the requirements of the U.S. Government have been satisfied with respect to delivery of the commodities.

(10) *Delivery, sale, or transfer of commodities to another U.S. purchaser.* (i) Commodities covered by an International Import Certificate may not be sold, and title to or possession of such commodities may not be transferred, to another U.S. purchaser or transferee before the commodities are delivered to the United States (or to an approved foreign destination, as provided by § 368.2(a)(8) above), except in accordance with the provisions described in § 368.2(a)(10)(ii) below. The provisions of § 368.2(a)(10) do not apply *after* the commodities have been delivered in accordance with the undertaking set forth in the Certificate.

(ii) Resale or transfer to another U.S. purchaser or transferee requires the prior approval of the Office of Export Administration *only* in cases where the buyer or transferee is listed in Supplement No. 1 to Part 388, Table of Denial and Probation Orders. However, the person who obtained the International Import Certificate is required to notify the Office of Export Administration of any change in facts or intentions relating to the transaction, and in all cases that person is held responsible for the delivery of the commodities in accordance with the Export Administration Regulations. The seller or transferor is therefore required in all cases to secure, prior to sale or transfer, and to retain in his files for two years, written acceptance by the purchaser or transferee of [*a*] all obligations undertaken by, and imposed under the Export Administration Regulations, upon the holder of the Certificate; and [*b*] an undertaking that all subsequent sales or transfers will be made subject to the same conditions.

(iii) The responsibility of the International Import Certificate holder for obtaining a Delivery Verification Certificate also applies to those cases where the commodities are resold to a U.S. purchaser. This is explained fully in § 368.3(a)(1) below.

(11) *Reexport or transhipment of commodities after delivery to United States.* Commodities imported into the United States under the provisions of a U.S. International Import Certificate may not be reexported to any destination under the provisions of General License *GIT* (see § 371.4). However, all other provisions of the Export Administration Regulations applicable to commodities of domestic origin shall apply to the reexport of commodities of foreign origin shipped to the United States under a U.S. International Import Certificate.

(12) *Lost, destroyed, or unused International Import Certificates.* (i) *Lost or destroyed Certificates.* Where an International Import Certificate is lost or destroyed, a duplicate copy may be obtained by the person in the United States who executed the original Certificate by submitting to any of the offices listed in § 368.2(a)(2) new Forms ITA–645P and DIB–646 in the same way as an original request, except that the forms shall be accompanied by a letter detailing the circumstances under which the original International Import Certificate was lost or destroyed and certifying:

(*a*) That the original International Import Certificate No. ———, dated ———, issued to (*name and address of U.S. importer*) for import from (*foreign exporter's name and address*) has been lost or destroyed; and

(*b*) That if the original International Import Certificate is found, the applicant agrees to return the original or duplicate of the Certificate to the Office of Export Administration.

(ii) *Unused Certificates.* Where the transaction will not be completed and the International Import Certificate will not be used, the Certificate shall be returned for cancellation to the Office of Export Administration (Room 1617M), U.S. Department of Commerce, Washington, D.C. 20230.

§ 368.3 Delivery verification certificate.

(a) *Requirements.* (1) *General.* (i) U.S. importers may be requested by their foreign suppliers to furnish them with a certified U.S. Delivery Verification Certificate, Form DIB–647P covering commodities imported into the United States. These requests are made by foreign governments to assure that strategic commodities shipped to the United States are not diverted from their intended destination. In these instances, the issuance of an export license by the foreign country is conditioned upon the subsequent receipt of a Delivery Verification Certificate from the U.S. importer.

(ii) The responsibility of a person or firm executing a U.S. International Import Certificate for providing the foreign exporter with confirmation of delivery of the commodities includes instances where the commodities are resold or transferred to another U.S. person or firm prior to actual delivery to the United States or to an approved

foreign destination. The person who executed the Certificate shall secure in writing from the U.S. purchaser or transferee, and retain in his files for two years, (*a*) acceptance of the obligation to provide him with either the Delivery Verification Cerificate (or other official government confirmation of delivery if a Delivery Verification Certificate is unobtainable) or assurance that this document was submitted to the Office of Export Administration; and (*b*) an undertaking that each succeeding U.S. transferee or purchaser will assume the same obligation or assurance. In each case the seller or transferor shall transmit to the U.S. purchaser or transferee the identification number of the International Import Certificate covering the export from the foreign country and request that they pass it on to any other U.S. purchasers or transferees.

(iii) Failure of the U.S. importer to comply with his foreign exporter's request for a Delivery Verification Certificate will result in the exporter's inability to fulfill his obligation to his government and may result in his being denied further export licenses and/or subjected to other penalties. Obviously, this would prevent the U.S. importer from participating in further import transactions with that foreign exporter. It also may result in the U.S. importer being prevented from trading with the exporting country requesting the Delivery Verification Cerificate.

(2) *Completion and disposition of Delivery Verification Certificates.* A U.S. importer who is required by the foreign government to obtain Form DIB–647P shall present the certificate, in duplicate, to a U.S. customs office. *A Delivery Verification Certificate will be certified by a U.S. customs office only where the import is made under a warehouse or consumption entry.* Form DIB–647P shall be completed by the U.S. importer in all respects *except* as to type of customs entry (warehouse or consumption), entry number, date of entry, and the certification signature and date (all contained in the "For Official Use Only" space at the bottom of the form). The commodities shall be described on the form in the same terms as those shown on the related International Import Certificate. The importer shall dispatch the original of the certified Delivery Verification Certificate to the foreign exporter or otherwise dispose of it in accordance with the instructions of the exporting country. The duplicate copy will be retained by the U.S. customs office. Form DIB–647P may be obtained from sources listed in § 370.12 and from U.S. customs offices.

(3) *Issuance of U.S. Delivery Compliance Notice in lieu of Delivery Verification Certificate.* Where a U.S. party is required to provide a Delivery Verification Certificate but does not wish to disclose the name of his customer to the foreign supplier (e.g., in the event that the commodities are resold or transferred to another person or firm before the commodities enter the United States), he may submit an authenticated Form DIP–647P together with an explanatory letter requesting a Delivery Compliance Notice, to the Office of Export Administration (Room 1617M), U.S. Department of Commerce, Washington, D.C. 20230. The Office of Export Administration will then provide the U.S. party with an original and a copy of an authenticated Delivery Compliance Notice signifying that the commodities were imported into the United States and that a satisfactory U.S. Delivery Verification Certificate has been submitted to the Office of Export Administration. The U.S. party shall forward the original to the foreign supplier for submission to the foreign government and retain the copy in its files.

(4) *Lost or destroyed Delivery Verification Certificate.* When a Delivery Verification Cerificate is lost or destroyed, the U.S. importer shall submit a letter to the Office of Export Administration (Room 1617M), U.S. Department of Commerce, Washington, D.C. 20230, certifying:

(i) That the original Delivery Verification Certificate has been lost or destroyed;

(ii) The circumstances under which it was lost or destroyed;

(iii) The type of customs entry (warehouse or consumption), entry number, and date of entry; and

(iv) The number and date of the related International Import Certificate.

The Office of Export Administration will, in applicable cases, notify the exporting government that a Delivery Verification Certificate has been issued.

§ 368.4 Penalties and sanctions for violations.

(a) Administrative. The enforcement provisions of Part 387 and § 390.2(a), and the sanctions set forth in § 388.1(a) of the Export Administration Regulations shall apply to transactions involving imports into the United States covered by this Part 368 and to both foreign and U.S. parties involved in a violation of this Part 368. Any provisions of Part 387 and § 390.2(a) which, by their terms, relate to "exports" or "exports from the United States" are also deemed to apply and extend to imports into the United States, applications for International Import Certificates (Form ITA–645P presented to U.S. Department of Commerce for certification), International Import Certificates, and Delivery Verification Certificates, dealt with in this Part 368. (Applications for International Import Certificates and Delivery Verification Certificates, as specified in this Part 368, are included within the definition of export control documents set forth in § 370.2(a)(17) of the Export Administration Regulations.)

(b) Criminal. The False Statements Act makes it a criminal offense to make a willfully false statement or conceal a material fact, or knowingly use a document containing a false statement, in any matter within the jurisdiction of a U.S. department or agency. Maximum penalties under this provision are $10,000 fine or imprisonment for 5 years, or both. In addition, a violation of the Export Administration Act or any regulation, order, or license issued thereunder is punishable by a fine of not more than $25,000 or by imprisonment for not more than one year, or both (also see § 387.1(a)).

Authority: Sections 3 and 4, Pub. L. 91–184, 83 Stat. 841, 842 (50 U.S.C. App. 2402, 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10–3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45–1, dated December 4, 1977, 42 FR 64716 (1977).

Stanley J. Marcuss,

Deputy Assistant Secretary.

[FR Doc. 79–16509 Filed 5–24–79; 8:45 am]

BILLING CODE 3510–25–M

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15 CFR Part 369

Restrictive Trade Practice or Boycotts; Disclosure of Information

AGENCY: Industry and Trade Administration, Department of Commerce.

ACTION: Clarification and amendments to final rules.

SUMMARY: This document clarifies and amends the reporting requirements of § 369.6(c) (1) and (2) of the final regulations on Restrictive Trade Practices or Boycotts, published in the **Federal Register** on July 5, 1978 (43 FR 29078) by specifying what information reporting entities may withhold from the copies of documents accompanying reports of boycott requests that will be made available for public inspection and copying. In addition, it clarifies who

has the responsibility for making permissible deletions of information from these documents.

EFFECTIVE DATE: Retroactively to August 1, 1978, except as stated below.

FOR ADDITIONAL INFORMATION CONTACT: Lorna Ramsay, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone 202-377-2448.

SUPPLEMENTARY INFORMATION: The Department of Commerce issued final regulations to implement the reporting requirements of Title II of the Export Administration Amendments of 1977 (Pub. L. 95-52), published in the **Federal Register** on July 5, 1978 (43 FR 29078). The Department has determined that there is some confusion on the part of the public with respect to whether certain information, generally regarded by the business community as confidential and not required by the Report of Request for Restrictive Trade Practice or Boycott, will be publicly disclosed when such information appears in the document(s) accompanying the report form. In addition, there is uncertainty over who has the responsibility for making permissible deletions of information from the public inspection copy of the accompanying document(s).

The Department has, therefore, decided that clarification of and amendments to the reporting requirements of § 369.6(c) (1) and (2) of the regulations are appropriate.

Clarification

I. *Deletion of Confidential Information.*—Prior to August 1, 1978, information related to the foreign consignee was required to be contained in the report of boycott request. The reporting regulations then in effect specifically permitted deletion of this information from any document(s) that accompanied the report form. However, the reporting requirements in effect since August 1, 1978 do not provide that information related to the foreign consignee be contained in the report form. The only proprietary information now required to be contained in the report relates to the description of the commodities or technical data involved as well as their quantity and value. See Item #11 of the report form. This information may be withheld from public disclosure and deleted from the public inspection copy of the document(s) accompanying the report. See § 369.6(c)(1) and (2).

It is the Department's position that information considered confidential by reporting entities and not required to be contained in the report (e.g., information related to the foreign consignee) may also be withheld from public disclosure by the reporting entity's deletion of such information from the public inspection copy of the document(s) accompanying the report form. Accordingly, § 369.6(c)(2) is amended to reflect this position.

This amendment to permit deletion of confidential information is effective retroactively to August 1, 1978 to coincide with the effective date of Section 369.6, and applies to reports of boycott requests received by United States persons as defined in § 369.1(b), after July 31, 1978.

II. *Deletion of Required Proprietary Information.*—It has come to the Department's attention that some reporting entities are not properly editing reports submitted to the Department. They are not deleting from the public inspection copy of documents accompanying the report form the proprietary information which they may delete under § 369.6(c)(2). The information in question relates to the quantity, description or value of any articles, materials, and supplies, including related technical data and other information. Such deletion is permitted when the reporting entity has made a request for confidentiality on the report form (Item #10). When reporting entities have failed to make the deletions, the Department has done it for them in order to withhold the proprietary information from public disclosure.

To eliminate any uncertainty over who has the responsibility for deleting the specified proprietary information from the public inspection copy of documents accompanying the report form, and to facilitate the fair and efficient administration of the reporting requirements by the Department, § 369.6(c)(1) is amended to provide an exception to the Department's undertaking not to disclose publicly such information. This exception will apply only when the reporting entity has made a request for confidentiality on the report form, but has failed to edit the public inspection copy of accompanying documents accodingly, as provided in § 369.6(c)(2).

Section 369.6(c)(2) is amended to provide that the public inspection copy of documents accompanying the report form will be made available to the public as submitted whether or not it has been appropriately edited by the reporting entity. This applies to reports and accompanying documents received by the Department on or after July 1, 1979. The purpose of this delay is to give notice and opportunity to reporting entities to adjust their reporting procedures, and applies only to the deletion of the specified proprietary information.

To emphasize that it is the *reporting entity* and *not* the Department which is responsible for deleting the proprietary or other confidential information from the public inspection copy of documents submitted with the report, § 369.6(c)(2) is further amended by substituting the word "must" for the word "should" as it appears twice in the first sentence of the paragraph.

Amendments to Final Rules

Accordingly, § 369.6(c) of the final regulations on Restrictive Trade Practices or Boycotts is amended by revising paragraphs (1) and (2) to read as follows:

§ 369.6 Reporting requirements.

* * * * *

(c) Disclosure of information.—(1) Reports of requests received on or after October 7, 1976, as well as any accompanying documents filed with the reports, have been and will continue to be made available for public inspection and copying, except for certain proprietary information. With respect to reports of requests received on or after August 1, 1978, if the person making the report certifies that a United States person to whom the report relates would be placed at a competitive disadvantage because of the disclosure of information regarding the quantity, description, or value of any articles, materials, and supplies, including related technical data and other information, whether contained in a report or in any accompanying document(s), such information will not be publicly disclosed except upon failure by the reporting entity to edit the public inspection copy of the accompanying document(s) as provided by § 369.6(c)(2), unless the Secretary of Commerce determines that the disclosure would not place the United States person involved at a competitive disadvantage or that it would be contrary to the national interest to withhold the information. In the event the Secretary of Commerce considers making such a determination concerning competitive disadvantage, appropriate notice and an opportunity for comment will be given before any such proprietary information is publicly disclosed. In no event will requests of reporting persons to withhold any information contained in the report other than that specified above be honored.

(2) Because a copy of any document(s) accompanying the report will be made available for public inspection and copying, one copy must be submitted intact and another copy must be edited by the reporting entity to delete the same information which it certified in the report would place a United States person at a competitive disadvantage if disclosed. In addition, the reporting entity may delete from this copy information that is considered confidential and that is not required to be contained in the report (e.g., information related to foreign consignee). This copy should be conspicuously marked with the legend "Public Inspection Copy." With respect to documents accompanying reports received by the Department on or after July 1, 1979, the public inspection copy will be made available as submitted whether or not it has been appropriately edited by the reporting entity as provided by this paragraph.

Dated: May 22, 1979.

Stanley J. Marcuss,

Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 79-16416 Filed 5-24-79; 8:45 am]

BILLING CODE 3510-25-M

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15 CFR Part 377

Short Supply Controls and Monitoring; Non-Substantive Revisions in Export Administration Regulations

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule amends 15 CFR Part 377 by making the necessary editorial changes to conform the CFR with the Department's Export Administration Regulations. These changes eliminate obsolete material, revise form numbers, update paragraph headings and numbers, and make other non-substantive changes.

EFFECTIVE DATE: May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Dale F. Snell, Jr., Chief, Management Services Branch, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. 202-377-2440).

SUPPLEMENTARY INFORMATION: It has been determined that this regulatory revision is "not significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082 *et seq.*, January 9, 1979) and Industry and Trade Administration Administrative Instructions 1-6 (44 FR 2093 *et seq.*, January 9, 1979), which implement Executive Order 12044 (43 FR 12661 *et seq.*, March 23, 1978), "Improving Government Regulations".

Accordingly, the Export Administration Regulations (15 CFR Part 377 *et seq.*) are amended as follows:

§ 377.2 [Amended]

1. Section 377.2(c)(1), the first sentence is amended to read " * * * an exporter shall submit Form DIB-669P, Past Participation Statement, on which the exporter shall list his exports of the commodity(ies) during the specified base period."

§ 377.2 [Amended]

2. Section 377.2(e) is amended by replacing "are listed in a Supplement" in the second sentence with "will be listed in a Supplement."

§ 377.4 [Amended]

3. Section 377.4(i)(1) the first sentence is amended by replacing "Form DIB-622P" with "Form ITA-622P."

§ 377.6 [Amended]

4. Section 377.6(d)(12), the second set of lower case Roman numerals should be replaced by A, B, C, and D.

§ 377.6 [Amended]

5. Section 377.6(e)(1), the first sentence is amended by replacing "Form DIB-622P" with "Form ITA-622P."

§ 377.15 [Amended]

6. Section 377.15(g) is amended by inserting a heading: "Other Applicable Provisions" following "(g)."

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

Stanley J. Marcuss,

Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 79-16508 Filed 5-24-79; 8:45 am]

BILLING CODE 3510-25-M

FEDERAL TRADE COMMISSION

16 CFR Part 14

Assigning Model Years to Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final Rule; Revision of Enforcement Policy Statement.

SUMMARY: The Federal Trade Commission has revised its Enforcement Policy to guide manufacturers and distributors in assigning model years to motor vehicles. Vehicles covered include all motor vehicles intended for use upon public highways including truck chassis and incomplete vehicles used in the construction of motor homes. The revision effectively requires manufacturers to assign model years to vehicles shipped to all states except Hawaii. It also requires manufacturers to establish written standards and to follow Commission guidelines for assigning model years. It also prohibits dealers from representing that vehicles may be titled or registered by any model years other than the model years indicated by the manufacturers. The revision was made after an inquiry of state motor vehicle administrators revealed that some dealers and customers of heavy duty trucks were filling in model years on applications for title or registration when manufacturers did not identify the vehicles by model year. These practices, it was felt, like other practices prohibited by the original enforcement policy, could mislead subsequent purchasers as to date of manufacture and hinder market forces that normally lead to price cuts of unsold vehicles at the end of model years.

DATE: Effective date: May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Paul Sailer, Attorney, Division of Professional Services, Federal Trade Commission, Washington, D.C. 20580 (202) 724-1037.

SUPPLEMENTARY INFORMATION: This policy revises the enforcement policy which was issued by the Commission on June 3, 1975, 40 FR 23845.

16 CFR 14.11 is amended to read as follows:

§ 14.11 Assigning model years to motor vehicles.

(a) The Federal Trade Commission has been concerned about misleading practices some manufacturers have used to identify the model years of heavy duty trucks and other vehicles whose features change little from year to year.

(b) Two practices have been of particular concern:

(1) some manufacturers have changed the identification papers of unsold vehicles at the end of one model year to show that the vehicles are of the next model year;

(2) some manufacturers have let their branches or dealers base the model year on the date of sale to retail purchasers.

(c) These practices may mislead buyers as to the date of manufacture. They may also hinder market forces that normally lead to price cuts at the end of model years.

Guidelines

(d) To prevent deception and help manufacturers avoid violating the Federal Trade Commission Act, the Commission has issued the following guidelines for motor vehicle manufacturers and dealers. They apply to all motor vehicles built for use upon public highways. These include truck chassis and incomplete vehicles used in building motor homes. The guidelines are:

(1) Manufacturers of motor vehicles must put on each vehicle a permanent label. The label must show clearly and conspicuously the month and year of manufacture. Following the certification rules of the National Highway Traffic Safety Administration, 49 CFR 567 (1977), will satisfy this requirement;

(2) Manufacturers must assign model years to all vehicles shipped to states which provide spaces on title or registration papers for model years, or which otherwise identify vehicles by model years on such papers. Manufacturers must indicate the model years on the Certificates or Statements of Origin of all vehicles shipped to such states. (As of July, 1978, all states except Hawaii either provided spaces on title or registration papers for model years, or otherwise identify vehicles by model years on such papers;

(3) In assigning model years, manufacturers must follow written standards set for each model before a model year starts;

(4) The standards must be uniformly applied to all vehicles of a particular model, however they are sold. In particular, the same standards must be used for vehicles sold through factory-owned branches and through independent dealers;

(5) A standard once set must be used throughout a model year;

(6) A standard must base model year on either the date of manufacture or features of the vehicle. The standard must be such that all vehicles assigned a model year which are manufactured on the same date with the same features are assigned the same model year;

(7) The model year must be assigned to each vehicle on or before its date of manufacture;

(8) Once a vehicle is assigned a model year, the model year must not be changed. But, mistakes in applying the standards may be corrected;

(9) Dealers must not represent to customers or to state title or registration officials (on application forms or otherwise) that vehicles are of any model years or that they should be titled or registered by any model years other than the model years indicated by the manufacturers on the Certificates of Origin for those vehicles. Dealers must not represent that vehicles are of any model years if no model years are indicated on Certificates of Origin for such vehicles. Manufacturers must not make any such representations or help or encourage dealers to make such representations.

(10) *Exceptions.* (i) Guidelines (2) through (8) do not apply to chassis or incomplete vehicles sold to motor home or recreational vehicle manufacturers who issue separate Certificates of Origin. Manufacturers of such chassis or incomplete vehicles need not assign model years to these vehicles. If they do not assign model years, they must put on Certificates of Origin, the words "Model Year" or "Year," followed by "NA" or "Not Applicable" or "None."

(ii) As indicated in Guide (2) manufacturers do not have to assign model years to vehicles shipped to any state which does not identify vehicles by model year on title or registration papers. Manufacturers who do not assign model years to vehicles shipped to such a state, must put on the Certificates of Origin the words "Model Year" followed by "NA" or "Not Applicable" or "None."

Interpretation and Enforcement

The Commission recognizes that this Enforcement policy Statement may not provide clear guidance in every situation that may arise. The staff of the Bureau of Consumer Protection will be available to answer questions and help industry members comply with these guidelines. Should subsequent investigation disclose violations of law, the Commission will take appropriate enforcement action.

By direction of the Commission, dated May 4, 1979.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16350 Filed 5-24-79; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 3 and 284]

[Docket No. RM79-34]

Transportation Certificates for Natural Gas for the Displacement of Fuel Oil

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission gives notice that, for the purpose of displacing fuel oil, it hereby issues special rules authorizing the transportation of natural gas purchased by certain end-users. This rule was initiated by the March 19, 1979, proposal of the Economic Regulatory Administration of the Department of Energy. It serves to further the objective of displacing fuel oil with natural gas so that the nation's current shortage of certain crude oil products may be minimized.

DATE: Effective May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Robert Platt, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275-0161 or James Kiely, Office of Pipeline and Producer Regulation, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275-4384.

I. Introduction

On March 19, 1979 the Economic Regulatory Administration (ERA) of the Department of Energy proposed a rulemaking to the Commission pursuant to section 403(a) of the DOE Organization Act, 42 U.S.C. 7173(a). The ERA proposed rule[1] would establish a procedure for the issuance of one year certificates of public convenience and necessity under Section 7(c) of the Natural Gas Act, 15 U.S.C. 717f(c), authorizing the transportation of natural gas purchased by end-users in order to displace fuel oil. On April 2, 1979, the ERA established a procedure to certify the eligibility of end-users for this program.[2] The Commission provided a written comment procedure on the ERA proposed rule, and held a public hearing in Washington, D.C. on April 30, 1979.[3] The ERA proposed rule was presented by John F. O'Leary, Deputy Secretary of Energy. Comments on the ERA proposed rule were received from Senator

[1] 44 FR 17644 (March 22, 1979).

[2] 10 CFR Part 595, 44 FR 20398 (April 5, 1979).

[3] Order Commencing Rulemaking, 44 FR 21682 (April 11, 1979).

Howard Metzenbaum, as well as pipelines, consumer groups and end-users.

II. Related Fuel Oil Displacement Programs

Several existing functions within the Commission's jurisdiction will assist in displacing fuel oil with natural gas. The most important method of reducing fuel oil consumption will be by reducing (or halting any further deterioration of) curtailment levels on interstate pipelines. The objective of maximizing interstate pipeline supplies was advanced by Secretary of Energy James R. Schlesinger:

> The Department will undertake two approaches to reduce imports in the near-term through movement of surplus gas to oil users. The first approach is to encourage sales from producers or intrastate pipelines to interstate pipelines and distribution companies. Such sales will increase general system supply, thereby reducing overall gas curtailments and displacing fuel oil. The second approach is to encourage and facilitate the transportation of natural gas purchased directly from producers or intrastate pipelines by users capable of substituting gas for oil. In general, the Department's first priority is to encourage additions to interstate pipeline system supplies. However, when surplus gas is not fully utilized by interstate pipelines, the transportation of direct purchases will be facilitated.[4]

The Commission believes that the Secretary is correct in giving first priority to encouraging additions to interstate system supplies; direct sales to users capable of substituting fuel oil for natural gas generally must yield to calls on available gas by customers served from system supply. Our actions in the rulemaking are intended to fit the fuel oil displacement program to that order of priorities.[5]

Congressional enactment of the Natural Gas Policy Act of 1978 was motivated by a perceived need to improve the supply condition of interstate pipelines. The key feature of the NGPA was the elimination of the artificial distinction between the interstate and intrastate natural gas markets. Congress believed that such a merger in conjunction with the provisions of Title I, which provides incentive prices to natural gas producers in excess of cost-based prices under the Natural Gas Act, should, over time, cause additional natural gas to become available. In addition, the provisions of Title III of the NGPA, particularly sections 311 and 312, seek to make any intrastate surplus deliverability available to interstate pipelines and local distribution companies. Hence, the Commission is under a clear mandate from the Congress to assist in increasing interstate system supplies. Therefore the first and most appropriate means of displacing fuel oil consumption is to increase interstate system supplies in order to reduce curtailments and thereby generally to reduce fuel oil requirements.

Second, the recently promulgated direct sales program in Subpart E of Part 157 permits schools, hospitals, and essential agricultural users to displace fuel oil.[6]

Third, the Commission intends to clarify 18 CFR 2.79 to permit process and feedstock users to participate in fuel oil displacement. At present, some process and feedstock users which receive direct sale gas under FPC Order No. 533 and FERC Order No. 2 may not be eligible to also use system supply gas in boilers, even if the pipeline supplying the user is not in curtailment. A future clarification of 18 CFR 2.79 may be appropriate to permit such boiler fuel use to displace additional fuel oil.

III. The Fuel Use Act

On May 8, 1979, the Powerplant and Industrial Fuel Use Act of 1978 (PIFUA), Pub. L. 95–620, became effective. Section 301 of PIFUA prohibits the use of natural gas as a primary energy source in powerplants to the extent that such use exceeds historic use. In addition, the Secretary of Energy may prohibit other uses of natural gas by either powerplants or major fuel burning installations.

There is general agreement that the long term solution to the nation's energy needs relies upon more abundant fuels such as coal, solar and other renewable energy sources rather than oil or natural gas.[7] The ERA rule, therefore, appears to be in conflict with accepted energy policy objectives. However, the ERA argues that in the short run, considering the fuel oil situation and the reported additional availability of natural gas, natural gas is currently the more appropriate fuel for facilities capable of burning either natural gas or fuel oil. We do not consider the ERA proposal to be inconsistent with our nation's general policies to encourage the use of more abundant fuels in place of natural gas if the displacement program is clearly articulated to be of short-term duration and tied to current and critical fuel oil shortages.

The Commission notes that the authority to grant any exemption from PIFUA resides in the Secretary of Energy and not with this Commission. To the extent of our authority, the Commission will further the purposes of Title I of PIFUA. In the instant rule, all fuel oil displacement transactions are conditioned upon full compliance with the PIFUA.

IV. Policy Considerations

The final rule is an attempt to balance a number of competing policy considerations. On the one hand, the nation must remedy a serious and immediate fuel oil supply situation. On the other hand, both statutory and policy constraints limit the ways in which natural gas can be made available to fuel oil users.

Middle distillate fuel oil is in critically short supply. Middle distillate fuel oil consists primarily of home heating oil and diesel fuel. Accordingly, many residential, commercial and small industrial fuel oil customers will be particularly affected by high-priced and possibly inadequate distillate fuel oil. It is this Commission's responsibility to afford these users, who would be considered "high priority" if served by natural gas,[8] relief within our discretion so long as this relief does not come at the expense of other high priority users.

Distillate oil stocks are currently about 117 million barrels. This is significantly below minimum acceptable levels for this time of year, and 17 million barrels, or 14.8%, below the level at this time in 1978.[9] In order to achieve historically acceptable levels of distillate supply by the onset of next winter's heating season, the Department of Energy estimates it will be necessary to increase stocks by one million barrels per day. This goal will be extremely difficult to achieve because domestic refiners have rarely produced distillate at a rate that would allow for such a rapid build-up. The primary near-term alternative measures for accelerating distillate stock are to: (1) Increase imports; (2) reduce gasoline production in order to permit refiners to increase distillate production; (3) increase conservation; and (4) displace distillate

[4] Statement dated March 13, 1979 at 2. See also Transcript at 33.

[5] Direct purchases of natural gas have a role within a fuel oil displacement initiative because they permit natural gas to be targeted to those users or facilities using high-cost, high quality petroleum fuels. Allocating all available gas as system supply through normal curtailment plans may, in some instances, result in displacing low quality residual fuel oil or other natural gas substitutes so that the fuel oil displacement program would not produce optimal impact.

[6] Order No. 27, 44 FR 24825 (April 27, 1979).

[7] Statement of James R. Schlesinger dated March 13, 1979 at 1.

[8] Transcript at 19; Comments of Tennessee Gas Pipeline Company, filed May 4, 1979.

[9] Weekly Petroleum Status Report, U.S. Department of Energy, May 11, 1979.

use with competing fuels, particularly natural gas.[10]

Each option presents its own potential disadvantages. Increased reliance upon imported distillate oil is not only dangerous, given the insecurity of foreign crude oil and petroleum product supplies, but could also tighten foreign petroleum product markets, and significantly increase the consumer cost of distillate oil next winter.

Reducing gasoline production in order to maximize refinery yields of distillate oil presents other difficulties. Induced shortages of gasoline could create serious dislocation in the transportation sector of our economy because of its virtually total dependence upon liquid hydrocarbons. If other potentially effective means of increasing distillate supplies are seen to exist without equivalent risks or harm to the public welfare they should be fully utilized. The public interest lies in a balanced set of strategies and actions for coping with the fuel emergency.

Increased conservation measures are in the public interest, and must be a part of any strategy for dealing with fuels shortages. But additional near term conservation measures are limited in number and impact. There simply does not appear to be a capability to meet this winter's distillate stock level objectives through increased conservation.

Displacing fuel oil with natural gas also presents difficulty. The Commission is concerned that such a program will be mistaken for a change in long-term end-use policy, which it is not. The Commission is also concerned that the fuel oil displacement program will increase deliveries to low priority users now but at the expense of higher priority users later on. However, this problem of user equity can be addressed and resolved by making fuel oil displacement sales of relatively short-term duration, and, even then, subject to interruption if high priority natural gas needs are not being met. The danger of harm to high priority natural gas users can be further mitigated by targeting the program to sales of natural gas not currently committed or dedicated to the interstate market.

Accordingly, we believe that the Commission's responsibility to high priority customers, regardless of the type of fuel consumed, compels our action. The acceptable level of risk associated with the natural gas displacement option leads us to conclude that such transactions, properly conditioned, are in the public interest.

The NGPA creates both opportunities for and constraints upon a fuel oil displacement program. Natural gas supplies available for this program are increased by the NGPA section 311(b) which permits interstate pipelines and local distribution companies served by interstate pipelines to acquire surplus natural gas from the intrastate market at prices based upon the selling intrastate pipeline's weighted average cost of gas. These section 311(b) supplies are particularly important to small, high-priority users which cannot participate in direct sale programs. But insofar as there may exist a temporary surplus of natural gas resulting from the recent energy legislation, it should be made accesssible not only to high-priority users served by interstate system supplies, but also to those users who can contribute to the nation's short-term fuel oil displacement needs.

This rule balances the interests of these two user categories. The design objective of this rule is to give eligible fuel oil users access to available natural gas without providing them any advantage over those who rely upon interstate system supplies to meet their high-priority requirements. For example, NGPA section 311(b) price limitations are placed upon fuel oil displacement transactions, if the seller is an intrastate pipeline. Such a price limitation will place fuel oil using direct purchasers in the same position as interstate pipelines and local distribution companies served by interstate pipelines with respect to access to surplus intrastate natural gas under NGPA section 311(b) programs.

In addition to price considerations, the Commission will monitor the fuel oil displacement program to prevent any serious disruption of markets, to maximize the efficient use of the interstate pipeline transportation network, and to coordinate the program with pipeline curtailment policies.

V. Section by Section Summary

§ *284.200 Applicability*

Section 284.200 emphasizes that the purpose of this program is the displacement of fuel oil consumption. The fuel oil displacement transactions are implemented under both section 311(a)(1) of the NGPA and section 7(c) of the Natural Gas Act.

§ *284.201 Definitions*

Section 284.201 provides definitions for this subpart. Eligible uses are determined by the Administrator of the Economic Regulatory Administration. The ERA has already established procedures for certifying eligible uses in 10 CFR 595.03. Although the Commission's transportation authorization is self-implementing in some instances, a condition to such transportation is the prior certification by the Administrator of the ERA that the use for which the natural gas is to be transported is an eligible use.

Several comments question whether the implementation of this program will in fact result in such displacement of fuel oil as to ameliorate the current supply shortage. The ERA has taken the position that displacement of any fuel oil by natural gas will assist the current supply situation. Although ERA may further refine its certification procedure to include additional requirements, such as restrictions of the program to particular geographical regions or type of fuel oil use, the Commission will accept any currently valid certification by the ERA when implementing this emergency program.

The definition of "volumes attributable to local supply" in § 284.201(g) is constructed to prevent the diversion of interstate system supplies from high-priority users served by a local distribution company making sales under this program. The definition of "interstate system supplies" in § 284.201(f) is broader than the committed or dedicated test proposed by the ERA. The term "system supplies" in paragraph (f)(1) includes all natural gas purchased by an interstate pipeline for resale to its on-system customers regardless of when the natural gas was committed under a contract. Natural gas purchased under Subpart C of Part 157 for assignment to a specific customer is an example of natural gas not within the scope of the definition.

As noted in Part IV above, the Final Rule reflects the Commission's concern for the current emergency conditions confronting high-priority fuel oil users. The Commission believes that such a supply condition will exist at least through the 1979–80 heating season. At this time, the Commission is unable to conclude that this program will be necessary beyond June 1, 1980. As a result, the Commission finds the period through June 1, 1980 to be a "fuel shortage emergency period."

§ *284.202 Interstate pipeline transportation authorizations.*

Section 284.202 authorizes the transportation by interstate pipelines of certain transactions on a self-implementing basis.

Section 284.202(a)(1) authorizes interstate pipeline transportation of

[10] Transcript at 20; Further Comments of the Department of Energy, filed May 7, 1979 at 2–3.

direct sales by natural gas producers and other persons making first sales as defined in NGPA Section 2(21) without requiring that they obtain prior Commission approval under section 7(c) of the Natural Gas Act.

If the eligible user purchases gas directly from a producer, such gas is a first sale and subject to price ceilings under Title I of the NGPA. Additionally, only gas which was not "committed or dedicated to interstate commerce" within the meaning of section 2(18) of the NGPA is eligible to be transported under this section. The transportation of only natural gas meeting these conditions is exempted from the requirements of section 7 since the public interest would not be further served by requiring the issuance of a certificate. In order to make covered transportation of such natural gas authorized a self-implementing basis, the Commission is exercising its exemptive authority under section 7(c)(1)(B) of the Natural Gas Act. As explained in Part IV above, the ERA finds the current fuel oil situation an emergency of a magnitude to justify the issuance of temporary certificates. The Commission accepts the ERA emergency finding as equally applicable to the exemption provided in § 254.202(a)(1).

Gas currently available to the interstate system may not be diverted from that market under this exemption. Any proposed sale of interstate system supply under this program may be transported only if a certificate is granted under § 284.202(a)(3) and § 284.208. Transportation of natural gas under this section is subject to certain reporting requirements described in § 284.207.

The statutory authority for permitting an interstate pipeline to transport natural gas sold by an intrastate pipeline or a local distribution company under this program without first obtaining a section 7(c) certificate is section 311(a)(1) of the NGPA. This latter statutory provision states that the Commission may, by rule or order, authorize interstate pipelines to transport natural gas on behalf of intrastate pipelines or local distribution companies. In implementing this section initially in Part 284, Subpart A, the Commission focused primarily upon transportation of volumes destined for system supply. In developing the current rule, the Commission recognized that the need to develop a truly national transportation system pertains not only to the transportation of system supplies but also to the interstate transportation of natural gas owned by a particular end-user. The Commission believes that it should exercise its discretion under section 311 to permit the efficient and timely transportation of natural gas destined to serve a use found to be in the national interest and necessary to help manage the nation's fuels supply problems.

The Commission did not exercise the full breadth of its legal authority under NGPA section 311(a) and did not rely upon this broad interpretation of "on behalf of" in its authorizations under Subparts A and B of Part 284. Subpart F makes clear that transportation of direct sale gas to end-users was not included within the scope of the Subparts A and B authorizations. The Commission intends to further clarify Subparts A and B in the course of promulgating final rules in Docket No. RM79–3. These subparts may not be utilized to transport natural gas owned by an end-user.

Subpart F of Part 284 must be utilized if certain end-users wish to have qualifying natural gas supplies transported on a self-executing basis. Transportation of other types of natural gas supplies require section 7(c) authority as provided elsewhere in Subpart F.

Authorization for interstate pipeline transportation of direct sales by interstate pipelines is not self-executing. Section 284.202(a)(3) requires interstate pipelines to obtain Natural Gas Act section 7(c) authorization for the transportation of natural gas sold directly by interstate pipelines or an other persons not covered by §§ 284.202(a)(1) or (a)(2). The requirement for prior certification, while requiring additional time, is necessary to assure that the ability of interstate pipelines to purchase general system supply is not prejudiced in favor of direct purchases.

In keeping with the Commission's practices in its other direct sales programs, no Commission authorizations will be required for any incidental transportation performed by local distribution companies.[11]

Interstate pipelines may sell gas to fuel oil users if the gas is in excess of the current demands of the pipeline. As noted above, the Department of Energy's first priority for displacing fuel oil is the lowering of curtailment levels on interstate pipelines. However, local or regional surpluses may exist, and natural gas from interstate pipelines serving such areas could be made available to fuel oil users. The Commission must, however, review these instances on a case-by-case basis in order to adequately protect customers served by interstate system supplies. Therefore, the transportation of such surpluses will be permitted only under certificates issued by the Commission on a case-by-case basis pursuant to section 7(c) of the Natural Gas Act. Application requirements for interstate pipelines are set forth in § 284.208. All transportation under this subpart, whether authorized under NGPA section 311(a)(1) or under Natural Gas Act Section 7(c), is subject to the conditions of this subpart.

Under § 284.202(b)(1), intrastate pipelines may sell gas to fuel oil users at a price which does not exceed the NGPA section 311(b) price. Special reporting requirements for such transactions are set forth in § 284.207(b). Because the sale between the intrastate pipeline and the fuel oil user is a direct sale rather than a sale for resale, no sales authorization is required by NGPA sections 311(b) or 312(a) or Natural Gas Act section 7(c).

Under § 284.202(b)(2), a local distribution company, served by either an intrastate pipeline or an interstate pipeline, may sell natural gas to a fuel oil user. The local distribution company may sell on a self-executing basis only natural gas which represents volumes attributable to local supplies and not attributable to either deliveries from interstate pipelines or producers selling gas which was "committed or dedicated to interstate commerce" within the meaning of section 2(18) of the NGPA. While there is no price ceiling imposed upon these sales, state regulatory agencies have primary jurisdiction over the prices charged by local distribution companies. We note, also, that the sale price between the local distribution company and the fuel oil user will be determined by arms-length negotiation. The selling local distribution company will be competing against other sellers who are subject to price controls. Such sales of surplus local supplies by local distribution companies permit the distribution of certain costs such as take-or-pay obligations or SNG facilities across a greater number of customers.

Section 284.202(b)(2) delays the authorization of transportation of natural gas purchased from local distribution companies for a 15-day period to give appropriate state regulatory agencies with jurisdiction over the local distribution company an opportunity to oppose the transaction. If the state regulatory agency files an objection within the 15-day period, the eligible user must apply either for a transportation certificate under section 7(c) of the Natural Gas Act or for an adjustment under NGPA section 502(c)

[11] See Order No. 2, 43 FR 5362 (February 8, 1978).

and § 1.41 of this chapter to permit the transaction to proceed.

§ 284.203 Intrastate pipeline transportation authorization.

Implementation of fuel oil displacement transactions may require incidental transportation by intrastate pipelines. For example, sales by producers or local distribution companies attached to an intrastate pipeline would require that pipeline to transport the natural gas to an interstate pipeline for subsequent transportation to an eligible user located on the interstate system. The Commission views this transportation to be "on behalf of" the interstate pipeline if an intrastate pipeline is either receiving the natural gas from or delivering it to an interstate pipeline. As a result, the Commission will permit incidental transportation by an intrastate pipeline under NGPA section 311(a)(2) if necessary to complete a transaction permitted under § 284.202. The jurisdictional guarantees of NGPA section 601(a)(2) apply to intrastate pipelines who supply such transportation services.

§ 284.204 Construction of facilities.

Although most fuel oil displacement transactions may be implemented without the construction or operation of additional facilities, any incidental facilities needed for the sole purpose of facilitating the transportation of natural gas supplies of the eligible user may be constructed without Natural Gas Act certification if the cost is borne by the eligible user. Should new facilities be constructed for the benefit of several eligible users, the costs may be pro rated among those eligible users.

§ 284.205 General conditions.

Section 284.205(a) requires the eligible user to obtain any necessary waivers of PIFUA (see Part III above).

Section 284.205(b) incorporates by reference the provisions governing rates, charges, terms and conditions that would otherwise apply to self-implementing transactions under section 311(a)(1) of the NGPA. For those transactions authorized under a certificate of public convenience and necessity issued under section 7(c) of the Natural Gas Act, these conditions are incorporated by reference into any such certificate unless otherwise specified in any such certificate. Transportation services authorized by § 284.203 are subject to the rates, charges, terms and conditions of Subpart B of Part 284.

The rate methodology incorporated by reference from Subpart A of Part 284 is of special importance. Section 284.103 provides that all revenues in excess of those derived from transportation included within billing determinants will be required to be credited to Account No. 191, except for either an allowance of one cent per Mcf or actual out-of-pocket cost. Several comments noted that such a flowthrough of revenues to the interstate pipelines' other customers does not provide an incentive for interstate pipelines to participate in these transactions. The Commission reemphasizes that it does not seek in this rule to create any greater incentive for direct sales than the incentive for fuel oil displacement through increases in general system supply. This reflects the Department of Energy's statement that sales from interstate system supplies is the preferred method of fuel oil displacement. Because some interstate pipelines may not have supplies available to serve their own customers' fuel oil displacement requirements, the Commission hopes that the pipeline will cooperate in addressing an important national problem by transporting volumes under the final rule.

Section 284.205(c) prescribes the duration of a fuel oil displacement transaction. Several comments suggest a two or three year term, while the Commission staff has suggested a six month term. Because of the substantial effort required in negotiating and implementing a fuel oil displacement transaction, § 284.205(c)(1) is based upon the ERA proposal for a one-year maximum term. However, the Commission recognizes that the fuel oil supply situation is changing rapidly, and believes that all transactions under the Final Rule should expire on June 1, 1980. Also, paragraph (d)(2) provides for termination prior to the end of the term of any authorization.

Section 284.205(c)(2) differs from the one-year renewal period proposed by ERA, by prohibiting extensions beyond the termination of the fuel shortage emergency period. The rule incorporates the extension procedures for section 311(a)(1) authorizations by reference. Such extensions are limited to the fuel shortage emergency period. If a transaction is authorized pursuant to a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act, the Commission will treat an extension report conforming to § 284.106(c)(2) as an application for an amendment to extend the certificate.

Paragraph (d)(1) provides that the authorization under either NGPA section 311(a)(1) or the certificate will automatically terminate if the gas is diverted from an eligible use.

Termination under paragraph (d)(2) may be made by rule or order. Such actions may be undertaken on an individual, regional or national basis as the nation's fuel oil needs and the public interest require. Paragraph (d)(2) is based upon NGPA section 311(b)(6).

The ERA proposed rule included an automatic 90 day extension for eligible users purchasing gas under a take-or-pay contract. Although the Commission has provided such extensions in its direct sales programs for high-priority users, the nature of this program, insofar as it makes direct sale gas available to low priority users, and the size each sophistication of such users makes any automatic extensions inappropriate.

Section 284.205(d)(3) provides that any transportation of natural gas sold by any local distribution company may be terminated without an opportunity for a presentation of opposing views if the Governor of a state certifies that the natural gas is needed to serve certain high priority users[12] in the local distribution company's service area. The transaction then shall terminate upon 15 days notice. The Governor's action would be authorized either under applicable state statutes or by the inherent emergency police power accorded to the Governor under state law. The Governor's power under paragraph (d)(3) is independent of the Commission's rights reserved under paragraphs (d)(1), (d)(2), or (e) of § 284.205.

Section 284.205(e) reserves to the Commission the right to terminate fuel oil displacement in the event that the President declares a natural gas supply emergency under NGPA section 301.

§ 284.206 Effect upon curtailment plans.

Section 284.206 adopts the curtailment plan provision proposed by ERA. We note that it applies only to "an interstate pipeline's customer's requirements." Several comments suggest that the curtailment plan provision is unnecessary or inconsistent with the intent of Title IV of the NGPA. Agricultural users are concerned that the program will jeopardize the availability of natural gas under NGPA section 401. On the other hand, some fuel oil users consider participation in the program to be impossibile without protection from adverse curtailment consequences. The Commission shares the concerns of both groups and adopts the provision with the expectation that any interference with our first priority of

[12] *Cf.* NGPA Section 303(k).

channelling natural gas through pipeline system supply will be brought to the Commission's attention to permit prompt action, including termination under § 284.205(d).

§ 284.207 Reporting requirements.

Section 284.207(a) states the requirements that apply to all interstate pipelines which transport natural gas under this subpart. Paragraph (a)(1) requires an initial report to be filed by the interstate pipeline within 48 hours of the start of the transaction. This report will permit the Commission and the ERA to monitor the fuel oil displacement program and will provide part of the factual basis for actions under the termination provision. Paragraph (a)(2) requires a more complete report within 60 days of the completion of the transaction.

Section 284.207(b) requires intrastate pipelines to supply the same acquisition cost report that are required by § 284.148(a)(1)–(7). Although the referenced section specifies when reports are due, such requirements are not incorporated into § 284.207(b).

Section 284.207(c) adopts the reporting requirements proposed by the ERA. In addition, eligible users are required to file an affidavit confirming that all volumes transported under this subpart meets the requirements of this subpart. Paragraph (c) also requires additional information when a producer sells the natural gas directly to the eligible user.

§ 284.208 Certificate procedures.

Although it is likely that the majority of fuel oil displacement transactions will meet the eligibility criteria for authorization under § 284.202, transactions involving covered transportation not authorized by § 284.202(a)(1) or (2) may instead receive Commission consideration on a case-by-case basis. Section 157.206(b) of the ERA proposed rule would have made the seller eligibility requirements subject to waiver, but failed to establish a procedure for processing waiver requests. The comments of the Department of Energy indicate that request for waivers will not be considered as part of ERA's certification proceedings under 10 CFR 595.03. However, ERA reserves the right to intervene in any waiver proceeding held before the Commission.[13] The transactions considered under § 284.208 will involve sales by interstate pipelines. Because these sellers are central to the Commission regulatory responsibilities under the Natural Gas Act, careful scrutiny of such transactions is warranted.

Paragraph (a) limits this procedure to interstate pipelines which transport natural gas to eligible users. Further, intrastate pipelines proposing to sell natural gas at a price above that permitted by § 284.202(b)(1) are precluded from using this procedure. This restriction is necessary to prevent disrupting the flow of intrastate supplies to interstate consumers under NGPA section 311(b).

Paragraph (b) incorporates the filing requirements proposed by the ERA. Paragraph (b) also requires that the source of the natural gas supplies and any relevant take-or-pay obligations must be included in the application.

Paragraph (c) describes the limited 60 day temporary certificates available under this subpart. Temporary certificates will be issued during the winter heating season by action of the Commission only upon a showing of special hardship. A conforming amendment to § 3.5(f)(1)(iv) of this chapter is included to delegate the authority to issue temporary certificates to the Director of the Office of Pipeline and Producer Regulation. The Commission accepts the ERA suggestion that a fuel oil emergency exists, and is of sufficient urgency to warrant the issuance of temporary certificates under section 7(c)(1)(B) of the Natural Gas Act. In response to several comments objecting the use of temporary certificates for fuel oil displacement, the Commission will limit their duration to 60 days.

Paragraph (d) provides for an evidentiary hearing to be scheduled on an expedited basis during the 60 day period by a presiding administrative law judge to be appointed by the Chief Administrative Law Judge.

The hearing will provide an opportunity for other natural gas companies to express interest in purchasing the natural gas for pipeline system supplies. Both the sales price and the disposition of revenues will be examined.

VI. Environmental Impact

The extent that natural gas is substituted for fuel oil and the specific location of eligible users is not known and cannot be ascertained quantitatively at present since the Commission is not empowered to require substitution, but merely to act upon requests to make these transactions, the response to which will not occur until the Final Rule becomes effective. However, on the basis of preliminary inquiries to potential eligible users by the ERA it appears that eligible users would be scattered in a broad band running through the southeastern southern, and mid-western states, with some isolated users in the northeast.

The Commission has assessed potential impacts on air and water quality, safety land use and climate and conclude that no adverse environmental effects can be forecast due to implementation of the Final Rule. The duration of those sales will be short-term and involve no major construction of new facilities. We are pleased that all of our analyses indicate that should there be any measurable environmental effects, these would be beneficial, in the nature of localized improvements in air quality, decreased water pollution, and diminished safety risks isolated to oil tanker operations.

For these reasons we have determined that approval of the Final Rule would not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969, as amended, and therefore will not require the preparation of an environmental impact statement. In a separate analysis, the ERA has made the same finding.

(Natural Gas Act, (15 U.S.C. 717 *et seq.*), Natural Gas Policy Act of 1938, Pub. L. 95–621, Department of Energy Organization Act, Pub. L. 95–91, E.O. 12009, 42 FR 46267).)

In consideration of the foregoing, Parts 3 and 284 of Subchapter I, Chapter I, Title 18, Code of Federal Regulations, are amended as set forth below, effective immediately.

By the Commission. Commissioner Smith, dissenting, filed a separate statement appended hereto.

Kenneth F. Plumb,

Secretary.

SMITH, Commissioner, dissenting, does not believe the data submitted in support of the Order establishes a surplus of adequate size and duration sufficient to support a major change in natural gas use priority and consequently dissents to the issuance of the Order.

Don S. Smith,

Commissioner.

PART 3—ORGANIZATION, OPERATION, INFORMATION AND REQUESTS

1. Section 3.5(f) of Subchapter A of Chapter I, Title 18, Code of Federal Regulations, is amended by revising subparagraph (1)(iv) to read as follows:

[13] Further Comments of the Department of Energy at 10.

§ 3.5 Delegations of final authority.

The Commission authorizes:

* * * * *

(f) The Director of the Office of Pipeline and Producer Regulation or in the Director's absence, the Director's designee to:

(1) Pass upon the following types of applications or amendments to applications: *Provided,* That no formal opposition to the applications or amendments is timely filed with the Commission:

* * * * *

(iv) Applications for temporary certificates for the transportation of natural gas to end-users, pursuant to § 2.79, § 157.101, or § 284.208 of this chapter.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS

§§ 284.103—284.106 [Amended]

2. Sections 284.103 through 284.106 of Part 284, Subpart A, Subchapter I, Chapter I of Title 18, Code of Federal Regulations shall be amended to change all occurrences of "§ 284.102(a)" to "§ 284.102(a) or § 284.202."

3. Part 284, Subchapter I, Chapter I of Title 18, Code of Federal Regulations, shall add a new Subpart F as follows:

Subpart E—[Reserved]

Subpart F—Transportation of Fuel Oil Displacement Gas

Sec.

284.200 Applicability.
284.201 Definitions.
284.202 Interstate pipeline transportation authorizations.
284.203 Intrastate pipeline transportation authorizations.
284.204 Construction of facilities.
284.205 General conditions.
284.206 Effect on curtailment plans.
284.207 Reporting requirements.
284.208 Certificate procedures.

Authority: Natural Gas Act, 15 U.S.C. 717 et seq., Natural Gas Policy Act of 1938, Pub. L. 95-621, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267.

Subpart E—[Reserved]

Subpart F—Transportation of Fuel Oil Displacement Gas

§ 284.200 Applicability.

(a) *General.* This subpart authorizes, and provides procedures for the authorization of, the transportation of certain natural gas to eligible users for the displacement of fuel oil consumption.

(b) *Relationship to Subparts A and B of this Part 284.* The provisions of this subpart are the only provisions of Part 284 which authorize, under section 311(a) of the NGPA, an interstate pipeline or intrastate pipeline to transport natural gas which is owned by an end-user or which after such transportation will be sold directly to an end-user.

§ 284.201 Definitions.

For the purposes of this subpart:

(a) "Administrator" means the Administrator of the Economic Regulatory Administration.

(b) "Covered transportation" means transportation during the fuel shortage emergency period of natural gas by an interstate pipeline for ultimate delivery to an eligible user.

"Eligible use" means any use of natural gas certified by the Administrator pursuant to 10 CFR 595.03.

(d) "Eligible user" means any person who is a purchaser (other than for resale) of natural gas for an eligible use in a facility operated by that person.

(e) "Fuel shortage emergency period" means the period between May 17, 1979 and June 1, 1980.

(f) "Interstate system supplies" mean any natural gas obtained, either directly or indirectly, from:

(1) The system supplies of an interstate pipeline, or

(2) Natural gas reserves which were committed or dedicated to interstate commerce on November 8, 1978.

(g) "Volumes attributable to local supplies" means the volumes of natural gas sold by a local distribution company during any month which are obtained from sources other than interstate system supplies.

§ 284.202 Interstate pipeline transportation authorizations.

(a) *General rule.* Subject to paragraph (b) and the conditions in § 284.205:

(1) Covered transportation is exempt from the requirements of section 7 of the Natural Gas Act if:

(i) The sale of such natural gas is a first sale as defined in section 2(21) of the NGPA; and

(ii) Such natural gas is not committed or dedicated to interstate commerce on November 8, 1978.

(2) Covered transportation is authorized under section 311(a)(1) of the NGPA if the seller of such natural gas is:

(i) A local distribution company with respect to volumes which are attributable to local supplies; or

(ii) An intrastate pipeline.

(3) Covered transportation not described in paragraph (1) or (2) is authorized if a certificate of public convenience and necessity is issued under section 7(c) of the Natural Gas Act in accordance with § 284.208.

(b) *Special rules.*—(1) *Intrastate pipeline sales.* Paragraph (a)(2) of this section does not authorize covered transportation of natural gas if the seller of such gas is an intrastate pipeline and the price for such natural gas exceeds the maximum price which could lawfully be charged under section 311(b) of the NGPA.

(2) *Local distribution company sales.* (i) Authorization of covered transportation under paragraph (a)(2) of this section shall not become effective unless 15 days has elapsed since the local distribution company making the sale has given notice to the appropriate state regulatory agency.

(ii) No authorization of covered transportation under paragraph (a)(2) of this section shall become effective if the appropriate state regulatory agency which received the notice under subparagraph (2)(i) of this paragraph serves an objection upon the Secretary of the Commission and the local distribution company within 15 days after receipt of such notice.

(iii) If a transportation authorization under paragraph (a)(2) of this section does not become effective by reason of an objection under paragraph (b)(ii), the interstate pipeline may apply for a certificate under § 284.208.

§ 284.203 Intrastate pipeline transportation authorization.

An intrastate pipeline is authorized under section 311(a)(2) of the NGPA to transport natural gas which is purchased by an eligible user and is transported by an interstate pipeline pursuant to an authorization under this subpart.

§ 284.204 Construction of facilities.

Construction or operation of facilities by a natural gas company necessary for the transportation of natural gas under this subpart shall be exempted from the requirements of section 7 of the Natural Gas Act, if:

(a) No costs associated with such facilities are included in the natural gas company's jurisdictional rates, and

(b) The facilities are used only to perform transportation of natural gas authorized by this subpart.

§ 284.205 General conditions.

(a) *Fuel Use Act.* Any authorization under this subpart is conditioned upon the eligible user obtaining any necessary waivers under the Powerplant and Industrial Fuel Use Act of 1978.

(b) *Rates, charges, terms and conditions.* Except as otherwise

provided in this subpart or any certificate issued pursuant to this subpart:

(1) The provisions covering rates, charges, terms and conditions for transportation services in Subpart A of this part shall apply to covered transportation authorized by § 284.202; and

(2) The provisions covering rates, charges, terms and conditions for transportation services in Subpart B of this part shall apply to such transportation services authorized by § 284.203.

(c) *Duration.*—(1) *Initial term.* Transportation arrangements under this subpart may cover any period during the fuel shortage emergency period.

(2) *Renewals.* Transportation arrangements under this subpart may be extended as provided in § 284.105, except:

(i) No extensions may be granted for a period which extends beyond the fuel shortage emergency period; and

(ii) The application for renewal shall include a recertification of eligible use by the Administrator pursuant to 10 CFR 595.03.

(d) *Transfer and termination.* (1)(i) The transportation authorization is not transferrable in any manner.

(ii) The transportation authorization shall be effective only so long as the natural gas is consumed for an eligible use.

(2) Upon complaint of any interested person or upon the Commission's own motion, the Commission may, by rule or order, after affording an opportunity for the oral and written persentation of data, views and arguments, terminate any transportation authorization pursuant to this subpart.

(3) A transportation authorization for natural gas sold by a local distribution company under this subpart shall terminate 15 days after the Governor of the State within which such company's service area is located certifies to the Commission and to the local distribution company that the natural gas being sold pursuant to this subpart is necessary to serve:

(i) Residental uses,

(ii) Uses in a commercial establishment in amounts less than 50 Mcf on a peak day, or

(iii) Any use of natural gas, the curtailment of which the Governor determines would endanger life, health, or maintenance of physical property.

(e) *Natural Gas Supply Emergency.* If the President declares a natural gas supply emergency under section 301 of the NGPA, either nationally or in a region served by the interstate pipeline, any authorization under this subpart to transport natural gas may be terminated by the Commission.

§ 284.206 Effect on curtailment plans.

All volumes of natural gas purchased by an eligible user and transported by an interstate pipeline pursuant to this subpart shall not be considered as either a natural gas supply or market in a determination of an interstate pipeline's customer's requirements for present of future allocations of natural gas during periods of natural gas curtailment.

§ 284.207 Reporting requirements.

(a) *Reporting by interstate pipelines.*—(1)*Initial notice.* Within 48 hours of the commencement of covered transportation under this subpart, the interstate pipeline shall file a report with the Commission stating:

(i) The information requested in § 284.106;

(ii) The price at which natural gas is being sold; and

(iii) The docket number assigned to the ERA application made under 10 CFR 595.05.

(2) *Reports after termination or expiration of the authorization.* Within sixty days after termination or expiration of the authorization, the interstate pipeline shall file a report with the Commission containing:

(i) Corrections to any of the information contained in paragraph (a) of this section which is no longer accurate;

(ii) An affidavit that the natural gas transported under this subpart was transported in accordance with the provisions of this subpart; and

(iii) The total cost of any facilities constructed in order to effectuate to the transportation, the method by which those costs were or are being recovered from either the eligible user or other pipeline customers and the actual amount so recovered from each.

(b) *Reports for sales by intrastate pipelines.* Within sixty days after termination or expiration of the authorization, intrastate pipelines selling natural gas to an eligible user shall submit to the Commission such reports as are described in subparagraphs (1) through (7) of § 284.148(a).

(c) *Reports by eligible users after termination or expiration of the authorization.* Within sixty days after termination or expiration of the authorization, the eligible user shall file a report with the Commission containing:

(1) The total amount of natural gas consumed during the term of the authorization, itemized on a monthly basis;

(2) The actual monthly volumes in barrels of each type of fuel oil displaced during the term of the authorization;

(3) The average delivered cost per Mcf paid, itemized by amounts paid to:

(i) The seller;

(ii) Each pipeline company and local distribution company involved in transporting the natural gas; and

(iii) Any other parties;

(4) The volumes of each type of fuel oil displaced which have been retained in the eligible users inventory or otherwise remain at the eligible user's disposal; and

(5) With respect to natural gas purchased in a first sale:

(i) A certified copy, if one has been obtained, of any currently effective determination by a jurisdictional agency under NGPA section 503 and Part 274 of this chapter applicable to the natural gas to be transported; and

(ii) An affidavit that includes the well number or numbers from which the natural gas will be produced, and state that the natural gas meets the eligibility requirements of § 284.202(a)(1).

§ 284.208 Certificate procedures.

(a) *Applicability.* Covered transportation described in § 284.202(a)(3) may be authorized by a certificate of public convenience and necessity issued under section 7(c) of the Natural Gas Act pursuant to the procedures established by this section. No such certificate may authorize the transportation of natural gas sold to the eligible user by an intrastate pipeline.

(b) *Application requirements.* All applications for transportation certification pursuant to this subpart shall:

(1) Indicate the total volume of natural gas to be transported under the proposed certificate on a peak day, average day, monthly and annual basis;

(2) Include a statement by the interstate pipeline company that it has capacity sufficient to perform the transportation service without detriment or disadvantage to its existing customers who are dependent on the pipeline's interstate system supplies;

(3) Provide a copy of the proposed transportation agreement and the proposed transportation rate, together with a breakdown and justification of the proposed rate level as required in § 284.106 for interstate pipeline companies or § 284.126 for intrastate pipeline companies;

(4) Include a statement by any local distribution company or intrastate pipeline participating in the

transportation of the natural gas to the eligible user that it has capacity sufficient to perform the transportation service without detriment or disadvantage to its existing customers;

(5) Provide a copy of the gas purchase contract with the seller;

(6) Describe any facilities that will be constructed under § 284.204 in order to provide the services, as well as any other facilities that will be utilized, and specify their location;

(7) If an intermediary participates in the transaction between the eligible user and the eligible seller and charges a fee, indicate the amount of the fee and terms of payment and the intermediary's affiliation, if any, with the seller or the interstate pipeline company;

(8) If either the eligible seller or the eligible user assumes the cost of the construction of any facilities in order to consummate the purchase, provide the cost, terms of payment, ownership, and date of construction of the facilities;

(9) Provide a copy of the certification of eligible use issued by the Administrator;

(10) A description of the source of the natural gas to be sold; and

(11) A description of any take-or-pay conditions which apply to the relevant sources of natural gas.

(c) *Temporary certificates.* (1) Any application for a certificate described in paragraph (a) of this section may include a request for a temporary certificate and shall be processed by the Commission staff on an expedited basis.

(2) If an application for a temporary certificate is sufficient on its face, and the requested temporary transportation service authorization will occur between March 1 and November 1, 1979, a temporary certificate may be issued by the Director of the Office of Pipeline and Producer Regulation pursuant to his authority under § 3.5(f)(1)(iv) of this chapter.

(3) No temporary certificate issued under this paragraph shall be effective for a period exceeding 60 days.

(4) The interstate pipeline company may, within 15 days of the date of issuance, file in writing its acceptance or rejection of the temporary certificate. If no acceptance or rejection has been filed within 15 days, the temporary certificate shall be deemed to have been accepted. Such temporary certificate shall be effective on:

(i) The earlier of:

(A) The date the Commission received acceptance, or

(B) The fifteenth day after issuance if no acceptance or rejection is filed within 15 days; or

(ii) Such other date as may be prescribed by the Commission or the Director of the Office of Pipeline and Producer Regulation pursuant to his authority under § 3.5(f)(1)(iv) of this chapter.

(d) *Hearing.* Upon the issuance of a temporary certificate, the Chief Administrative Law Judge shall set the application for an expedited hearing. The evidentiary hearing shall examine, among other issues:

(1) Whether any other natural gas company seeks to purchase for system supply the natural gas to be transported;

(2) The price charged for the natural gas and the revenues retained by the seller; and

(3) The disposition of the natural gas in the event that certificate authorization is not granted.

[FR Doc. 79-16412 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

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18 CFR Part 157

[Docket No. RM79-43]

Applications for Certificates of Public Convenience and Necessity

AGENCY: Federal Energy Regulatory Commission.

ACTION: Interim rule.

SUMMARY: Sections 311 and 312 of the Natural Gas Policy Act of 1978 allow interstate pipelines to acquire natural gas from intrastate pipelines without the prior approval of the Federal Energy Regulatory Commission. These transactions often require an interstate pipeline to construct facilities. The amendments contained in this document will allow such facilities to be constructed under a budget-type certificate authorizing the construction of "gas-purchase facilities".

DATES: Effective date: May 18, 1979. Comments due: June 18, 1979.

ADDRESSES: All findings should reference Docket No. RM79-43 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-4214.

On November 8, 1978, the Natural Gas Policy Act of 1978 (NGPA) was enacted. Section 311(b) of the NGPA allows the Commission to authorize an intrastate pipeline to sell natural gas from its system supply to an interstate pipeline or local distribution company served by an interstate pipeline. Section 312 allows the Commission to authorize the assignment to an interstate pipeline of an intrastate pipeline's right to receive natural gas under a particular contract. Subparts C and D of Part 284 of the Commission's regulations implement these provisions of the NGPA.

To enable section 311 or 312 transactions to occur, new facilities are often needed to connect the intrastate source of supply to the interstate system. These facilities are usually minor in nature. Regulatory consistency and logic dictate that an interstate pipeline should be allowed to construct such facilities pursuant to the budget-type authority granted in § 157.7(b) of our regulations. However, that regulation was drafted before the enactment of the NGPA, and it does not presently permit such authority to be relied upon for the construction of facilities to attach system supply from intrastate sources. By this order the Commission amends § 157.7(b)(4) to include within the definition of "gas-purchase facilities" those facilities necessary to transport volumes of gas sold or assigned by an intrastate pipeline under section 311 or 312.

In this regard, the Commission deems all existing budget-type certificates issued pursuant to section 157.7(b) to be sufficient authorization for construction pursuant to the expanded definition of "gas-purchase facilities" promulgated by this interim rule.

The availability of budget-type authority for the facilities in question should begin at once in order to implement as rapidly as possible those section 311 or 312 transactions which are currently delayed since, absent this authority, the purchasing interstate pipeline must await issuance of a Natural Gas Act section 7 certificate. Accordingly, the Commission finds that good cause exists to dispense with the normal notice and public procedures prior to making this rulemaking effective, since they are impracticable, unnecessary and contrary to the public interest. This interim rule shall become effective immediately.

Interested persons are invited to submit written comments, data, views, or arguments with respect to this proposed language. All comments received within 30 days of the date of this order will be considered prior to the promulgation of final regulations. The Commission is currently considering other revisions to § 157.7. These amendments are contained in the notice of proposed rulemaking entitled "Proposed Rulemaking Respecting

Budget-Type Applications for Gas-Purchase Facilities." [1] The comment period for the Docket No. RM79-37 proposed rule concludes on May 25, 1979. Any comments received pursuant to this Notice will also be considered in Docket No. RM79-37.

An original and 14 copies of comments should be filed with the Secretary of the Commission. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, N.E., Washington, D.C., during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79-43.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*, Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, P.L. 95-91, E.O. 12009, 42 F.R. 46267)

In consideration of the foregoing, the Commission amends Subpart A of Part 157, Subchapter E of Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. § 157.7(b) of Subpart A, Part 157, Subchapter E of Chapter I, Title 18, Code of Federal Regulations shall be amended by revising the introductory paragraph and paragraph (b)(4) to read as follows:

§ 157.7 Abbreviated applications.

* * * * *

(b) *Gas-purchase facilities—budget-type applications.* An interstate pipeline may file an abbreviated application requesting a budget-type certificate authorizing the construction of gas-purchase facilities during a given twelve-month period of operation.

* * * * *

(4) "Gas-purchase facilities" means those facilities, subject to the jurisdiction of the Commission, necessary to connect:

(i) The system of the gas purchaser or the system of another natural gas company authorized to transport or exchange such gas for the account of the gas purchaser with the system of:

(A) An intrastate pipeline for the purpose of effectuating a sale or assignment authorized by the Commission under Section 311(b) or 312 of the Natural Gas Policy Act of 1978; or

(B) An independent producer or other similar seller authorized by this Commission to make a sale of gas to a gas purchaser for resale in interstate commerce; or

(ii) The system of a natural gas company with the system of another natural gas company in order to effectuate the transportation of volumes sold or assigned under section 311 or 312 of the Natural Gas Policy Act of 1978.

Budget-type applications to construct and operate "gas-purchase facilities" may be filed by either or both the gas purchaser and another natural gas company authorized to transport gas for the account of, or for the exchange of gas with, the gas purchaser, depending upon which company or companies will actually construct and operate the budget facilities.

* * * * *

[FR Doc. 79-16413 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

[1] Docket No. RM79-37, 44 FR 24103 (April 24, 1979).

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Ch. I

[Docket No. 79N-0111]

Antibiotic Drugs; Miscellaneous Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the antibiotic regulations by making corrections, editorial revisions, and noncontroversial technical changes to update the regulations providing for the certification of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and useable regulations that reflect current certification practices.

DATES: Effective June 25, 1979; comments by June 25, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by making corrections, editorial revisions, and noncontroversial technical changes in several regulations that provide for certification of antibiotic and antibiotic-containing drugs intended for human use. To aid in understanding the types of changes included in this document, the changes have been grouped into two general classes for discussion in this preamble: monograph corrections and minor, noncontroversial technical changes.

Monograph Corrections

1. In the table in § 436.105(b) (21 CFR 436.105(b)), the spelling of "paromomycin" is corrected and "/ml." is unnecessary and is deleted from the entry for rifampin.

2. Section 446.581(a)(2) (21 CFR 446.581(a)(2)) is revised to provide for over-the-counter drug labeling for tetracycline hydrochloride ointment. It was inadvertently changed to prescription drug labeling when Part 446 was updated and recodified in the **Federal Register** of March 17, 1978 (43 FR 11151, at 11174).

3. In § 449.10(b)(4)(iv) (21 CFR 449.10(b)(4)(iv)), the word "nominally," which is not appropriate for the context, is changed to read "approximately."

4. Section 452.110b(a)(1) (21 CFR 452.110b(a)(1)) is revised by deleting the reference to the U.S.P. tests for disintegration. This reference is unnecessary because it duplicates the reference in § 452.110b(b)(3) to procedures for determining disintegration time.

Technical Changes

In keeping with current policy, certain noncontroversial technical changes based on certification experience are made as part of updating the regulations. Technical changes are made in two sections of the regulations:

1. Section 436.33(b) (21 CFR 436.33(b)) is amended in the table by adding superscript "3" to the item "vidarabine." This change will make the observation period of mice in the general safety test consistent with the requirements in the specific monograph for vidarabine, § 455.90a(b)(3) (21 CFR 455.90a(b)(3)).

2. In § 436.308 (21 CFR 436.308), a description of the preparation of spotting solutions is added for clarity.

The agency has determined that this document does not contain an agency action covered by § 25.1(b) and that consideration by the agency of the need for preparing an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21

CFR 5.1), Parts 436, 446, 449, and 452 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

§ 436.33 [Amended]

1. In § 436.33 *Safety test,* the table in paragraph (b) is amended by adding a superscript "3" to the item "Vidarabine" in the first column.

§ 436.105 [Amended]

2. In § 436.105 *Microbiological agar diffusion assay,* the table in paragraph (b) is amended by revising the item "Parmomycin" to read "Paromomycin" and by deleting "/ml." from the last column of the entry for rifampin.

3. In § 436.308, by redesignating paragraph (b) as (c), inserting new paragraph (b), and revising the fourth sentence of paragraph (c) to read as follows:

§ 436.308 Paper chromatography identity test for tetracyclines.

(a) * * *

(b) *Preparation of spotting solutions.* Prepare solutions of the working standard and sample as follows: Accurately weigh a portion of the working standard and sample and dilute with methanol to obtain a concentration of 1 milligram per milliliter of antibiotic to be tested.

(c) * * * Starting about 5 centimeters from the edge of the sheet and at 1.5-centimeter intervals, apply to the starting line 2 microliters each of standard solution, sample solution, and a 1:1 mixture of the standard and sample solutions. * * *

Part 446—TETRACYCLINE ANTIBIOTIC DRUGS

4. In § 446.581, paragraph (a)(2) is revised to read as follows:

§ 446.581 Tetracycline hydrochloride ointment.

(a) * * *

(2) *Labeling.* In addition to the labeling requirements prescribed by § 432.5(a)(3) of this chapter, each package shall bear on its label or labeling as hereinafter indicated, the following:

(i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark.

(*b*) The name and quantity of each active ingredient contained in the drug.

(ii) On the label of the immediate container or other labeling attached to or inserted within the package: Adequate directions under which the layperson can use the drug safely and efficaciously.

* * * * *

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

§ 449.10 [Amended]

5. In § 449.10 *Candicidin,* the last sentence of paragraph (b)(4)(iv) is amended by revising the word "nominally" to read "approximately".

PART 452—MACROLIDE ANTIBIOTIC DRUGS

6. In § 452.110b, the fourth sentence of paragraph (a)(1) is revised to read as follows:

§ 452.110b Erythromycin enteric-coated tablets.

(a) * * *

(1) * * * The tablets shall disintegrate within 2 hours. * * *

* * * * *

Because this amendment institutes changes that are either corrective, editorial, or of a minor substantive nature, the Commissioner finds for good cause that prior notice and public procedure are unnecessary. Interested persons may, however, on or before June 25, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments on this final rule. Four copies of all comments shall be submitted, except that individuals may submit single copies of comment, and shall be indentified with the Hearing Clerk docket number found in brackets in the heading of this document. Comments received may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

Effective date. This regulation shall be effective June 25, 1979.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357).)

Dated: May 17, 1979.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 79-16210 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Ch. I

[Docket No. 76N-0460]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Amendment of Essential Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document adds to the list of products containing a chlorofluorocarbon for an essential use an intrarectal hydrocortisone acetate drug product for human use. The Food and Drug Administration (FDA) concludes that the product provides a unique health benefit unavailable without the use of the chlorofluorocarbon.

EFFECTIVE DATE: June 25, 1979.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Bureau of Drugs (HFD–30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 8, 1978 (43 FR 57617), FDA proposed to amend § 2.125(e) (21 CFR 2.125(e)) to include intrarectal hydrocortisone acetate for human use as an essential use of chlorofluorocarbon. This action was taken in response to a citizen petition stating that the product provides a special benefit for patients in the treatment of ulcerative proctitis and that this benefit would be unavailable without the use of chlorofluorocarbons.

Interested persons were allowed 30 days to submit comments on the proposal. No comments, however, were received.

Based on available information, the agency concludes that intrarectal hydrocortisone acetate for human use is an essential use of chlorofluorocarbon. The use of this product provides a special benefit for patients who cannot retain hydrocortisone or corticosteroid enemas in the treatment of ulcerative proctitis. Furthermore, this benefit would be unavailable without the use of chlorofluorocarbon.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 501, 502, 505, 701(a), 52 Stat. 1042–1043 as amended, 1049–1053 as amended, 1055 (21 U.S.C. 331, 351, 352, 355, 371(a))) and the National Environmental Policy Act of 1969 (sec. 102(2), 83 Stat. 853 (42 U.S.C. 4332)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 2 is amended in § 2.125 by adding new paragraph (e)(6) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(e) * * *

(6) Intrarectal hydrocortisone acetate for human use.

* * * * *

Effective date. This regulation is effective *(insert date 30 days after date of publication in the* **Federal Register***).*

(Secs. 301, 501, 502, 505, 701(a), 52 Stat. 1042–1043 as amended, 1049–1053 as amended, 1055 (21 U.S.C. 331, 351, 352, 355, 371(a)); sec. 102(2), 83 Stat. 853 (42 U.S.C. 4332))

Dated: May 16, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-16040 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 436 and 455

[Docket No. 79N-0069]

High Pressure Liquid Chromatography Assay for Vidarabine

AGENCY: Food and Drug Administation.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for an improved method for determining the vidarabine content of drugs containing vidarabine monohydrate. The new method, high pressure liquid chromatography, replaces the existing method for the determination of vidarabine content. The regulation is intended to improve drug quality.

DATES: Effective June 25, 1979; comments by June 25, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated a request submitted in accordance with the antibiotic drug regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357) as amended, that a high pressure liquid chromatography method be adopted as the method specified in the regulations for content determination of the antibiotic drug vidarabine.

The agency finds that the high pressure liquid chromatography method is more acurate and reliable than the method currently in the regulations.

Because this amendment is an improvement in testing procedures and the only manufacturer affected has agreed to the change, FDA finds for good cause that prior notice and public procedures are unnecessary and not in the public interest. However, an opportunity is provided for submission of comments to determine whether the regulation should subsequently be modified or revoked. (A copy of the agreement with the manufacturer is on file with the Hearing Clerk, address above.)

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 436 and 455 are amended as follows:

1. Part 436 is amended by adding new § 436.325 to read as follows:

§ 436.325 High pressure liquid chromatography assay for vidarabine.

(a) *Equipment.* A suitable high pressure liquid chromatograph, such as a Waters Associates Model 244 [1] or equivalent, equipped with:

(1) A low dead volume cell 8 to 20 microliters;

(2) A light path length of 1 centimeter;

(3) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers;

(4) A suitable recorder of at least 25.4 centimeter deflection;

(5) A 30-centimeter column having an inside diameter of 4 millimeters and packed with a suitable octadecyl bonded silica phase packing such as Waters Associates, Micro-Bondapack C18.[1]

(b) *Mobile phase.* (1) Transfer 2.2 grams of sodium dioctyl sulfosuccinate and 10 milliliters of glacial acetic acid to a 1-liter volumetric flask. Dissolve with 500 milliliters of methanol, dilute to volume with distilled water, and mix. Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter.

(2) De-gas the mobile phase just before its introduction into the chromatograph pumping system.

(c) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 1.5 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the reference standard that is at least 50 percent of scale. The minimum between peaks must be no more than 2 millimeters above the initial baseline.

(d) *Preparation of sample and working standard solutions.* Accurately weigh approximately 24 milligrams of sample or working standard into a 200-milliliter volumetric flask. Add about 150 milliliters of distilled water and heat on a steam bath for 10 minutes. Shake until all the powder is dissolved. Cool to room temperature and dilute to volume with distilled water.

(e) *Procedure.* Using the equipment, mobile phase, and operating conditions listed in paragraphs (a), (b), and (c) of this section, inject 10 microliters of the sample or working standard solution prepared as directed in paragraph (d) of this section into the chromatograph. Allow an elution time sufficient to obtain satisfactory separation of expected components. The elution order is void volume, arahypoxanthine (if present), vidarabine, and adenine (if present).

(f) *Calculations.* Calculate the vidarabine content as follows:

Micrograms of vidarabine per milligram $= [(A)(W_s)(f)]/[(B)(W_u)]$, where:

A = Area of the vidarabine sample peak (at a retention time equal to that observed for the standard);

B = Area of the standard peak;

W_s = Weight of standard in milligrams;

W_u = Weight of sample in milligrams; and

f = Potency of standard in micrograms per milligram.

2. Part 455 is amended:

a. In § 455.90a, by revising paragraph (b)(1) to read as follows:

§ 455.90a Sterile vidarabine monohydrate.

* * * * *

(b) * * *

(1) *Vidarabine content.* Proceed as directed in § 436.325 of this chapter.

* * * * *

b. In § 455.290, by revising paragraph (b)(1) to read as follows:

§ 455.290 Vidarabine monohydrate for infusion.

* * * * *

(b) * * *

(1) *Vidarabine content.* Proceed as directed in § 436.325 of this chapter, except prepare the sample solution and calculate the vidarabine content as follows:

(i) *Preparation of sample solution.* Using a suitable hypodermic needle and syringe, transfer 2 milliliters of the well-shaken suspension to a 500-milliliter volumetric flask. Add approximately 50 milliliters of distilled water and 5

[1] Available from Waters Associates, Inc., Mable St., Milford, MA 10757.

milliliters of glacial acetic acid. Warm on a steam bath for 15 minutes to dissolve the vidarabine. Cool to room temperature and dilute to volume with distilled water. Transfer 4 milliliters to a 25-milliliter volumetric flask and dilute to volume with distilled water.

(ii) *Calculations.* Calculate the vidarabine content as follows:

Milligrams of vidarabine per milliliter = $[(A)(W_s)(f)(125)]/[(B)(1,000)(16)]$,

where:

A = Area of the vidarabine sample peak (at a retention time equal to that observed for the standard);

B = Area of the standard peak;

W_s = Weight of the standard in milligrams; and

f = potency of standard in micrograms per milligram.

* * * * *

c. In § 455.390, by revising paragraph (b)(1) to read as follows:

§ 455.390 Vidarabine monohydrate ophthalmic ointment.

* * * * *

(b) * * *

(1) *Vidarabine content.* Proceed as directed in § 436.325 of this chapter, except prepare the sample solution and calculate the vidarabine content as follows:

(i) *Preparation of sample solution.* Accurately weigh a portion of the sample containing the equivalent of approximately 12 milligrams of vidarabine (estimated) into a 100-milliliter volumetric flask. Add approximately 80 milliliters of distilled water and heat for 15 minutes on a steam bath. Shake to dissolve the vidarabine and, while the solution is still hot, add 10 milliliters of heptane to dissolve the ointment base. Swirl gently until the ointment base is dissolved. Cool to room temperature and dilute the aqueous phase to volume with distilled water. Discard the heptane phase and mix the solution.

(ii) *Calculations.* Calculate the vidarabine content as follows:

Percent vidarabine = $[(A)(W_s)(f)]/[(B)(W_u)(10)]$,

where:

A = Area of the vidarabine sample peak (at a retention time equal to that observed for the standard);

B = Area of the standard peak;

W_s = Weight of standard in milligrams;

W_u = Weight of sample in milligrams; and

f = Potency of standard in micrograms per milligram.

* * * * *

Interested persons may, on or before June 25, 1979, file with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments, in four copies and identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

Effective date. This amendment shall become effective June 25, 1979.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: May 11, 1979.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 79-16039 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 1220

[Docket No. 75N-0115]

Regulations Under the Tea Importation Act; Tea Standards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document establishes tea standards for the year beginning May 1, 1979, and ending April 30, 1980. The tea standards are provided for under the Tea Importation Act.

DATES: Effective May 25, 1979. Comments by June 25, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Caesar A. Roy, Bureau of Foods (HFF-310), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1186.

SUPPLEMENTARY INFORMATION: This amendment is based on the recommendation of the Board of Tea Experts, which comprises tea experts drawn from the Food and Drug Administration (FDA) and the tea trade, who are representative of the trade as a whole. By law (21 U.S.C. 42), the tea standards are to be revised annually, and FDA has set the effective date for the standards as May 1 by regulation (21 CFR 1220.41). The standards have been publicly available since the Board's report on March 16, 1979, and have been enforced in accordance with 21 U.S.C. 41 since then. Because the official publication date has passed and FDA has been enforcing the standards, the agency concludes that the standards for the current year should be published without delay. For these reasons, FDA finds also that it is unnecessary, impractical, and contrary to the public interest to initiate a notice and comment rulemaking proceeding at this time.

FDA therefore is invoking the good cause exemption provisions of the Administrative Procedure Act (5 U.S.C. 553(b)(B) and (d)(3)) and the food and drug regulations (21 CFR 10.40(c)(4) and (e)(1)) and is issuing this notice as a final rule effective immediately without notice of proposed rulemaking. However, interested persons may submit comments on this notice by June 25, 1979, as provided by 21 CFR 10.40(f)(10). If the comments necessitate agency action, FDA will publish a notice in the **Federal Register**, discussing the comments and announcing the action determined to be necessary.

Therefore, under authority vested in the Secretary of Health, Education, and Welfare by the Tea Importation Act (secs. 3, 10, 29 Stat. 605, 607, 41 Stat. 712, 54 Stat. 1237, 67 Stat. 631 (21 U.S.C. 43, 50)) and delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 1220 is amended in § 1220.40 by revising paragraph (a) to read as follows:

§ 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on March 16, 1979, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1979, and ending April 30, 1980:

(1) Formosa Oolong.

(2) Black Tea other than China and Formosa Type (to be used for all black teas except those from China and Formosa).

(3) Black Tea, China and Formosa Type (to be used for black teas from China and Formosa).

(4) Green Tea (to be used for all green teas).

(5) Canton Oolong Type (to be used for all Canton type teas of Formosa or China origin).

(6) Scented Black Tea.

(7) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1979. Tea shipped prior to May 1, 1979 will be governed by the standards that became effective on May 1, 1978.

* * * * *

Effective date. This regulation is effective May 25, 1979.

(Secs. 3, 10, 29 Stat. 605, 607, 41 Stat. 712, 54 Stat. 1237, 67 Stat. 631 (21 U.S.C. 43, 50))

Dated: May 17, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-16041 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 217

[DOD Directive 6050.2] [1]

Recreational Use of Off-Road Vehicles on DOD Lands

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is revising its existing rule on recreational use of off-road vehicles on DoD Lands in response to comments received on its 1978 publication. It adds the provision that each type of off-road vehicle be evaluated separately to determine the suitability of areas or trails for off-road vehicle use Administrative and editorial changes have been made to clarify the intent of the original rulemaking.

EFFECTIVE DATE: April 19, 1979.

FOR FURTHER INFORMATION CONTACT: CDR David A. Rein, Director, Air and Water Quality Program, OASD(MRA&L), The Pentagon, Room 3D823, Washington, D.C. 20301, Telephone 202-695-0221.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-9232 appearing in the **Federal Register** (43 FR 14650) on April 7, 1978, the Office of the Secretary of Defense published this part prescribing uniform policies, procedures and criteria for controlling off-road travel on DoD Lands. This is the first revision of Part 217.

Accordingly, 32 CFR Chapter I, is amended by revising Part 217, reading as follows:

PART 217—RECREATIONAL USE OF OFF-ROAD VEHICLES ON DOD LANDS

Sec.

217.1 Reissuance and purpose.
217.2 Applicability and scope.
217.3 Definitions.
217.4 Policy.
217.5 Responsibilities.
217.6 Protection of natural resources and environmental values.

Enclosure

Authority: E.O. 11644 (1972) as amended by E.O. 11989 (1977), (18 U.S.C. 1382 (1976), and 16 U.S.C. 460(1))

§ 217.1 Reissuance and Purpose.

This part (a) updates established policies, procedures, and criteria for controlling recreational use of off-road vehicles, and (b) prescribe appropriate operating conditions for such vehicles in accordance with E.O. 11644, "Use of Off-Road Vehicles on the Public Lands" (1972) as amended by E.O. 11989 (1977).

§ 217.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"). The Corps of Engineers may prescribe separate regulations.

(b) Its provisions do not apply to the official use of vehicles.

§ 217.3 Definitions.

(a) *Off-Road Vehicles.* Any motorized vehicle designated for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain. The term excludes any (1) registered motorboat, (2) military, fire, ambulance, or law enforcement vehicle when used for emergency purposes, (3) combat or combat support vehicle when used for national defense purposes, and (4) official use vehicle.

(b) *Official Use.* The use of a vehicle by an employee, agent, or designated representative of the Department of Defense or one of its contractors in the course of employment or agency representation.

§ 217.4 Policy.

(a) It is Department of Defense policy to protect and enhance environmental quality, conserve natural resources, and provide opportunities for outdoor recreation (Pub. L. 88-29, "Outdoor Recreation Programs" (16 U.S.C. 460(1), and DoD Directive 4700.1,[1] "Natural Resources—Conservation and Management," November 6, 1978). Land under DoD control was acquired solely for national defense purposes; other uses are secondary to mission needs.

(b) All land and water areas will be closed to recreational off-road travel except those areas and trails that are suitable and specifically designated for such use.

§ 217.5 Responsibilities.

Consistent with the provisions of this part regarding off-road vehicles, DoD Components with land management responsibilities shall:

(a) Prescribe operating conditions to protect resource values, preserve public health, safety and welfare, and minimize use conflicts. These conditions shall include provisions for registration permits, use fees, and liability insurance requirements for users.

(b) Ensure that lands where off-road vehicle use is permitted are identified in the natural resources management plan and are included as part of the installation's master plan.

(c) Provide opportunities for users to participate in the selection and designation of suitable sites. Distribute information which identifies permitted sites and describes the conditions of use.

(d) Mark permitted areas and trails.

(e) Manage trails and areas to ensure that conditions of use are met on a continuing basis.

(f) Monitor the effects of the use of off-road vehicles. This monitoring shall be the basis for changes to (1) installation or DoD Component regulations to ensure adequate control of off-road vehicle use; (2) area and trail designations; or (3) conditions of use which are necessary to protect the environment, ensure the public safety, and minimize conflict among users.

(g) Negotiate cooperative agreements with State or local governments for the enforcement of laws and regulations relating to off-road vehicle use.

§ 217.6 Protection of natural resources and environmental values.

(a) When the recreational use of off-road vehicles is permitted, the intensity, timing, and distribution will be carefully regulated to protect environmental values. In designating suitable sites, preference will be given to utilizing existing trails. Before designating areas or trails for such use, the environmental consequences will be assessed. Environmental statements will be prepared when assessments indicate that the proposed use will create a significant environmental impact (DoD Directive 6050.1,[1] "Environmental Considerations in DoD Actions," March 19, 1974.

(b) Evaluate each type of off-road vehicle separately to determine the suitability of areas and trails for off-road vehicle use. The impact of one type of off-road vehicle shall not affect or govern regulations on the use of an area or trail by another type of off-road

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code: 301.

vehicle except where their impacts may be cumulative.

(c) Persons abusing the off-road vehicle use privilege shall be barred from access to the DoD installation for off-road vehicle use. Further action may be taken under 18 U.S.C. 1382, "Entering Military, Naval or Coast Guard Property" (1976).

(d) If the installation commander determines that off-road vehicle use is causing or will cause considerable adverse effects to the soil, vegatation, wildlife, wildlife habitat, or cultural or historic resources, immediate action shall be taken to prohibit the type of use causing such effects, and if necessary, to close such designated sites.

(e) Restrictions on off-road vehicle use or closure of designated sites shall remain in effect until the adverse effects have been eliminated, including site restoration, if necessary, and measures have been taken to prevent any such recurrence.

Enclosure

Guidelines and Criteria to Evaluate DoD Lands for Recreational Off-Road Vehicle Use

A. *Site Identification*

1. DoD lands may be designated for off-road vehicle use provided that (a) there is sufficient suitable area, (b) a clear and demonstrated need exists, (c) other public lands that are more suitable are not available, and (d) the area is not an excepted area described below.

2. *Excepted areas* are:

a. Areas that are restricted for security or safety purposes.

b. Areas containing geological and soil conditions, flora or fauna, or other natural characteristics of a fragile or unique nature that would be subject to excessive damage by use of off-road vehicles.

c. Areas that are key fish and wildlife habitat as identified under environmental considerations (subsection C.5. of this enclosure).

d. Areas that contain archeological, historical or paleontological resources or that constitute actual wilderness or scenic areas.

e. Areas in which noise would affect adversely other users and wildlife resources.

3. *Site Designations.* Before designating sites, determine the carrying capacity of the area. Sites may be designated as:

a. *Area Designation.* For users, an area designation offers greater freedom of movement and is preferred over a trail designation. Area designation, however, may result in greater environmental damage and could cause conflicts with other uses. Care must be exercised in designating sites for area use.

b. *Trail Designation.* Designation of specific trails for off-road use by off-road vehicles constitutes a compromise for most off-road vehicle users, and is more compatible with the objective of this Directive. Therefore, where it is practicable to designate existing or proposed trails for use of off-road vehicles, preference should be given to this type of site designation.

c. *Use Classification.* Classify areas or trails as (1) generally open to the public with access controlled within manageable quotas, or (2) closed to the public. Where use by installation personnel is permitted, exclusions of the public may not be justifiable, except under the most compelling conditions.

B. *Zones of Use*

Locate areas and trails to minimize:

1. Damage to soil, watershed, vegetation or other resources of the public lands.

2. Harassment of wildlife or disruption of wildlife habitats.

3. Conflicts between off-road vehicle use and other recreational uses of the same or neighboring lands.

C. Environmental Considerations

The environmental impacts of off-road vehicle use will be assessed, and when such use will create significant environmental impacts, an environmental impact statement will be prepared in accordance with DoD Directive 6050.1[1]. Some factors to consider are the effects of:

1. Dust and exhaust emissions on air quality.

2. Siltation on streams or other bodies of water which may result from soil erosion created by off-road vehicles.

3. Soil erodability and soil compaction.

4. Off-road vehicle use on native and desirable species of plants with special consideration given to endangered species.

5. Off-road vehicle use on wildlife, their breeding and drumming grounds, winter feeding and yarding area, migration routes, and nesting areas. The effects of such use on the spawning, migration and feeding habits of fish and other aquatic organisms should also be considered. Particular attention should be given to the effects on species classified as rare or endangered.

6. Excessive noise.

7. Off-road vehicles on aesthetic values and visual characteristics of the sites.

D. *Operating Criteria*

1. Off-road vehicles shall not be operated:

a. In a reckless, careless, or negligent manner.

b. In excess of established speed limits.

c. While the operator is under the influence of alcohol or drugs.

d. In a manner likely to cause excessive damage or disturbance of the land, wildlife, or vegetative resources.

2. All off-road vehicles must conform to all applicable local and State laws, including those pertaining to pollutant emissions, noise, and registration requirements.

H. E. Lofdahl,

Director, Corres. & Directives, Washington Headquarters Services, Department of Defense.

May 22, 1979.

[FR Doc. 79-16495 Filed 5-24-79; 8:45 am]

BILLING CODE 3810-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL 1230-7]

Approval of a Delayed Compliance Order Issued by State of Maryland to General Refractories Co.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Maryland to the General Refractories Company. The Order requires the company to bring air emissions from its magnesite processing system in Baltimore into compliance with certain regulations contained in the Federally-approved Maryland State Implementation Plan (SIP). Because of the Administrator's approval, General Refractories Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect May 25, 1979.

FOR FURTHER INFORMATION: Thomas W. Shiland, U.S. EPA, Region III, Curtis Building, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106, 215/597-7915.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in

response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Air Enforcement Branch, U.S. EPA, Region III, Curtis Building, Sixth & Walnut Street, Philadelphia, Pennsylvania 19106.

SUPPLEMENTARY INFORMATION: On April 11, 1979, the Regional Administrator of EPA's Region III Office published in the **Federal Register**, 44 FR 13546, a notice proposing approval of a delayed compliance order issued by the State of Maryland to the General Refractories Company. The notice asked for public comments by April 11, 1979 on EPA's proposed approval of the Order.

No public comments have been received by this office; therefore, the delayed compliance order issued to General Refractories Company is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places General Refractories Company on a schedule to bring its magnesite processing installation in Baltimore into compliance as expeditiously as practicable with Regulations Number 10.03.38.01A and 10.03.38.03F, promulgated pursuant to Article 43, Section 697 of the Annotated Code of Maryland, a part of the Federally-approved Maryland State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit General Refractories Company to delay compliance with the SIP regulations covered by the Order until June 30, 1979. The company is unable to immediately comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place General Refractories Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Maryland Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: May 18, 1979.

Douglas M. Costle,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.251:

§ 65.251 EPA approval of State delayed compliance orders issued to major stationary sources.

Source	Location	SIP regulations involved	Date of FR proposal	Final compliance date
General Refractories Company	Baltimore	10.03.38.01A, 10.03.38.03F.	Mar. 12, 1979	June 30, 1979.

* * * * *

[FR Doc. 79-16333 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1233-2]

40 CFR Part 81

Commonwealth of Pennsylvania; Section 107 Designations—Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Hearings.

SUMMARY: The notice announces that pursuant to the United States Court Appeals for the Third Circuit's order in the cases of Bethlehem Steel v. EPA, No. 78-1523 and Sharon Steel v. EPA, No. 78-1522 public hearings will be held for the purpose of allowing the Bethlehem Steel Corporation and the Sharon Steel Corporation to comment on the Administrator's decision to designate the Allentown-Bethlehem-Easton (A-B-E) Air Basin, the Harrisburg Air Basin, the City of Farrell, and the City of Sharon, as nonattainment areas under Section 107 of the Clean Air Act, as amended. In addition, in the interest of full public participation, other interested persons will also be afforded an opportunity to comment on these designations and these hearings.

The hearing regarding the A-B-E Air Basin and the Harrisburg Air Basin will be held on June 25, 1979, at the William J. Green, Jr. Federal Building, Room 7306 Sixth and Arch Streets, Philadelphia, Pennsylvania, 19106 and will convene at 10 a.m. The hearing regarding the City of Farrell and the City of Sharon will be held on June 28, 1979, at the Federal Building, Room 2501, 1000 Liberty Avenue, Pittsburgh, Pennsylvania, 15222, and will convene at 10 a.m.

The hearings will be open to the public. Anyone may present written or oral comments during the hearing, however, such comments must be limited to the specific subject matter of that hearing. Each hearing record will remain open for ten (10) days following each public hearing for the submission of additional comments.

DATES: Hearings will be held on the following dates:

June 25, 1979, 10 a.m. (For A-B-E Air Basin and the Harrisburg Air Basin).
June 28, 1979, 10 a.m. (For City of Farrell and City of Sharon).

ADDRESSES: Hearings will be held at the following locations:

A-B-E Air Basin and the Harrisburg Air Basin: William J. Green, Jr., Federal Bldg., Room 7306, Sixth and Arch Streets, Philadelphia, Pa. 19106.
For the City of Farrell and City of Sharon: Federal Bldg., Room 2501, 1000 Liberty Ave., Pittsburgh, Pa. 15222.

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford (3AH12), Air Programs Branch, Air & Hazardous Materials Division, U.S. Environmental Protection Agency—Region III, 6th & Walnut Streets, Curtis Building, 10th Floor, Philadelphia, Pennsylvania 19106, Phone: 215/597-8392.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended in 1977 (CAA) imposed several new requirements on the States and EPA. Among them the CAA added Section 107(d) which directed each State, within 120 days after the Amendments were enacted, to submit to the Administrator a list describing the National Ambient Air Quality Standards attainment status for all areas within the State. The Administrator was then required to promulgate the State lists, with any necessary modifications, as a final rule within sixty days of their submittal.

On December 5, 1977, pursuant to Section 107(d)(1), the Commonwealth of Pennsylvania submitted to EPA its list of air quality attainment designations. For total suspended particulate (TSP), the designations were based on either

modeling data or monitoring data. In its list of designations, the Commonwealth of Pennsylvania designated the A-B-E Air Basin, the Harrisburg Air Basin, the City of Sharon and the City of Farrell as nonattainment areas for primary TSP standards.

On March 3, 1978 (43 Fed. Reg. 8962), the Administrator published Pennsylvania's designations as final agency action effective immediately without providing prior notice or opportunity to comment. These designations were made immediately effective because the Administrator determined that the strict statutory deadlines of Section 107 and the need to provide the States with guidance in the SIP process warranted such action. The Administrator, however, did invite public comments during a sixty day period after promulgation of the designations, and he indicated he would modify the rule if any comments received demonstrated that such action was necessary.

On September 12, 1978 (43 FR 40502), the Administrator repromulgated the designations, with amendments where necessary, for all States within Region III, including the Commonwealth of Pennsylvania. At that time, the Administrator determined that it was not appropriate to revise the TSP nonattainment designations for the A-B-E Air Basin, the Harrisburg Air Basin, the City of Farrell, or the City of Sharon.

On May 1, 1978, the Bethlehem Steel Corporation and the Sharon Steel Corporation filed separate petitions for review in the United States Court of Appeals for the Third Circuit challenging the Administrator's March 3, 1978 designations of the A-B-E Air Basin, the Harrisburg Air Basin, the City of Farrell, and the City of Sharon as nonattainment areas. In an opinion filed on April 25, 1979, the Third Circuit held that the Administrator lacked good cause to dispense with the Administrative Procedure Act's requirements of prior notice and an opportunity to comment and the Court remanded the matter to the Administrator with its instructions "... that the Administrator shall forbear from applying to Sharon and Bethlehem any of the requirements or sanctions imposed on nonattainment areas by the 1977 amendments to the Clean Air Act until the Administrator shall have conducted a limited legislative hearing in which he gives these two companies the required statutory notice and opportunity for participation and comments as provided by the APA, 5 U.S.C. § 553 (1976)." The Court limited its decision only to the specific designations challenged by Bethlehem Steel Corporation and Sharon Steel Corporation and only as the designations would be applied to those two companies. The Commonwealth of Pennsylvania is still obligated to submit a revised Part D state implementation plan as required under the CAA.

II. Public Hearings

In conformance with the Court's directions, the Regional Administrator hereby announces that two public hearings will be held, at which time the Bethlehem Steel Corporation and the Sharon Steel Corporation will be afforded an opportunity to comment on the four primary nonattainment TSP designations discussed in this notice. In the interest of full public participation, the public will also be afforded an opportunity to participate in these hearings and to comment upon these designations. At the hearings, comments may be admitted into the record in the form of written statements and/or oral testimony, and the companies as well as the public will have an opportunity to answer clarifying questions asked by the Hearing Officer regarding the designation of the four nonattainment areas. The hearing regarding the nonattainment designations for the A-B-E Air Basin and the Harrisburg Air Basin will be held on June 25, 1979 at the William J. Green, Jr. Federal Building, Room 7306, Sixth and Arch Streets, Philadelphia, Pennsylvania, 19106, and will convene at 10 a.m. The hearing regarding the nonattainment designations for the City of Farrell and the City of Sharon will be held on June 28, 1979, at the Federal Building, Room 2501, 1000 Liberty Avenue, Pittsburgh, Pennsylvania, 15222, and will convene at 10 a.m. Comments admitted into the record at each hearing must be limited to the specific subject matter of that hearing. Upon adjournment of each public hearing, the hearing record will remain open for ten days for the inclusion of additional comments upon the matters already made a part of the record and for the submission of new or clarifying information. The administrator intends to take action based upon these hearings no more than thirty days after the closing of each public hearing record.

Because of the rapidly approaching date for having an approved Part D state implementation plan revision as required by the CAA (July 1, 1979), and because the general public, as well as the Bethlehem Steel Corporation and the Sharon Steel Corporation, have had sufficient time and opportunity to become acquainted with the pertinent issues involved in these four designations, the Regional Administrator believes this notice, which is being published in excess of 30 days prior to the convening of these public hearings, is sufficient to appraise the companies as well as the general public, of the opportunity to provide comments on these four designations at these public hearings.

III. Status of Affected Designations

Pursuant to the Third Circuit order, during the course of these proceedings, the designations for the four areas in question will remain as nonattainment for primary TSP standards, except as applied to Bethlehem Steel Corporation and Sharon Steel Corporation. In the Harrisburg Air Basin, the Commonwealth of Pennsylvania's Department of Environmental Resources has conducted additional studies and determined that the area should be reclassified as nonattainment for secondary TSP standards. The Commonwealth of Pennsylvania has formally submitted this reclassification on December 29, 1978 to EPA, and the Agency will soon propose action on the Commonwealth's revision in the near future.

Any comments submitted into the record of the June 25, 1979 public hearing pertaining to the Harrisburg Air Basin will be considered by the Administrator in taking action on the proposed reclassification of the Harrisburg Air Basin as nonattainment for secondary TSP standards.

Dated: May 16, 1979.

Jack Schramm,

Regional Administrator.

[FR Doc. 79-16325 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51-5

Public Contracts and Property Management; Procurement Requirements and Procedures

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Final rule.

SUMMARY: This rule prescribes in paragraph 51-5.3(c) of Title 41 CFR the procedures for the application of price changes approved by the Committee for commodities and services on the Procurement List. The present wording

of paragraph 51–5.3(c) of the Committee's regulations requires clarification regarding when an order is "placed" with a workshop and the authority of the Committee to make price changes apply to orders received by the workshop prior to the effective date of the change. The revised wording specifies that (a) price changes shall usually apply to orders received by the workshop on or after the effective date of the change and (b) the Committee may, in special cases, make price changes applicable to orders received by the workshop prior to the effective date, after taking into consideration the views of the ordering office.

EFFECTIVE DATE: May 25, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher 703–557–1145.

SUPPLEMENTARY INFORMATION: Paragraph 47(b) of Title 41 United States Code gives the Committee the responsibility of determining the fair market prices for commodities and services on the Procurement List and for changing its price determinations in accordance with changing market conditions with respect to such commodities and services.

Currently, paragraph 51–5.3(c) states that price changes shall apply to orders placed on or after the effective date of its change. Questions have been raised regarding when an order is "placed" with a workshop. The revised wording clarifies the point by indicating that the price change shall normally apply to orders received by the workshop on or after the effective date of the change.

The present regulations leave the impression that the concurrence of the ordering office is required before a price change could be applied retroactively. The revised wording makes it clear that the Committee has the authority and responsibility for deciding which price changes should be applied retroactively.

These amendments consist of interpretive rules concerning the Committee's procedures and practices in fulfilling its responsibilities under 41 U.S.C. 46 to 48c. They are, therefore, exempted from the rulemaking procedures of 5 U.S.C. 553 and from the requirement for publication not less than 30 days before their effective date.

Accordingly, paragraph (c) of Section 51–5.3 is revised to read as follows:

§ 51–5.3 Prices.

* * * * *

(c) Price changes for commodities and services shall usually apply to orders received by the workshop on or after the effective date of the change. In special cases, after considering the views of the ordering office, the Committee may make price changes applicable to orders received by the workshop prior to the effective date of the change.

* * * * *

By the Committee.

C. W. Fletcher,
Executive Director.

[FR Doc. 79–16385 Filed 5–24–79; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 55a

Program Grants for Coal Miners' Respiratory Clinics; Removal of Eligibility Restriction

AGENCY: Health Services Administration, PHS, HEW.

ACTION: Final rule.

SUMMARY: The Department of Health, Education, and Welfare (HEW) removes a restriction on the eligibility of applicants for grants to support clinics for the examination and treatment of coal miners' breathing and lung impairments. Applicants will no longer be required to be from a State that contains at least 3 percent of the Nation's active and inactive coal miner population. The grant program is authorized by the Federal Mine Safety and Health Act of 1977.

DATES: The amendment is effective on May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. William Beacham, Director, Regional Commissions Health Programs, Bureau of Community Health Services, 5600 Fishers Lane, Rockville, Md. 20857, Phone: 301–443–5033.

SUPPLEMENTARY INFORMATION: Under Section 427(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 937(a)), the Secretary is authorized to make grants and contracts to public and private entities to support clinical facilities for the analysis, examination, and treatment of breathing and lung impairments in active and inactive coal miners. This grant program was funded in 1974 under Section 427(a) of the Coal Mine Health and Safety Act of 1969 (now Section 427(a) of the Federal Mine Safety and Health Act of 1977). On July 2, 1974, the Department issued Part 55a of Title 42, Code of Federal Regulations; the rules governing the award of these grants (39 FR 24363). The regulations provide, among other things, that grant awards may be made to any public or nonprofit agency which either (1) has received a grant from the Appalachian Regional Commission to carry out a miners' respiratory clinic program, or (2) has been designated by the Governor in a State with at least 3 percent of the Nation's population of active and inactive coal miners.

The coal miners' respiratory clinic program was funded for fiscal year 1979 to assist in implementing the Black Lung Benefits Reform Act of 1977 (Pub. L. 95–239) which added a new Section 435 to the Federal Mine Safety and Health Act of 1977. Section 435 requires that all claims for black lung benefits that have been denied be reviewed if review is requested by the claimant.

Funds to provide grants for additional black lung clinics were authorized so that medical testing facilities would not be overloaded by medical examinations associated with the reconsideration of claims (124 Cong. Rec. S16005, September 25, 1978). Since data are not available on the number and places of residence of inactive coal miners, the 3 percent eligibility requirement would preclude making adequate clinical services available to significant numbers of miners with respiratory or lung impairments. This result would be contrary to the intent of Congress as reflected in the legislative history of the amendment funding the coal miners' respiratory clinic program.

In view of the matters discussed above, the Department finds that good cause exists for omitting the notice of proposed rulemaking and delay in the effective date of the amendment to remove the restriction that eligible grant applicants must be from a State that contains at least 3 percent of the Nation's active and inactive coal miner population.

Therfore, § 55a.3(a) is amended as set forth below.

Dated: April 10, 1979.

Charles Miller,
Assistant Secretary for Health.

Approved: May 18, 1979.

Joseph A. Califano, Jr.,
Secretary.

Section 55a.3 is amended by revising paragraph (a) to read as follows:

§ 55a.3 Eligibility.

(a) Any public or other nonprofit agency or institution which

(1) has been designated by the Governor of the State as the agency to receive funds to carry out a miners' respiratory clinic program, or (2) is the recipient of a grant from the Commission to carry out a miners' respiratory clinic program, is eligible to apply for a grant under this part.

* * * * *

[FR Doc. 79-16549 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-84-M

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42 CFR Part 75

Prepaid Medical Service Plans; Revocation of Part

AGENCY: Public Health Service, HEW.

ACTION: Revocation of regulation.

SUMMARY: HEW revokes Part 75 of Title 42, Code of Federal Regulations, which provides for the authorization by HEW of prepaid medical service contracts by eligible carriers.

EFFECTIVE DATE: The revocation is effective on May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organization, Park Building, Third Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: In Title IV of Pub. L. 91-515, Congress enacted a program which permitted the Secretary of HEW to authorize carriers providing health benefits to present or retired Federal employees to issue prepaid medical service contracts in any State. On March 30, 1972, the Secretary issued 42 CFR Part 75, which set forth the regulations for this program. Section 75.4 of these regulations provides that the Secretary may authorize the issuance of these contracts "* * * if he finds that such authorization is necessary, by reason of the laws of the State with respect to which the application is made, to permit the carrier to issue such contracts."

Subsequently, the Congress enacted the Health Maintenance Organization Act of 1973, Pub. L. 93-222. This Act provides, among other things, that the Secretary may determine that entities organized and operated as required by the Act are qualified health maintenance organizations (HMOs). To a large extent, carriers issuing medical service contracts under Part 75 would be operating in a manner similar to qualified HMOs. The HMO Act of 1973 also added to the Public Health Service Act section 1311, which provides that certain restrictive State laws and practices shall not apply to prevent entities from operating as qualified HMOs.

Because the Secretary has not had occasion to exercise his authority under Part 75, and because section 1311 has been enacted to make certain restrictive State laws and practices inapplicable to qualified HMOs, the Secretary has decided that Part 75 is no longer necessary.

PART 75 [REVOKED]

Accordingly, Part 75 of Title 42 CFR is revoked, effective on May 25, 1979.

Dated: April 20, 1979.

Charles Miller,

Acting Assistant Secretary for Health.

Approved: May 17, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79-16363 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-85-M

Health Care Financing Administration

42 CFR Part 447

Payments for Services; Timely Claims Payment

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final Regulation.

SUMMARY: These regulations add new Medicaid State plan requirements for timely processing of claims from practitioners who are in individual or group practice or who practice in shared health facilities. Ninety percent of "clean claims" must be paid within 30 days of receipt; 99 percent, within 90 days. The regulations also add a requirement for prepayment claims review and reference existing requirements for postpayment claims review. The regulations are required by the Medicare-Medicaid Anti-Fraud and Abuse Amendments to the Social Security Act, enacted on October 25, 1977. The regulations also add a plan requirement that an agency must require providers to submit claims within 12 months of the date of services, and the agency must pay claims, other than those falling under the 30- and 90-day requirements, within 12 months of the date of receipt. The new requirements are intended to improve State program management, increase provider participation in Medicaid, and aid in preventing and detecting fraud.

EFFECTIVE DATE: August 23, 1979.

FOR FURTHER INFORMATION CONTACT: Charles Gardner (202) 245-8990.

SUPPLEMENTARY INFORMATION:

Background

Section 2(b) of P.L. 95-142, which amended section 1902(a) of the Social Security Act, provides that States must pay 90 percent of individual practitioner claims within 30 days and 99 percent within 90 days, that the Secretary may waive the requirements if a State has exercised good faith in trying to meet them, and that States must conduct prepayment and postpayment claims review. It is one of several provisions designed to prevent abuses that have arisen in the payment of Medicaid claims.

The House Ways and Means Committee Report noted that undue delay in Medicaid claims payments contributes to the rise of factoring arrangements as well as discourages physicians from participating in the program. The committee also expressed concern that the ban on factoring arrangements in Section 2(a) of P.L. 95-142 might impose an undue hardship on Medicaid practitioners. (H. Report 95-393, Part 1, at 45)

In developing these regulations, we met with State Medicaid officials to review current State practices and to obtain suggestions for writing the regulations. We also reviewed the Medicare claims payment policy, since compatibility between Medicare and Medicaid is desirable and may result in saving administrative costs. The provisions and major policy issues in the final regulations are discussed below.

Summary of Regulations Provisions

These regulations set time limits for Medicaid agency payment of claims from practitioners who are in individual or group practice or who practice in shared health facilities. For these providers, an agency must pay—

(1) 90 percent of all clean claims within 30 days of the date of receipt; and

(2) 99 percent of all clean claims within 90 days of the date of receipt.

These requirements may be waived by the Administrator, Health Care Financing Administration, if he finds that the agency has shown good faith in trying to meet them.

In addition, the regulations provide that an agency must require providers to submit claims within 12 months of date of the date of service, and the agency must pay claims, other than those falling under the 30- and 90-day requirements, within 12 months of the date of receipt. This requirement applies to both clean and unclean claims from any provider.

These regulations give States the option of defining a claim as (1) a bill for

services, (2) a line item of service, or (3) all services for one recipient within a bill. The regulations define a clean claim as one that can be processed without obtaining additional information from the provider of the service or from a third party.

Finally, these regulations contain new requirements for prepayment claims review. Existing requirements for postpayment claims review, in 42 CFR Parts 455 and 456, remain in effect.

Major Issues and Responses to Comments

We published a Notice of Proposed Rule Making on August 18, 1978 (43 FR 36656). Fifty-nine comments were received from forty-eight sources including representatives of national, regional, and State organizations. Some commenters expressed general satisfaction with the regulations and suggested no specific revisions. Fourteen comments concerned the definition of a claim. The remaining forty-five comments dealt with requirements for prepayment and postpayment review, a reporting system, waivers, timely payments, and the penalty for non-compliance.

1. *Applicability to Providers.* The legislation applies the requirement for timely claims payment to claims "furnished by health care practitioners through individual or group practices or through shared health facilities".

Several commenters suggested that the regulations should apply to institutional providers and several suggested that home health agencies should be covered. Two commenters recommended that the regulations more clearly identify the types of providers covered.

In the final rule, the timely claims requirements still apply only to individual, rather than institutional providers. This is exactly the requirement imposed by statute. We note that hospitals, skilled nursing facilities, and intermediate care facilities are reimbursed on a cost basis; these facilities submit cost reports, rather than claims, and receive interim payments during the course of a cost reporting year. Thus, it would be illogical to apply the timely claims requirements to those institutions. We note further that a primary consideration underlying the passage of the legislation was that undue delay in the payment of Medicaid claims to individual practitioners contributes to factoring arrangements and discourages participation by physicians. Delayed payments are often more burdensome to individual practitioners than to institutional providers. We therefore have not changed the applicability of these regulations. We have, however, revised the 24-month time period for payment of claims from other than individual practitioners to 12 months.

2. *Definition of Claim.* In the notice of proposed rule making, we proposed the following definition of a claim: "A claim includes all the services furnished to a recipient by a practitioner on the same day, except that each laboratory test or drug prescription shall be treated as a separate claim." Commenters said that this proposed definition would be administratively cumbersome and possibly unworkable given the methods by which claims are currently processed.

For example, many providers submit as a single claim a bill for services furnished to an individual on several different days. To require a provider to submit a separate claim for each day on which a service was furnished would create unnecessary paperwork without any corresponding benefit. Further, we do not believe that the intent of the statute was to require all States to process claims in exactly the same way, especially since it might be very costly for some States to change their processing methods in order to meet the proposed definition of "claim".

However, we do believe that some definition of claim is necessary, in order to insure uniform application of the timely claims requirements. The final rule allows the State to define claim, but only within the range of the following three options: (1) a bill for services, (2) a line item of service, or (3) all services for one recipient within a bill. A State need not use the same definition for all types of providers, but may use one of these three options for one class of providers, and other options for other classes of providers. For example, for pharmacists, each drug prescription could be treated as a claim; for clinic services, all the services furnished during one visit; for physicians, all the services furnished to a patient over a period of time and submitted on a single bill.

The State must specify its definition of claim for each type of service in the State plan.

3. *Definition of a Clean Claim.* The 30-day and 90-day requirements apply only to "clean" claims. Clean claims are defined as those claims that can be processed without obtaining additional information from the provider of services or from a third party, such as Blue Cross or a State Workmens' Compensation Unit. Claims from practitioners under investigation for possible fraud and abuse in the Medicaid program, and claims under review for medical necessity, are also excluded from clean claims.

Although the legislative history gives some indication that additional information means information from the provider (H. Report 95–393, Part 1 at 45), we believe that the underlying purpose of the statute is served by interpreting the term to include additional information from third parties who may be liable for payment of the claim. It often happens that this type of information takes longer to obtain than information from the providers themselves. Likewise, we believe the exclusion of claims submitted by practitioners under investigation for fraud or abuse, and claims under review for medical necessity, is consistent with the purpose of the statute. Most States have special procedures for examining more carefully claims submitted by those suspected of fraud or abuse, and claims under review for medical necessity. Not only do States subject these claims to closer scrutiny, but they often seek additional information for a more complete review. We believe that subjecting these claims to the 30- and 90-day payment requirements of these regulations would impose excessive burdens on the investigative process.

One commenter expressed concern that claims rejected due to faults in a State's internal claims, processing system (e.g., if the system incorrectly or incompletely codes information) might be classified as unclean claims. We have clarified the regulations to specify that these claims must be classified as clean.

One commenter suggested that the definition should exclude claims for services that cannot be uniformly categorized or priced, due to their complexity or unusual nature. This recommendation has not been accepted, as we believe it is contrary to the intent of the statute, which is to assure the timely processing of all clean claims.

Another commenter stated that some States have time limitations for processing of all their claims and do not segregate clean claims from other claims. States operating in this manner may need to adjust their systems to the requirements of the regulations, which have been designed to minimize State implementation costs.

One commenter suggested that a claim that is not clean should be defined as any claim that failed a prepayment review edit, independent of who is supplying the additional information. This definition would include a Medicaid agency as a supplier of additional information.

This suggestion has not been accepted because we believe that a Medicaid agency should be able to supply the additional information required to process a claim within the specified time limitations.

Another commenter recommended that clean claims not include those sampled by quality control claims systems that randomly select claims for investigation. We have not accepted this recommendation because the quality control system only samples paid claims, and these regulations deal with claims that have not been paid.

One commenter suggested that a clean claim should not include a claim for which payment is postponed because a charge by a provider appears unreasonable. In this regard, § 447.45(f)(1)(iv) provides for prepayment claims review, consisting of verification that a payment does not exceed any reimbursement rates or limits in the State plan. In our view, the State should resolve this issue promptly and, therefore, we do not agree with the suggestion.

One commenter stated that the receipt of an updated eligibility status report from a related State agency should constitute additional information from a third party, making a claim not clean. From our perspective, eligibility confirmation is part of a claims processing system, and its efficient accomplishment is within the State's control. However, if eligibility confirmation impedes the processing of claims within the required time limits, the State should request a waiver of the requirements for the period needed to make changes to the system. (See discussion following in section entitled "Waivers".)

4. *Claim Receipt and Payment Dates.* The statute requires that 90 percent of clean claims be paid within 30 days of the date of receipt, and that 99 percent of these claims be paid within 90 days of the date of receipt. Some State officials suggested requiring only that claims be approved for payment during these periods. One commenter noted that Medicare measures the number of claims processed during a period in this way. We have not accepted this recommendation, since the legislation specifically states that claims are to be paid within these time limits.

We incorporated standard definitions into the regulations to measure the payment period. The period begins with the date date-stamped on the claim and ends with the date of the check for payment.

Several commenters expressed concern that designating the date of payment as the date on the check would not assure that a check would be promptly sent to a provider. While we understand the concern, we also recognize that a definition must be administratively feasible, and without any workable alternative, we have retained the definition. Several commenters also noted that we had not defined the date of a claim's receipt. To rectify this, we have defined the date of a claim's receipt as the date that it is date-stamped as received by the State.

Another commenter stated that a measurement based on the date of payment was unfair in States where the State treasury generates the checks and the medical assistance unit has no control over the date of issuance. In such cases, the State may request a waiver by demonstrating that it processes claims on a timely basis and that the State treasury makes payment promptly.

One commenter stated that exceptions should be made in the 30-day and 90-day payment requirements when it is near the end of a year and a State has spent its authorized funds. We cannot make such an exception because the legislation does not provide for it.

5. *Waivers.* The legislation provides that the Secretary may waive the requirements for timely claims payments, if he finds that the State has exercised good faith in trying to meet them. In discussing this provision, the House Committee Report states, "Among other things the Secretary should take into account in making a waiver determination is whether the State has received an unusually high volume of claims which are not clean claims." (H. Report 95–393, Part 1, at 45.) Accordingly, the regulations specify that the Administrator will consider the volume of claims that are not clean in his evaluation of the State's good faith. Unclean claims are not subject to the 30-day and 90-day payment requirements, but they will be considered in the decision to grant a waiver because of the extensive administrative resources necessary to handle them. The administrative burden imposed by these claims increases the likelihood that a State's limited resources may be insufficient to handle clean claims in timely fashion.

In addition, in deciding whether to grant a waiver, the Administrator will consider whether the State is making diligent efforts to implement an automated claims processing and information retrieval system. We believe that most States will have difficulty meeting the timely payment requirements if they continue to process claims manually. Federal financial participation is available for 90 percent of a State's expenditures for design, development, and installation of an approved mechanized claims processing and information retrieval system, and for 75 percent of expenditures for its operation (42 CFR 433.112 and 433.113). We encourage States that have not planned to install such a system to do so. Diligent efforts to implement a system will be considered a sign of good faith in trying to meet the timely claims payment requirements.

For each waiver granted, the Administrator will specify an effective period during which the timely payment requirements need not be met. In determining the length of the waiver period, the Administrator will weigh latitude for States against Congressional concern that all State Medicaid programs assure the timely payment of claims. In some States, a waiver may be temporarily necessary while the State irons out administrative problems in the processing of claims (e.g., eligibility of recipients is reviewed by one agency, medical necessity is reviewed by a different agency, the State auditor is required to perform a pre-audit, and the State Comptroller is required to certify that funds are available for payment).

One commenter suggested that no waivers should be granted before there has been a base period of experience among all States to evaluate the need for individual waivers. This suggestion has not been implemented, because we believe it is necessary to be more flexible and evaluate each waiver request on an individual basis.

One commenter expressed concern that States with a high volume of claims that are not clean, that are making diligent efforts to implement an automated claims payment system, would be unfairly evaluated under these regulations. We believe that the waiver provision provides a fair basis for evaluating a State's situation and for making allowances in meeting the timely claims payment requirements, where necessary.

Another commenter suggested that the waiver requirement be clarified with respect to what constitutes an unusually high volume of claims that are not clean. We do not anticipate any disagreements on this issue. However, as experience is gained from comparative States practices, we may be able to provide further clarification.

One commenter recommended that an automatic waiver be granted for implementing an automated claims processing system. We think that an automatic waiver is not necessary, but

will consider efforts toward system implementation in evaluating a request for waiver.

6. *Prepayment and Postpayment Claims Review.* The legislation requires that a State plan provide for prepayment and postpayment claims review, including review of appropriate data on the recipient and provider of the service and the nature of the service for which payment is claimed. In our view, the postpayment review requirements are met by existing regulations. 42 CFR Part 455, Subpart A, Fraud Detection and Investigation, provides for verifying with recipients whether services billed by the providers were actually received. 42 CFR Part 456, Utilization Control, requires processes to determine misutilization practices of recipients, providers, and institutions.

These regulations do add new requirements for prepayment review of all claims. Prepayment review concerns recipient eligibility, provider authorization, reasonableness of number of visits and services delivered, duplication of claims, reimbursement rates, and possible third party liability. Prepayment review should minimize erroneous payments and aid in detecting attempted fraud in its early stages.

For those who are interested in the extent of prepayment and postpayment reviews established under the Medicaid Management Information System (MMIS), a computer system for processing claims, see volume II of the *MMIS General System Design*, pp. 63–69 and p. 155. This manual may be obtained for $7.50 from the National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

One commenter noted that the proposed regulations did not provide for a prepayment review comparing two or more claims being processed simultaneously in order to avoid duplicated payments. We have revised the regulations to require that prepayment review include this feature.

Several comments concerned the requirement for prepayment reviews of third party liability resources. Some commenters said that the requirement conflicted with some State claims processing systems that pay claims before seeking third-party reimbursement; others said that the term "third party" was not clear; and a few commenters said that the review should be required only for claims above a specific dollar value. We incorporated by reference the definition of third party in 42 CFR 433.135, which we think is clear. A State's claims processing methods that comply with § 433.135 will meet the requirements of this subpart, and we believe there is no conflict between the two provisions.

Several commenters recommended that prepayment claims review assure timely and accurate Medicaid eligibility determinations. Requirements for accuracy of eligibility determination are in regulations at 42 CFR 431.800. We will consider requirements for timeliness of eligibility determinations as we gain experience in the implementation of the present requirements.

One commenter recommended that States with manual claims processing systems be allowed to use sampling methods to measure compliance with the regulations. At the time that reports are required, we will consider the acceptability of sampling methods, including use of the Medicaid quality control system, for measuring compliance.

Another commenter recommended partially revising the first prepayment review provision to say that claims would be reviewed to ensure that the provider is approved to furnish, and claim for, the type of service being claimed. This recommendation has not been accepted, because we believe that verification that "the provider was authorized to furnish the service" is clearer.

Several commenters expressed concern that, in the prepayment review provisions, the phrase ". . . and are consistent with the recipient's characteristics and circumstances" requires clarification. We have revised the regulation by listing some common, useful characteristics—type of illness, age, sex, and service location. This list is not intended to be either exhaustive or a mandatory minimum. States may devise their own sets of characteristics for this purpose.

7. *Deadline for Paying All Claims.* The NPRM would have required that all claims be paid within 24 months after the date the service was furnished. (As noted in the preamble, the States would have discretion to establish deadlines for the submission of claims by the provider to the State.) This provision would apply to all the claims that were not clean, to any clean claims not paid within the 90-day time limit and, with certain specified exceptions, to all claims submitted by institutional providers.

We have retained the general approach of the NPRM, but have revised the starting date and length of time. We are setting a maximum deadline that the agency must require providers to meet in submitting claims. The deadline for submission is set at 12 months from the date of service. The agency still has discretion to set a shorter deadline for submission of claims, if it desires to do so. We are also requiring that agencies pay claims within 12 months of the date of receipt. We have specified date of receipt for agency payment rather than date of service to be consistent with the other timely payment provisions. We believe that, taken together, these requirements will reduce erroneous payments by providing better management of the claims payment process and increased opportunity for verifying the accuracy of claims submitted.

8. *Reporting System.* Several commenters recommended that a structured reporting or monitoring system be required to assure compliance with the timely claims requirements. This recommendation is not being implemented, because we believe that reporting only upon request is administratively more efficient.

In order to review the States' compliance with the timely payment requirements, the Administrator may require that reports be submitted from time to time. In addition to these reports the Regional Offices will monitor State performance during their program reviews.

9. *Penalty for Non-Compliance.* Several commenters expressed concern that the administrative sanction for non-compliance with the regulations was inadequate. Because the statute delineates the timely claims payment provision as a plan requirement, we developed the regulations to follow this approach.

42 CFR Part 447 is amended as set forth below:

1. The table of contents for Subpart A is amended as set forth below:

PART 447—PAYMENTS FOR SERVICES

Subpart A—Payments: General Provisions

* * * * *

Sec.
447.45 Timely claims payment.
* * * * *

2. A new § 447.45 is added to read as follows:

§ 447.45 Timely claims payment.

(a) *Basis and purpose.* This section implements Section 1902(a)(37) of the Act by specifying—

(1) State plan requirements for—

(i) Timely processing of claims for payment;

(ii) Prepayment and postpayment claims reviews; and

(2) Conditions under which the Administrator may grant waivers of the time requirements.

(b) *Definitions.* "Claim" means (1) a bill for services, (2) a line item of service, or (3) all services for one recipient within a bill.

"Clean claim" means one that can be processed without obtaining additional information from the provider of the service or from a third party. It includes a claim with errors originating in a State's claims system. It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity.

A "shared health facility" means any arrangement in which—

(1) Two or more health care practitioners practice their professions at a common physical location;

(2) The practitioners share common waiting areas, examining rooms, treatment rooms, or other space, the services of supporting staff, or equipment;

(3) The practitioners have a person (who may himself be a practitioner)—

(i) Who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at the common physical location other than the direct furnishing of professional health care services by the practitioners to their patients; or

(ii) Who makes available to the practitioners the services of supporting staff who are not employees of the practitioners; and

(iii) Who is compensated in whole or in part, for the use of the common physical location or related support services, on a basis related to amounts charged or collected for the services rendered or ordered at the location or on any basis clearly unrelated to the value of the services provided by the person; and

(4) At least one of the practitioners received payments on a fee-for-service basis under titles V, XVIII, and XIX in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $40,000 during the preceding 12 months.

The term does not include a provider of services (as defined in § 405.605 of this chapter), a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1954, or any public entity.

"Third party" is defined in § 433.135 of this chapter.

(c) *State plan requirements.* A State plan must (1) provide that the requirements of paragraphs (d), (e)(2), (f) and (g) of this section are met; and

(2) Specify the definition of a claim, as provided in paragraph (b) of this section, to be used in meeting the requirements for timely claims payment. The definition may vary by type of service (e.g., physician service, hospital service).

(d) *Timely processing of claims.*

(1) The Medicaid agency must require providers to submit all claims no later than 12 months from the date of service.

(2) The agency must pay 90 percent of all clean claims from practitioners, who are in individual or group practice or who practice in shared health facilities, within 30 days of the date of receipt.

(3) The agency must pay 99 percent of all clean claims from practitioners, who are in individual or group practice or who practice in shared health facilities, within 90 days of the date of receipt.

(4) The agency must pay all other claims within 12 months of the date of receipt, except in the following circumstances:

(i) This time limitation does not apply to retroactive adjustments paid to providers who are reimbursed under a retrospective payment system, as defined in § 447.272 of this Part.

(ii) If a claim for payment under Medicare has been filed in a timely manner, the agency may pay a Medicaid claim relating to the same services within 6 months after the agency or the provider receives notice of the disposition of the Medicare claim.

(iii) The time limitation does not apply to claims from providers under investigation for fraud or abuse.

(iv) The agency may make payments at any time in accordance with a court order, to carry out hearing decisions or agency corrective actions taken to resolve a dispute, or to extend the benefits of a hearing decision, corrective action, or court order to others in the same situation as those directly affected by it.

(5) The date of receipt is the date the agency receives the claim, as indicated by its date stamp on the claim.

(6) The date of payment is the date of the check or other form of payment.

(e) *Waivers.* (1) The Administrator may waive the requirements of paragraphs (d) (2) and (3) of this section upon request by an agency if he finds that the agency has shown good faith in trying to meet them. In deciding whether the agency has shown good faith, the Administrator will consider whether the agency has received an unusually high volume of claims which are not clean claims, and whether the agency is making diligent efforts to implement an automated claims processing and information retrieval system.

(2) The agency's request for a waiver must contain a written plan of correction specifying all steps it will take to meet the requirements of this section.

(3) The Administrator will review each case and if he approves a waiver, will specify its expiration date, based on the State's capability and efforts to meet the requirements of this section.

(f) *Prepayment and postpayment claims review.*

(1) For all claims, the agency must conduct prepayment claims review consisting of—

(i) Verification that the recipient was included in the eligibility file and that the provider was authorized to furnish the service at the time the service was furnished;

(ii) Checks that the number of visits and services delivered are logically consistent with the recipient's characteristics and circumstances, such as type of illness, age, sex, service location.

(iii) Verification that the claim does not duplicate or conflict with one reviewed previously or currently being reviewed;

(iv) Verification that a payment does not exceed any reimbursement rates or limits in the State plan; and

(v) Checks for third party liability within the requirements of § 433.135 of this chapter.

(2) The agency must conduct postpayment claims review that meets the requirements of Parts 455 and 456 of this chapter, dealing with fraud and utilization control.

(g) *Reports.* The agency must provide any reports and documentation on compliance with this section that the Administrator may require.

(Sec. 1102 and 1902(a)(37) of the Social Security Act (42 U.S.C. 1302, 1396a(a)(37).)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: April 20, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: May 18, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79-16515 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-35-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003 and 1056

Notice of Updating Form BOp 103

AGENCY: Interstate Commerce Commission.

ACTION: Updating Form BOp 103.

SUMMARY: The Commission is updating Form BOp 103, which is entitled Summary of Information for Shippers of Household Goods. This publication is listed at 49 CFR 1003.1(a) and is required under 49 CFR 1056.7(a) to be given by motor carriers of household goods to all shippers, with certain exceptions. The update is necessary due to the adoption of new regulations for household goods carriers subsequent to the last revision of Form BOp 103 which occurred in 1974. Because this action merely involves updating an existing interpretative publication rather than the adoption of new substantive rules, public comments are not being solicited. Due to the length of the publication, it is not being published in this notice; but, as before, copies will be available from the Office of the Secretary, Washington, D.C. 20423. As a related matter, the Commission is amending 49 CFR 1003.1(a) to reflect this latest revision of Form BOp 103 and to conform statute citations to the recent codification of the Interstate Commerce Act.

EFFECTIVE DATE: May 31, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Linda F. Mitchler (202) 275–7852.

SUPPLEMENTARY INFORMATION: The portion of 49 CFR 1003.1(a) which concerns Form BOp 103 formerly reads as follows:

BOp 103 *Summary of Information for Shippers of Household Goods* (Rev. 1974).

Cross Reference: Part 1056 of this chapter (49 Stat. 546, as amended, 558, as amended, 560, as amended; 49 U.S.C. 304, 316, 317).

§ 1003.1 [Amended]

We are amending this portion of 49 CFR 1003.1(a) to read as follows:

BOp 103 *Summary of Information for* **Shippers of Household Goods** (Rev. 1979).

Cross Reference: Part 1056 of this chapter (49 Stat. 546, as amended, 558, as amended, 560, as amended; 49 U.S,C. 10321, 10701, 10702, 10762, 11101, 11102).

Dated: May 16, 1979.

By the Commission: Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown was absent and did not participate.

H.G. Homme, Jr.,

Secretary.

[FR Doc. 79-16506 Filed 5-24-79; 8:45 am]

BILLING CODE 7035-01-M

[1] For six months carriers may use existing supplies of the current publication (with inserts concerning important changes) but, upon the effective date of this publication, all printing reorders will be of the 1979 edition.

Proposed Rules

Federal Register
Vol. 44, No. 103
Friday, May 25, 1979

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.

COST ACCOUNTING STANDARDS BOARD

[4 CFR Parts 403, 410, and 422]

Accounting for Independent Research and Development Costs and Bid and Proposal Costs

AGENCY: Cost Accounting Standards Board.

ACTION: Proposed rule.

SUMMARY: The Cost Accounting Standards Board is proposing a Standard which, if adopted, would be one of a series of cost accounting standards which the Board is promulgating to achieve consistency and uniformity in the cost accounting principles followed by defense contractors and subcontractors under Federal contracts. This proposed rule would provide criteria for (1) the accumulation of independent research and development (IR&D) costs and bid and proposal (B&P) costs, and (2) the allocation of such costs to cost objectives based on the beneficial or causal relationship between such costs and other cost objectives. The application of these criteria should increase the probability that such costs are accounted for in a uniform and consistent manner.

A proposed Standard on this subject was originally published July 28, 1978. After reviewing the responses to the previous publication, the Board has revised the proposal in a number of ways. The revised proposal is being republished today for further comments. To assist interested persons who wish to comment on this proposal, the Board has identified below the principal areas in which it has modified the proposal published on July 28, 1978, together with the Board's reasons for those modifications. The Board solicits comments which will assist it in consideration of the proposal and related amendments to 4 CFR Part 403 and Part 410.

DATE: Written comments must be received on or before July 30, 1979.

ADDRESS: Written comments should be sent to the Cost Accounting Standards Board, 441 G Street, NW., Room 4836, Washington, D.C. 20548.

Note.—All written submissions made pursuant to this Notice will be made available for public inspection at the Board's office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Clark G. Adams, Project Director, Cost Accounting Standards Board, 441 G Street, NW., Room 4836, Washington, D.C., 20548, (202)275–5418.

SUPPLEMENTARY INFORMATION:

1. General

The proposed Standard published on July 28 included definitions for independent research and development costs and bid and proposal costs. The definitions of IR&D costs and B&P costs in the proposed Standard were intended to be consistent with those currently in use in agency procurement regulations. However, two problems were of particular concern to many of the commentators. Most stated the concern that the definition for B&P costs, while similar to the definition in the Defense Acquisition Regulation, failed to include a reference to B&P administrative costs. Such failure, they believed would lead to the exclusion of such costs from being identified as B&P costs. A second problem was that the one for IR&D cost did not expressly refer to technical effort, and that without such reference they believed problems would be encountered in determining the IR&D cost.

In regard to both of these points, the Board believes that the concerns are not well founded. The accounting treatment of these costs is adequately covered by the Standard. The elements of cost to be included in these cost pools are provided for in several sections of the Standard. Specifically, in the Techniques for Application Section, the Standard provides that those activities that are direct charges to contracts are to be considered direct charges to IR&D and B&P projects. The Standard states that "IR&D and B&P cost pools shall include (1) project costs, which if incurred in like circumstances for final cost objectives, would be treated as direct costs of those final cost objectives, * * *." The Board has, therefore, not adopted commentators' suggested changes.

Many commentators objected to the proposal referring to IR&D and B&P projects as if they were final cost objectives. They noted that such projects do not represent a final accumulation point in a contractor's system, and therefore conceptually, it is incorrect to refer to them as final cost objectives. The use of the "as if" phrase was only a convenient means of establishing criteria to provide that the appropriate costs, both direct and indirect, will be allocated to the IR&D and B&P projects.

The current Standard has removed the "as if" phrase. It has, however, retained the concept of allocating specifically identified costs directly to IR&D and B&P projects to establish a base for allocation of overhead costs of supporting organizational units. It continues to provide that no allocation of general and administrative expenses shall be made to the costs of IR&D or B&P projects.

2. Allocation of G&A Expenses to Intersegment Work Performed for Another Segment or Home Office

Several of the commentators objected to the allocation of G&A expense to intersegment work stating in essence that IR&D or B&P is the same whether it is performed for a segment's own use or for another segment of the company. They argued that since G&A expense is not allocated to IR&D or B&P projects performed by a segment for its own use, it should not be allocated to project costs performed for and directly allocated to another segment.

Other commentators expressed the view that any work performed by one segment for another is in effect a sale of the performing segment. As such, the costs of performance should be accounted for like any other final cost objective, including receiving an allocation of the performing segment's general and administrative expense.

Where effort is not IR&D or B&P at the performing segment but is performed in support of an IR&D and B&P project of another segment, the work is a final cost objective of the performing segment and should be accounted for accordingly.

The proposal, therefore, has been written to provide that, work performed by a segment that is not in furtherance of an IR&D or B&P project in which the

performing segment has an interest, shall not be accounted for by the performing segment as IR&D or B&P.

3. Accumulation of IR&D Costs and B&P Costs by Project

Several commentators suggested that the fundamental requirement should deal only with general criteria for accumulating and allocating IR&D costs and B&P costs. They urged that the fundamental requirement should address the requirements for accumulating such costs in intermediate cost objectives or in separate pools, but should not require cost accumulation by project.

Several commentators noted that some firms prepare large numbers of bids, proposals and letter proposals each of which requires a small amount of B&P effort to prepare. The cost of maintaining individual project identification of this work would be out of proportion to whatever benefit such separate identification could possibly provide. They said that a contractor should be permitted to accumulate these costs in a single cost pool.

IR&D and B&P projects include costs which are incurred clearly and exclusively for that work. The proper identification of costs to those IR&D and B&P projects requires that cost be accumulated by project. Nonetheless, under the Board's concept of materiality, the costs of IR&D or B&P projects of small dollar value may be combined in a single project for inclusion in the IR&D and B&P pools without the necessity of separate cost identification. The Standard has been modified to clarify this point by adding a provision in the Techniques for Application Section and an illustration.

4. Allocation of Home Office IR&D and B&P Cost Pools

Several commentators urged that the use of a single prescribed total activity base for the allocation of home office IR&D and B&P cost pools to segments was not consistent with the purpose of the Standard which states that it is designed to allocate such costs on "the beneficial or causal relationship between such costs and cost objective." Some stated the belief that although a single base may be proper treatment for some contractors, it would result in a significant distortion for many others. Other commentators noted that the allocation should not occur automatically because of the existence of the segments. They stated that the allocation should be based on a beneficial or causal relationship in keeping with the requirements of 4 CFR Part 403, *Allocation of Home Office Expenses to Segments.*

The Board has concluded that there are circumstances where direct identification of some or all home office IR&D costs and B&P costs with specific segments or groups of segments is appropriate. For that reason the Standard has been changed to provide for direct identification of home office IR&D costs and B&P costs to specific segments. The Board believes that this will better reflect the beneficial or causal relationship of the home office IR&D costs and B&P costs to the segments. However, usually not all IR&D costs or B&P costs can be identified to specific segments. Those costs not so identified are considered to be for the benefit of the company as a whole. Such costs are to be allocated among all segments on a base consisting of the cost input of all of the segments reporting to the home office.

The Standard continues to recognize an exception in cases where a segment derives more or less benefit from corporate IR&D or B&P than would be reflected by the allocation on a total activity base. In those circumstances a contractor and the Government may agree to a special allocation.

5. Allocation of Segment IR&D and B&P Cost Pools

Many commentators stated the belief that the Techniques for Application Section did not adequately reflect the beneficial or causal relationship between IR&D costs and B&P costs accumulated at a segment and the cost objectives of that segment.

Several commentators made the point that the Board should recognize that contractor's organizations vary and circumstances exist wherein it would be inappropriate to allocate such costs to the final cost objectives solely within one segment. Commentators stated that circumstances exist where a segment may perform IR&D or B&P projects which are for the benefit of the company as a whole. They believe that such costs should be pooled at the home office and allocated to all of the segments. Other commentators noted that in many instances contractors can identify IR&D costs and B&P costs to specific product lines. They stated that in those circumstances it would be appropriate to allocate such costs to the benefiting product lines.

The Board has considered the comments received. It believes that most of the IR&D and B&P work performed at a segment is performed for the benefit of the segment only. Where the work benefits the segment as a whole it should be allocated to the segment's final cost objectives on a base representing the total activity of the segment. Where there is IR&D and B&P work which is not for the benefit of the segment as a whole, but benefits or is caused by other segments or specific product lines within a segment, the Standard provides for separate treatment. The Standard provides for specific identification of IR&D costs and B&P costs to product lines within a segment and to other segments through the home office allocation.

The Standard also recognizes the possible need for special allocations of IR&D cost and B&P cost to a final cost objective of a segment and has provided for such event in a manner similar to that discussed under Item 4 above concerning home office allocations.

6. Deferral of Development Costs

In the July 28, 1978, **Federal Register** proposal, the Board invited respondents to suggest objective criteria to distinguish between research and development effort that should be currently expensed and effort that should be deferred. A number of suggestions were received. Some of them when viewed in connection with recent GAO reports on this subject indicated that there are two distinct types of development costs. The difference is such that each type should receive separate accounting treatment. The proposal, therefore, has been modified to provide for the deferral of the cost of development effort which meets specific criteria.

The Board believes that additional research should be performed on the feasibility of a separate Standard on the accounting for deferred development cost. Until a Standard is published covering the allocation of development costs which are deferred, contractors and the Government should be guided by provisions of existing laws, regulations and other controlling factors

In addition to the proposed Standard related amendments to Standard 4 CFR Part 403 and 4 CFR Part 410 are being proposed.

PART 403—ALLOCATION OF HOME OFFICE EXPENSES TO SEGMENTS

4 CFR Part 403, *Allocation of Home Office Expense to Segments,* is to be amended by deleting paragraph (b)(5) of § 403.40 and inserting the following in lieu thereof.

§ 403.40 Fundamental requirement.

* * * * *

(b) * * *

(5) *Independent research and development and bid and proposal costs.* Independent research and development costs and bid and proposal costs allocated by a home office shall be in accordance with 4 CFR Part 422.

* * * * *

PART 410—ALLOCATION OF BUSINESS UNIT GENERAL AND ADMINISTRATIVE EXPENSES TO FINAL COST OBJECTIVES

Title 4 CFR Part 410, *Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives*, is to be amended by deleting paragraph (d) of § 410.40 in its entirety and inserting the following in lieu thereof.

§ 410.40 Fundamental requirement.

* * * * *

(d) Any costs which do not satisfy the definition of G&A expense but which have been classified by a business unit as G&A expenses, can remain in the G&A expense pool unless they can be allocated to business unit cost objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base.

It is proposed to amend 4 CFR Chapter III by adding a new Part 422 to read as follows:

PART 422—ACCOUNTING FOR INDEPENDENT RESEARCH AND DEVELOPMENT COSTS AND BID AND PROPOSAL COSTS

Sec.

422.10 General applicability.
422.20 Purpose.
422.30 Definitions.
422.40 Fundamental requirement.
422.50 Techniques for application.
422.60 Illustrations.
422.70 Exemption.
422.80 Effective date.

Authority: Sec. 719, Defense Production Act of 1950, as amended, Pub. L. 91-379, 50 U.S.C. app. 2168.

§ 422.10 General applicability.

General applicability of this Cost Accounting Standard is established by § 331.30 of the Board's regulations on applicability, exemption, and waiver of the requirement to include the Cost Accounting Standards contract clause in negotiated defense prime contracts and subcontracts. (§ 331.30 of this chapter.)

§ 422.20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the accumulation of independent research and development costs and bid and proposal costs and for the allocation of such costs to cost objectives based on the beneficial or causal relationship between such costs and cost objectives. Consistent application of these criteria will improve cost allocation.

§ 422.30 Definitions.

(a) The following are definitions of terms prominent in this Standard.

(1) *Allocate.* To assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Bid and proposal (B&P) cost.* The cost incurred in preparing, submitting, or supporting any bid and proposal which effort is neither sponsored by a grant, nor required in performance of a contract.

(3) *Business unit.* Any segment of an organization, or an entire business organization which is not divided into segments.

(4) *Cost input.* The cost, except G&A expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

(5) *General and administrative (G&A) expenses.* Any management financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

(6) *Home office.* An office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

(7) *Independent Research and Development (IR&D) Cost.* The cost of effort which is neither sponsored by a grant, nor required in the performance of a contract, and which falls within any of the following three areas: (i) Basic and applied research, (ii) Development, and (iii) Systems and other concept formulation studies.

(8) *Indirect cost.* Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(9) *Segment.* One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes Government-onwed contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority of ownership, but over which it exercises control.

§ 422.40 Fundamental requirement.

(a) The basic unit for the idenfication and accumulation fo IR&D and B&P costs shall be the individual IR&D or B&P project.

(b) IR&D and B&P cost pools will consist of all costs allocated to the projects included in such pool.

(c) Costs allocated to an individual IR&D or B&P project shall consist of (1) those costs that are incurred clearly and exclusively for that project, and (2) an appropriate share of all other allocable costs, except that business unit general and administrative expenses shall not be allocated to individual IR&D or B&P projects and also shall not be allocated to IR&D and B&P pools.

(d) The IR&D and B&P cost pools of a home office shall be allocated to segments by means of a base representing the beneficial or causal relationships between the IR&D and B&P costs and the segments reporting to that home office.

(e) The IR&D and B&P cost pools of a business unit shall be allocated by means of a base representing the beneficial or causal relationships between the IR&D and B&P costs and other cost objectives.

§ 422.50 Techniques for application.

(a) IR&D and B&P cost pools shall include (1) project costs, which if incurred in like circumstances for final cost objectives, would be treated as direct costs of those final cost objectives, (2) the manufacturing, engineering and comparable overhead costs related to those project costs based on the contractor's cost accounting practice or applicable Cost

Accounting Standards for allocation of indirect costs, and (3) costs allocated to a the IR&D and B&P cost pools from other indirect cost pools, other segments or a home office.

(b) When the costs of individual IR&D or B&P projects are not material in amount, these costs may be accumulated in a single project within each category.

(c) The cost of any work performed by one segment for another segment shall not be treated as IR&D costs or B&P costs of the performing segment unless the work is in furtherance of an IR&D or B&P project in which the performing segment has an interest.

(d) The costs of IR&D and B&P projects accumulaed at a home office shall be allocated to its segments as follows:

(1) The costs of projects which can be identified to a specific segment(s) shall be allocated to such segment(s).

(2) The costs of all other IR&D and B&P projects shall be allocated among all segments by means of a base consisting of their cost input, excluding the IR&D and B&P costs. For this purpose, the cost input of any segment shall include amounts allocated to other segments but shall exclude any amounts allocated to it by other segments.

(3) Where a particular segment receives significantly more or less benefit from the IR&D or B&P costs than would be reflected by the allocation of such costs to the segment on a cost input base, the Government and the contractor may agree to a special allocation of the IR&D or B&P costs to such segment commensurate with the benefits received. The amount of a special allocation to any segment made pursuant to such an agreement shall be excluded from the IR&D and B&P cost pools to be allocated to the segment and the cost input data of any such segment shall be excluded from the base used to allocate these pools.

(e) The costs of IR&D and B&P projects accumulated at a business unit shall be allocated to cost objectives as follows:

(1) The costs of any IR&D and B&P project which benefits more than one segment of the organization shall be allocated to the home office.

(2) The costs of IR&D and B&P projects which can be identified exclusively with one or more specific product lines within the segment shall be allocated only among the final cost objectives of such product lines.

(3) IR&D and B&P cost pools which are not allocated under paragraphs (e)(1) and (2) of this section shall be allocated to all final cost objectives of the business unit by means of a base consisting of the total cost input, excluding the IR&D and B&P costs.

(4) Where a particular final cost objective receives significantly more-or less benefit from IR&D or B&P costs than would be reflected by the allocation of such costs pursuant to subparagraph (e)(3) of this section, the Government and the contractor may agree to a special allocation of the IR&D or B&P costs to such final cost objectives commensurate with the benefits received. The amount of special allocation to any such final cost objective made pursuant to such an agreement shall be excluded from the IR&D and B&P cost pools to be allocated to the final cost objective and the particular final cost objective's total cost input data shall be excluded from the base used to allocate these pools.

(f) IR&D and B&P costs incurred in a cost accounting period as set forth in paragraph (e) of this section shall not be allocated to cost objectives of any other cost accounting period, except that the costs of IR&D that constitute development projects which meet all of the following conditions shall be deferred:

(1) The project effort is clearly identifiable with and beneficial to a single product or product line.

(2) The product of the development project meets the following criteria:

(i) The technical feasibility of the product has been demonstrated.

(ii) It is reasonable to conclude that there is a market for the product.

(iii) Management has indicated its intention to produce and market the new product.

§ 422.60 Illustrations.

(a) Business Unit A's engineering department in accordance with its established accounting practice, charges administrative effort including typing to its overhead cost pool. In submitting a proposal, which was not required by a contract, the engineering department assigns several typists to the proposal project on a full time basis and charges the typists' time direct to the proposal project, rather than to its overhead pool. Because the engineering department does not under any circumstances charge the cost of typing directly to final cost objectives, the direct charge does not meet with the requirements of §§ 422.40(c) and 422.50(a).

(b) Company B has five segments. The company undertakes an IR&D project that will require the capabilities of segments, X, Y, and Z, and will be of general benefit to all five segments. The company designates Segment Z as the lead segment in performing the project. In accumulating the costs, segments X, Y, and Z allocate overhead to the projects but do not allocate segments G&A. The IR&D costs are then allocated to the home office by each segment. Because the project is for the benefit of the company as a whole, its costs are combined with other IR&D costs that benefit the company as a whole and allocated to all five segments by means of a base consisting of the cost input, excluding IR&D and B&P costs, of all segments. This practice meets the requirements of § 422.40(c), 422.50(d)(2) and 422.50(e)(1).

(c) Business Unit C normally accounts for its B&P effort by individual project. It accumulates directly allocated costs and departmental overhead costs by project. The business unit also submits large numbers of bids and proposals whose individual costs of preparation are not material in amount. The business unit collects the cost of these projects under a single project. Since the cost of preparing each individual B&P is not material, the practice of accumulating these costs in a single project does meet the requirements of § 422.50(b).

(d) Segment D requests that Segment Y provide support for a Segment D IR&D project. The work being performed by Y is similar in nature to Y's normal product, and is not connected with any IR&D project in which it has an interest. Segment Y allocates to the project all costs it allocates to other final cost objectives, including G&A expense. Segment Y then directly allocates the cost of the project to Segment D. This accounting treatment meets with the requirements of § 422.50(c) and 4 CFR Part 410.

(e) Contractor E has six operating segments and a research segment. The research segment performs work under research and development contracts, IR&D projects for the benefit of the company as a whole, and projects specifically in support of other segment's IR&D projects.

(1) The research segment directly allocates the costs of the projects in support of other segment's IR&D projects, including an allocation of its general and administrative expenses, to the receiving segment. This practice meets the requirements of § 422.50(c).

(2) The costs of the IR&D projects which benefit the company as a whole, exluding an allocation of the research

segment's general and administrative expenses, are allocated to the home office. The home office allocates these costs on a base consisting of the cost input, excluding the IR&D and B&P costs of all seven segments. This practice meets the requirements of § 422.50(d)(2) and (e)(1).

(f) Company F has a research laboratory established at the home office. The laboratory performs applied research which generally benefits all segments of the company except Segment X. The company and the contracting officer agree that the nature of the business activity of Segment X is such that the research performed by the home office laboratory is neither caused by nor provides any benefit to that segment. For allocation purposes the company uses a base consisting of the cost input, exluding the IR&D and B&P costs of all of its segments, except that the company removes the cost input of Segment X from the base for allocation of the IR&D costs. This practice meets the requirements of § 422.50(d)(3).

(g) Company G has a segment which has six product lines. The segment performs IR&D, a portion of which benefits only two of the product lines. The segment allocates that portion of the IR&D cost pool to the final cost objectives of the two product lines on a base which the government and contractor agree represents the beneficial or causal relationship between the IR&D project and the product lines. This practice is in accordance with the requirements of § 422.50(e)(2).

§ 422.70 Exemption.

This Standard shall not apply to contractors who are subject to the provisions of Federal Management Circular 74–4 (Principles for Determining Cost Applicable to Grants and Contracts with State and Local Governments).

§ 422.80 Effective date.

(a) The effective date of this Cost Accounting Standard is [reserved].

(b) this Cost Accounting Standard shall be followed by each contractor on or after the start of his next fiscal year beginning after the receipt of a contract to which this Cost Accounting Standard is applicable.

Arthur Schoenhaut,

Executive Secretary.

[FR Doc. 79-16358 Filed 5-24-79; 8:45 am]

BILLING CODE 1620-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 245]

Proposed Change in the Announcement of Free and Reduced Price Eligibility Criteria for Free and Reduced Price Meals and Free Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Regulation.

SUMMARY: This proposed regulation would amend Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, to provide for a change in the required method of announcing eligibility criteria to discourage abuse of free and reduced price meal and free milk benefits.

DATE: Comments must be received on or before June 25, 1979 to be assured of consideration.

ADDRESS: Comments should be sent to Margaret O'K. Glavin, Director, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447–8130.

FOR FURTHER INFORMATION, CONTACT: Margaret O'K. Glavin, Director, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447–8130.

SUPPLEMENTARY INFORMATION: The National School Lunch Act, enacted in 1946, contained a provision that lunches be served free or at a reduced price to children who were unable to pay the full price of a lunch. With the passage of Pub. L. 91–248 in May 1970, local school officials were directed to determine who was eligible for free and reduced price benefits "solely on the basis of an affidavit executed in such form as the Secretary may prescribe by an adult member of such household." This affidavit (application) was limited to the information necessary to determine eligibility, namely information on family size and family income, and was to be compared to income poverty standards based on guidelines issued by the Secretary in making a determination of eligibility. The application process for receiving free and reduced price benefits has remained fundamentally the same since the passage of Public Law 91–248. As a result, this simple application process has facilitated the delivery of meals and expansion of the program to needy children.

The application process for receiving free and reduced price benefits has become an area of controversy in the school feeding programs' operations. The Department has recently become concerned by reports from a number of school officials that the application process for free and reduced price meals is being abused. The Office of Inspector General of the Department has also expressed concerns about abuses of the "self-certification" process and has commented favorably on this regulatory proposal in its first semi-annual report to Congress under the Inspector General Act (Pub. L. 95–452).

The Department believes that the general public has the right to have access to the criteria used to determine eligibility for free and reduced price benefits. The proposal protects the public's access to this information by continuing to require School Food Authorities to make full eligibility criteria available in a public release. Furthermore, any individual wishing additional information concerning the eligibility criteria may obtain it from the local School Food Authority. However, the Department believes that the inclusion of separate scales for free and for reduced price meal eligibility criteria in the letter to parents is not necessary to the actual application process. Informing parents of childen who attend schools participating in the Programs of the availability of either free or reduced price meal benefits to any family with an income below the applicable mandated 195% of the Secretary's family-size-income guideline is sufficient for the application process.

Remaining within the framework of legislative intent, the Department of Agriculture is proposing this amendment to the regulations to make the application process less vulnerable to abuses and criticism while maintaining a simple application process.

In accordance with Section 9(b) of the National School Lunch Act, as amended, regulations would continue to require School Food Authorities to publicly announce income guidelines for free and reduced price benefits. The proposal would require School Food Authorities to make available to the news media, major local employers contemplating layoffs, and local unemployment offices a public release of the availability of free and reduced price meals and free milk, as applicable. In addition, the public release would include family-size income standards for both free and reduced price benefits. Current regulations prescribe that the information that is required to be made available to the news media also be included in a letter to parents. This amendment would allow School Food Authorities the option of putting in the letter to parents only their maximum eligibility criteria for reduced price

benefits in schools that participate in the National School Lunch or School Breakfast Programs. Under this proposal, for example, a School Food Authority could announce in the letter to parents that under current income poverty guidelines, all children from a family of four whose income is at or below $12,660 would be eligible to receive free or reduced price benefits. At the School Food Authority's discretion, the letter to parents would not distinguish between criteria for free and for reduced price benefits. An exception is made in those School Food Authorities with schools participating in only the Special Milk Program and in which the School Food Authority has opted to serve free milk. For these schools, the School Food Authority would have to continue to include in the letter to parents the eligibility critera for free milk. This exception is made because there is no program offering reduced price milk and therefore only the eligibility criteria for free milk is applicable.

This proposal would clarify existing free and reduced price application procedures at the School Food Authority level. These changes, made to § 245.6(b), do not affect the substance of the existing paragraph but do change its order and format to make the free and reduced price application procedure clear.

Comment Period

Normally the Department provides a 60 day comment period for proposed regulations. However, Robert Greenstein, Acting Administrator of the Food and Nutrition Service has determined that a 30 day comment period is necessary for this proposal in order to finalize a regulation quickly enough to affect free and reduced price meal policies for school year 1979–80. This is because many school districts print public announcements, including their letter to parents, in June, after the Department announces its income eligibility standards.

Commentors should address their remarks to the provisions contained in these proposed regulations. Comments will be especially helpful to the Department in assessing the new provisions contained in §§ 245.1 and 245.5.

All written submissions received will be made available for public inspection at the School Programs Division, Food and Nutrition Service, 201 14th Street, S.W., Room 4122, Washington, D.C. 20250 during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) (7 CFR 1.27(b)).

Accordingly, Part 245 is proposed to be amended as follows:

1. In § 245.1, the fifth sentence in paragraph (a) is revised and new sentences are added to read as follows:

§ 245.1 General purpose and scope.

(a) * * * School Food Authorities are required to publicly announce in a letter to parents:

(1) The availability of both free and reduced price meals and free milk, as applicable; and (2) the maximum family-size income eligibility criteria for reduced price benefits with an explanation that children from families whose income is within the stated criteria may be eligible for either free or reduced price benefits. School Food Authorities may, at their option, also announce in the letter to parents the maximum family-size income eligibility criteria for free meals and, if served, free milk. However, School Food Authorities administering schools that participate in only the Special Milk Program and in which free milk is offered shall announce in the letter to parents in such schools the maximum family-size income eligibility criteria for free milk. School Food authorities shall also make available to the news media, local unemployment offices, and to any major employers contemplating large layoffs in the area from which the schools within the School Food Authority draw their attendance a public release which contains the family-size and income eligibility criteria for both free and reduced price meals and free milk, as applicable. School Food authorities shall make determinations with respect to family-size and income on the basis of a statement executed by an adult member of the family. * * * (Retain existing sixth and seventh sentences.)

* * * * *

2. In § 245.5, the first sentence in paragraph (a) up to the colon, paragraph (a)(1) division (i) and paragraph (a)(2) are changed as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) After the State agency, or FNSRO where applicable, has notified the School Food Authority that its criteria for determining the eligibility of children for free and reduced price meals and free milk, as applicable, has been approved, the School Food Authority shall publicly announce such criteria consistent with the requirements of this section: * * *

* * * * *

(1) * * * (i) the maximum family-size and income eligibility criteria for reduced price meals with an explanation that children from families whose income is within the stated criteria may be eligible for either free or reduced price benefits. School Food Authorities may, at their option, also include in the letter the maximum family-size income eligibility criteria for free meals and, if served, free milk. However, School Food Authorities administering schools that participate in only the Special Milk Program and in which free milk is offered shall announce in the letter to parents in such schools the maximum family-size income eligibility criteria for free milk.

* * * * *

(2) On or about the beginning of each school year, a public release, containing the family-size and income eligibility criteria for both free and for reduced price meals and free milk, as applicable, and all information included in the letter to parents, shall be provided to the news media, local unemployment offices, and to any major employers contemplating large layoffs in the area from which the schools within the School Food Authority draw their attendance.

* * * * *

3. Section 245.6(b) is revised and redesignated (b–1) and new paragraphs (b–2), (b–3), (b–4), and (b–5) are added to read as follows:

§ 245.6 Application for free and reduced price meals and free milk.

* * * * *

(b–1) When the information furnished by a family in its application indicates that the family meets the eligibility criteria for either free or reduced price meals or free milk, as applicable, the children from that family shall be provided the free or reduced price meals or free milk, as applicable, to which the information indicates they are entitled.

(b–2) School officials may, for cause, seek verification of the data in the application subsequent to the eligibility determination.

(b–3) Any challenge to information on an application or an eligibility determination must be made under the fair hearing procedure established under § 245.7. The hearing may be requested by either a school official wishing to challenge the continued eligibility of any child for free or reduced price benefits, or by a family wishing to appeal a decision made by the school official with respect to an application for free or reduced price benefits for its children.

(b–4) However, prior to any hearing, school officials or the parents may request a conference to discuss the situation, present information and explain the data submitted in the application or the decision rendered.

The request for a conference prior to a hearing shall not in any way prejudice or diminish the right to a fair hearing.

(b–5) The children of a family determined eligible for free or reduced price meals or free milk based on the information contained in the family's application shall continue to receive free or reduced price meals or free milk while any challenge to the application is pending.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.555)

Note: The Food and Nutrition Service has determined that this document contains a proposal requiring preparation of a draft impact analysis. A copy of the draft impact analysis for this proposal may be viewed and obtained at the Office of the Director, School Programs Division, 201 14th Street, SW., Room 4122, Washington, D.C. 20250 during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday).

(Sec. 6c, Pub. L. 94–105, 89 Stat. 513 (42 U.S.C. 1758))

Dated: May 22, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79–16543 Filed 5–24–79; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

[7 CFR Part 1011]

[Docket No. A0–251–A21]

Milk in the Tennessee Valley Marketing Area; Referendum Order; Determination of Representative Period and Designation of Referendum Agent

AGENCY: Agricultural Marketing service, USDA.

ACTION: Referendum order.

SUMMARY: This document orders that a referendum be conducted to determine whether producers favor issuance of the amended order regulating the handling of milk in the Tennessee Valley marketing area, as proposed in the final decision issued by the Deputy Assistant Secretary on April 23, 1979.

DATE: The referendum is to be completed on or before June 25, 1979.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing—Issued August 23, 1978; published August 28, 1978 (43 FR 38412).

Recommended Decision—Issued January 18, 1979; published January 23, 1979 (44 FR 4696).

Extension of Time for Filing Exceptions—Issued February 9, 1979; published February 15, 1979 (44 FR 9761).

Final Decision—Issued April 23, 1979; published April 26, 1979 (44 FR 24563).

It is hereby directed that a referendum be conducted to determine whether the issuance of the amended order regulating the handling of milk in the Tennessee Valley marketing area, which was attached to the decision of the Deputy Assistant Secretary issued April 23, 1979, is approved by producers, as defined under the terms of the amended order, who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The month of February 1979 is hereby determined to be the representative period for the conduct of such referendum.

J. E. Bobo is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Such referendum shall be completed on or before June 25, 1979.

Signed at Washington, D.C., on May 21, 1979.

Jerry C. Hill,

Deputy Assistant Secretary.

[FR Doc. 79–16586 Filed 5–24–79; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

[7 CFR Part 1701]

Public Hearings on Proposed Revision of REA Environmental Policies and Procedures

AGENCY: Rural Electrification Administration.

ACTION: Notice of Public Hearings.

SUMMARY: In the May 15, 1979, **Federal Register** (44 FR 28383 et seq.), the Rural Electrification Administration announced the proposed revision of REA Bulletin 20–21:320–21, "National Environmental Policy Act." The proposed revision provides for compliance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulation (40 CFR Parts 1500–1580) implementing the procedural provisions of NEPA, and also implements other laws, regulations, Executive Orders, and Secretary's Memoranda regarding environmental protection. Comments were invited on the proposed revision and are to be submitted to REA by July 16, 1979.

In the notice of proposed rulemaking, it was also announced that public hearings would be held to discuss the proposed revision and that the date, location, and time of such public hearings would be noticed at a later date. The purpose of this **Federal Register** notice is to announce the time, place, and locations of the public hearings.

DATES: Public hearings will be held June 18, Denver, Colorado; June 19, Little Rock, Arkansas; and June 22, Washington, D.C. See Addresses below.

ADDRESSES: Public hearings will be held at the following locations on the dates shown.

Denver, Colorado—Monday, June 18, 1979, beginning at 9:00 a.m., at Stouffer's Denver Inn, 3203 Quebec Street, Denver, Colorado.

Little Rock, Arkansas—Tuesday, June 19, 1979, beginning at 10:00 a.m., at Hilton Inn, 925 S. University, Little Rock, Arkansas.

Washington, D.C.—Friday, June 22, 1979, beginning at 9:00 a.m., at the Jefferson Auditorium, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harlan M. Severson, Public Participation Officer, Room 4043 South Building, U.S. Department of Agriculture, Rural Electrification Administration, Washington, D.C. 20250, phone (202) 447–5606.

An approved draft impact analysis is also available from this office.

SUPPLEMENTARY INFORMATION: *Public Hearings:* The purpose of the public hearings is to provide an opportunity for broad public consideration of the proposed revision.

A request to make an oral statement, including name, address, telephone number, location of hearing to be attended, approximate length of time required for presentation, and organization represented, if any, should be received by Mr. Severson not later than June 14, 1979. Speakers shall provide a copy of their testimony to the presiding officer at the hearings. Others wishing to make written statements for the record may submit them at the hearing or forward them to Mr. Severson.

Conduct of the Hearings: The agency reserves the right to schedule appearances, within time constraints, and to establish the procedures governing the conduct of the hearings. Presentations may have to be limited,

based on the number of persons seeking to be heard. The hearings will be conducted under the auspices of the REA Public Participation Office and an REA official will preside. These will be informal proceedings and not judicial or evidentiary-type hearings.

Copies of all speakers' prepared statements will be made available for public inspection at the Public Participation Office, Room 4043, South Building, U.S. Department of Agriculture, Rural Electrification Administration, Washington, D.C. 20250, during regular business hours after the final hearing on June 22, 1979.

Dated: May 21, 1979.

Robert W. Feragen,

Administrator.

[FR Doc. 79-16492 Filed 5-24-79; 8:45 am]

BILLING CODE 3410-15-M

[7 CFR Part 1701]

Rural Electrification and Telephone Programs; Proposed Revisions of Debt Service Payment Requirement

AGENCY: Rural Electrification Administration.

ACTION: Proposed Rule.

SUMMARY: REA proposes to issue revised pages of REA Bulletin 20–9:320–12 to provide that the Rural Electrification Administration (REA) and the Rural Telephone Bank (RTB) loan contracts and amendments to loan contracts approved after the issuance of the revised pages will require that debt service payments in excess of $10,000 on REA and RTB borrowers' notes held by REA or RTB be made by electronic funds transfer (EFT) utilizing the Treasury Financial Communications System (TFCS) (formerly referred to as the U.S. Treasury Electronic Funds Transfer System). This requirement implements a recommendation made by members of the President's Reorganization Project on Federal Cash Management. The action will assure that REA borrowers' debt service payments will be received on a timely basis, and the government will have immediate use of funds by eliminating the bank clearing time. Also on borrower's request, all advances on FFB notes guaranteed by REA and advances of $750,000 or more on REA and RTB notes will be made by TFCS.

DATE: Public comments must be received by REA no later than: July 24, 1979.

ADDRESS: Persons interested in the revision may submit written views and comments to Mr. Sheldon Chazin, Director, Accounting and Auditing Division, Rural Electrification Administration, Room 4307, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202–447–7221.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon Chazin at the number and address given above.

SUPPLEMENTARY INFORMATION: Notice is hereby given that REA proposes to issue the revised pages of REA Bulletin 20–9:320–12 pursuant to the Rural Electrification Act, as amended (7 USC 901 et seq.). A draft impact analysis has been prepared and is available upon request.

Dated: May 16, 1979.

Robert W. Feragen,

Administrator.

[FR Doc. 79-16195 Filed 5-24-79; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[8 CFR Part 204]

New Procedures for Requesting Advance Processing in Orphan Visa Petition Cases

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This is a proposed amendment of the regulations of the Immigration and Naturalization Service concerning revised rules for submission of requests for advance processing of orphan visa petitions. The proposed rule will require that a request for advance processing of an orphan petition be accompanied by the petition Form I–600, the required fee, and the fingerprints of the prospective adoptive parent(s). However, a request for advance processing will require the child to be identified to the Service within one year or the petition will be considered abandoned and the fee will not be refunded. This proposed amendment is needed and intended to encourage the filing of serious requests for advance processing of petitions for alien orphan children, to expedite the processing of such petitions and the immigration of the children and to enable the Service to recover some of its processing costs in instances where the petitions are not completed.

DATES: Representations must be received on or before July 23, 1979.

ADDRESSES: Please submit written representations, in duplicate, to the Commissioner of Immigration and Naturalization, Room 7100, 425 Eye STREET, NW., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT: James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service, Washington, D.C. 20536. Telephone: 202–633–3048.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking sets forth proposed new regulations and procedures under which prospective adoptive parents of alien orphan children may initiate advance processing of petitions to classify these orphans as immediate relatives before the child has been located and identified.

The existing regulation at 8 CFR 204.1(b) provides that a prospective adoptive parent who intends to proceed abroad to locate an orphan for adoption may submit a request for preliminary processing in writing to the district director having jurisdiction over the place where the petitioner resides in the United States. No formal application or fee is required for advance processing to be initiated. Upon receipt of this request, the Service initiates the preliminary processing of the application including obtaining fingerprint checks, reviewing the home study etc., and forwards the results to the designated overseas Service office.

However, a situation has developed in many Service offices in which prospective adoptive parents request advance processing, but never complete the adoption or the petition. In these circumstances, the Service has gone to a good deal of time and expense in performing the preliminary processing.

Therefore, the Service proposes to amend 8 CFR 204.1(b) by adding a new subparagraph containing new regulations for the advance processing of orphan petitions.

These regulations will provide that requests for advance processing must be accompanied by the Form I–600 application, appropriate fee ($10.00), and the fingerprints of the prospective adoptive parent(s). The Service will commence preliminary processing, but the petition will not be considered properly filed until the orphan has been identified, the biographical information form concerning the child has been furnished to the Service and the necessary supporting information has been submitted to the Service. If the child has not been identified to the Service within a year, the petition will be considered abandoned; the fee will not be returned, and a new petition will be required to be filed.

This proposal is necessary to insure that only serious requests for advance processing of orphan petition cases are filed, and to enable the Service to recoup some of its cost of such preliminary processing in cases where the petitions are not completed. We should point out that the $10.00 fee required for filing the Form I–600 application covers no more than ten (10) per cent of the cost of performing the fingerprint checks alone, and these would be performed in every case in which preliminary processing was requested.

This amended procedure would be advantageous to the prospective adoptive parents because it would enable the necessary paperwork (home study, fingerprints and filing of application and fee, etc.) to be completed while efforts were being made to locate and identify the child to the Service. Then, when the child was identified, he or she could then be brought to the United States without further delay.

Accordingly, it is proposed to amend 8 CFR 204.1(b) by designating the existing material as subparagraph (1) *General.* The final sentence will be deleted and redrafted into proposed new subparagraph (2) *Advance processing.* These proposed amendments to Chapter I of Title 8 of the Code of Federal Regulations are set forth below:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR AS A PREFERENCE IMMIGRANT

It is proposed to revise § 204.1(b) by designating the existing material as subparagraph (1) *General,* and deleting the last sentence, and by adding a new subparagraph (2) *Advance processing.* As revised § 204.1(b) is proposed to read as follows:

§ 204.1 Petition.

* * * * *

(b) *Orphan*—(1) *General.* A petition in behalf of a child defined in section 101(b)(1)(F) of the Act shall be filed on Form I–600 by a United States citizen with the office of the Service having jurisdiction over the place where the petitioner is residing, shall identify the child, and shall be accompanied by the fee required under § 103.7(b) of this chapter. If the petitioner is married, the Form I–600 shall be signed also by the petitioner's spouse. If unmarried, the petitioner must be at least twenty-five years of age at the time of the adoption and when the petition is filed. If the petitioner resides outside of the United States, the petition shall be filed with the foreign office of the Service designated to act on the petition, which can be ascertained by consulting an American consul. However, since no Service office in Canada has been so designated, a petitioner residing in that country shall file the petition with the office of the Service having jurisdiction over the place of the child's intended residence in the United States. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(2) *Advance processing.* A prospective petitioner may request advance processing when a prospective orphan has not been located and identified or where the prospective petitioner or spouse is going abroad to adopt or locate a child. The request for advance processing must be in writing and must be accompanied by a Petition to Classify Orphan as an Immediate Relative (Form I–600), the appropriate fee and fingerprints of the petitioner and spouse, if married. The request will be submitted to the district director in whose jurisdiction the prospective petitioner is residing. Such petition will not be regarded as properly filed until the orphan has been identified, the biographical information concerning the child is furnished to this Service and the necessary supporting documents have been submitted. The petitioner will be informed that the petition will be retained for one year and that if a child has not been identified to this Service within that year the petition will be considered abandoned and that any further proceedings will require the filing of a new petition. If the petition is denied or considered abandoned, the fee will not be refunded.

* * * * *

(Sec. 103, 8 U.S.C. 1103; Interpret or apply sec. 101(b)(1)(F) and sec. 201(b) (8 U.S.C. 1101(b)(1)(F) and 1151(b)).)

Public Comment Invited

The Commissioner of Immigration and Naturalization invites members of the interested public to submit relevant data, views and arguments concerning the proposed rule. Comments should be submitted in writing, in duplicate, and mailed to the Commissioner at the address specified at the beginning of this document. All relevant responses received on or before July 23, 1979 will be considered.

Dated: May 18, 1979.

Leonel J. Castillo,

Commissioner of Immigration and Naturalization.

[FR Doc. 79–16341 Filed 5–24–79; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 585]

[Docket No. ERA–R–79–24]

Proposed Rulemaking and Public Hearing Regarding Administrative Procedures for Adjustments of Natural Gas Curtailment Priority Regulations

AGENCY: Department of Energy (Economic Regulatory Administration).

ACTION: Cancellation of Proposed Public Hearing.

SUMMARY: A proposed rulemaking regarding Administrative Procedures for Adjustments of Natural Gas Curtailment Priority Regulations was published by the Economic Regulatory Administration on May 11, 1979 (44 FR 27676). The public hearing scheduled for May 30, 1979, on this rulemaking, is being cancelled due to lack of interest.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, 2000 M Street, N.W., Washington, D.C. 20461 (202) 254–5201.

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Washington, D.C. 20461 (202) 634–2170.

Paula Daigneault (Division of Natural Gas Regulations), Economic Reglatory Administration, 2000 M Street, N.W., Washington, D.C. 20461 (202) 632–4721.

Michael T. Skinker (Office of General Counsel), Department of Energy, 12th & Pennsylvania Ave., N.W., Room 7148, Washington, D.C. 20461 (202) 633–8814.

Issued in Washington, D.C., May 22, 1979.

F. Scott Bush,

Acting Assistant Administrator, Regulations and Emergency Planning Economic Regulatory Administration.

[FR Doc. 79–16709 Filed 5–24–79; 11:21 am]

BILLING CODE 6450–01–M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 752 3186]

Chrysler Corp.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Highland Park, Mich. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model years of trucks, truck-trailers, vans, chassis, and incomplete vehicles. The company would effectively be required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture would have to be permanently affixed to each vehicle and specified information concerning the label would have to be disclosed in Owner's Manuals. Additionally, the company would be required to maintain, for four years, records regarding model year designation standards for each vehicle it manufacturers.

DATE: Comments must be received on or before July 24, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave. NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PS, Michael C. McCarey, Washington, D.C. 20580. (202) 523–3948.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreements Containing Consent Order To Cease and Desist

In the matter of Chrysler Corporation, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Chrysler Corporation, a corporation, and it now appearing that Chrysler Corporation, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Chrysler Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent, Chrysler Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 12000 Oakland Avenue, Highland Park, Michigan 48203.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

Order

It is ordered that respondent, Chrysler Corporation, a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this Order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of any such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered that respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year; or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation or representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

a. The characteristics of the vehicle designated, or

b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), provided, however, that:

(1) Vehicles whose assembly began before the model year changeover date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants, all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

Provided, however, that nothing in this Order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this Order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of the Order.

It is further ordered: 1. That respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. Prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. Requires a model year designation on:

(i) Certificates or Statements of Origin for such vehicles, or (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or

(iii) Applications for title or registration of such vehicles.

2. That if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designated a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

a. Are not titled or registered, and

b. Are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statement of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered that respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or

2. Comply with the certification requirements of National Highway Traffice Safety Administration regulation 49 CFR Part 567 (1974);

Provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered that for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period four (4) years after such standards are issued.

It is further ordered that until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after such standard becomes final; provided, however, that failure to provide such information shall not be a violation of this Order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered that until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or

code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered that respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and

2. The location (or possible locations) of the certification label, and

3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and

4. The location of a vehicle identification number, and

5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered that respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and

b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and

c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b) and (c) of this paragraph.

It is further ordered that respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this Order, and to dealers, and branches who sell such vehicles.

It is further ordered that the respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent which may affect compliance obligations arising out of the Order.

It is further ordered that the respondent herein shall within sixty (60) days after service upon them or 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:

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally agreed to accept a consent order from Chrysler Corporation. The proposed order prohibits Chrysler from misrepresenting the model years of heavy duty trucks, and of incomplete vehicles it sells to recreational vehicle manufacturers.

The Commission is placing the proposed order on the public record for 60 days so that interested persons may comment. Comments received will become part of the public record. After 60 days the Commission will review all comments and decide whether it should accept the order.

To aid public comment, this analysis summarizes Chrysler's alleged misconduct and the provisions of the order.

The Alleged Misconduct

The complaint which accompanies the order alleges that Chrysler misrepresented the true model years of vehicles by "updating" identifying documents. Specifically, it alleges that:

1. Chrysler would send its franchised dealers Certificates of Origin for vehicles shipped to the dealers.

2. At the end of a model year, the dealers would send back to Chrysler, Certificates of Origin for vehicles which the dealers had not sold.

3. Chrysler then would supply the dealers with new Certificates or Origin in which model years of the unsold vehicles were updated to show that the vehicles belonged to the upcoming (instead of the previous) model year.

The complaint also alleges that Chrysler would indicate on Certificates of Origin and other documents, identifying vehicles sold through company-owned dealerships, that vehicles were of the current model year, when in many instances, they were manufactured during a previous model year.

The Proposed Order

Vehicles Covered. The proposed order covers the following vehicles intended for on-highway use: trucks, truck-chassis, vans, chassis and incomplete vehicles. Throughout the order and in this summary these are referred to simply as "vehicles."

Assigning Model Years. The order requires Chrysler to assign model years to all vehicles shipped to states which provide space on title or registration papers for model year, or which otherwise identify the vehicles by model year on such papers. It requires Chrysler to indicate the model years on the Certificate or Statement of Origin of all vehicles shipped to such states. (As of July 1978, this requirement applies to vehicles shipped to all states except Hawaii.)

This requirement does not apply to chassis or incomplete vehicles Chrysler may sell to motor home or recreational vehicle manufacturers who issue separate Certificates of Origin. If Chrysler does not assign a model year to such chassis or incomplete vehicles, it must put on the Certificate of Origin the words "Model Year" or "Year" followed by "NA" or "Not Applicable" or "None."

The order prohibits Chrysler from "updating" any document or otherwise misrepresenting the model years of any vehicle. In addition, Chrysler must follow a number of conditions in setting model years. These are essentially those required by the Commission's Enforcement Policy Statement which was published in the **Federal Register** on May 25, 1979. These conditions are:

1. In assigning model years Chrysler must follow written standards which it must set for each model, before the model year starts.

2. The standard set for all vehicles of a particular model, however they are sold, must be the same. In particular, the same standard must be used for vehicles sold through factory-owned branches and through independent dealers.

3. A standard once set must be used throughout a model year.

4. A standard must base model year on either date of manufacture or features of the vehicle, and be such that all vehicles manufactured on the same date with the same features have the same model year.

5. The model year must be assigned to each vehicle on or before its date of manufacture.

6. Once a vehicle is assigned a model year, the model year must not be changed, although a mistake in applying a standard may be corrected.

Disclosure of Date of Manufacture and Location of Vehicle Identification Number. Chrysler must either permanently attach a label on each vehicle showing the month and year of manufacture or else provide a later stage manufacturer with information so that the later stage manufacturer may install the appropriate label. Chrysler must disclose in its Owner's Manual where the label which indicates the date of manufacture is located, and also must disclose at least one place where the vehicle identification number is stamped on the vehicle.

Disclosures about Model Years of Motor Homes and Recreational Vehicles. If Chrysler manufactures chassis or incomplete vehicles for motor home or recreational vehicle manufacturers, it must make a number of disclosures in its Owners' Manuals or equivalent documents about how model years of motor homes and recreational vehicles are determined, and request manufacturers of such vehicles and their dealers to make similar disclosures.

Recordkeeping Provisions. Chrysler must maintain records for each vehicle it manufactures indicating the vehicle identification number, the date of manufacture, and the model year, and must make such records available so that Commission staff may determine whether Chrysler is complying with the provisions of the order.

Distribution of the Order and Compliance. The order contains provisions requiring Chrysler to distribute copies of it to employees and dealers, to file compliance reports, and to notify the Commission of corporate changes which might affect Chrysler's compliance obligations.

The purpose of this summary is to provide information to help the public comment on the proposed order; it does not constitute an official interpretation of the complaint or the proposed order or modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16351 Filed 5-24-79; 8:45 am]

BILLING CODE 6750-01-M

[16 CFR Part 13]

[File No. 752 3191]

Ford Motor Co.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Dearborn, Mich. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model years of trucks, truck-trailers, vans, chassis, and incomplete vehicles. The company would effectively be required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture would have to be permanently affixed to each vehicle and specified information concerning the label would have to be disclosed in Owner's Manuals. Additionally, the company would be required to maintain, for four years, records regarding model year designation standards for each vehicle in manufactures.

DATE: Comments must be received on or before July 24, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PS, Michael C. McCarey, Washington, D.C. 20580. (202) 523-3948.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Ford Motor Company, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Ford Motor Company, a corporation, and it now appearing that Ford Motor Company, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Ford Motor Company, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent, Ford Motor Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at The American Road, Dearborn Michigan 48126.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to

cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

Order

It is ordered that respondent, Ford Motor Company, a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this Order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of any such vehicle; and shall not use a manfacturer's Certificate of Origin or other document to misprepresent the model year of any such vehicle.

It is further ordered that respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year; or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation or representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

a. The characteristics of the vehicle designated, or

b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), provided, however, that:

(1) Vehicles whose assembly began before the model year changeover date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants, all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

Provided, however, that nothing in this Order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this Order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this Order.

It is further ordered:

1. That respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. Prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. Requires a model year designation on: (i) Certificates or Statements of Origin for such vehicles, or (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or (iii) Applications for title or registration of such vehicles.

2. That if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

a. Shall provide a space on such certificates preceded by the words "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

a. Are not titled or registered, and

b. Are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statement of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

a. Shall provide a space on such certificates preceded by the words "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered that respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or

2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974);

Provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered that for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period four (4) years after such standards are issued.

It is further ordered that until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after such standard becomes final; provided, however, that failure to provide such information shall not be a violation of this Order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered that until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered that respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and

2. The location (or possible locations) of the certification label, and

3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and

4. The location of a vehicle identification number, and

5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered that respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and

b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and

c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered that respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this Order, and to dealers, and branches who sell such vehicles.

It is further ordered that the respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent which may affect compliance obligations arising out of the Order.

It is further ordered that the respondent herein shall within sixty (60) days after service upon them or 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:

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally agreed to accept a consent order from Ford Motor Company. The proposed order prohibits Ford Motor from misrepresenting the model years of heavy duty trucks it manufactures.

The Commission is placing the proposed order on the public record for 60 days so that interested persons may comment. Comments received will become part of the public record. After 60 days the Commission will review all comments and decide whether it should accept the order.

To aid public comment, this analysis summarizes Ford Motor's alleged misconduct and the provisions of the order.

The Alleged Misconduct

The complaint which accompanies the order alleges that Ford Motor misrepresented the true model years of vehicles by "updating" identifying documents. Specifically, it alleges that:

1. Ford Motor would send its franchised dealers Certificates of Origin for vehicles shipped to the dealers.

2. At the end of a model year, the dealers would send back to Ford Motor, Certificates of Origin for vehicles which the dealers had not sold.

3. Ford Motor then would supply the dealers with new Cerificates of Origin in which model years of the unsold vehicles were updated to show that the vehicles belonged to the upcoming (instead of the previous) model year.

The complaints also alleges that Ford Motor would indicate on Certificates of Origin and other documents identifying vehicles sold through company-owned dealerships, that vehicles were of the current model year, when in many instances, they were manufactured during a previous model year.

The Proposed Order

Vehicles Covered. The propsed order covers the following vehicles intended for on-highway use: trucks, truck-chassis, vans, chassis and incomplete vehicles. Throughout the order and in this summary these are referred to simply as "vehicles."

Assigning Model Years. The order requires Ford Motor to assign model years to all vehicles shipped to states which provide space on title or registration papers for model year, or which otherwise identify the vehicles by model year on such papers. It requires

Ford Motor to indicate the model years on the Certificate or Statement of Origin of all vehicles shipped to such states. (As of July 1978, this requirement applies to vehicles shipped to all states except Hawaii.)

This requirement does not apply to chassis or incomplete vehicles Ford Motor may sell to motor home or recreational vehicle manufacturers who issue separate Certificates of Origin. If Ford Motor does not assign a model year to such chassis or incomplete vehicles, it must put on the Certificate of Origin the words "Model Year" or "Year" followed by "NA" or "Not Applicable" or "None." The order prohibits Ford Motor from "updating" any document or otherwise misrepresenting the model years of any vehicle. In addition, Ford Motor must follow a number of conditions in setting model years. These are essentially those required by the Commission's Enforcement Policy Statement which was published in the **Federal Register** on May 25, 1979. These conditions are:

1. In assigning model years Ford Motor must follow written standards which it must set for each model, before the model year starts.

2. The standard set for all vehicles of a particular model, however they are sold, must be the same. In particular, the same standard must be used for vehicles sold through factory-owned branches and through independent dealers.

3. A standard once set must be used throughout a model year.

4. A standard must base model year on either date of manufacture of features of the vehicle, and be such that all vehicles manufactured on the same date with the same features have the same model year.

5. The model year must be assigned to each vehicle on or before its date of manufacture.

6. Once a vehicle is assigned a model year, the model year must not be changed, although a mistake in applying a standard may be corrected.

Disclosure of Date of Manufacture and Location of Vehicle Identification Number. Ford Motor must either permanently attach a label on each vehicle showing the month and year of manufacture or else provide a later stage manufacturer with information so that the later stage manufacturer may install the appropriate label. Ford Motor must disclose in its Owner's Manual where the label which indicates the date of manufacture is located, and also must disclose at least one place where the vehicle identification number is stamped on the vehicle.

Disclosures about Model Years of Motor Homes and Recreational Vehicles. If Ford Motor manufactures chassis or incomplete vehicles for motor home or recreational vehicle manufacturers, it must make a number of disclosures in its Owners' Manuals or equivalent documents about how model years of motor homes and recreational vehicles are determined, and request manufacturers of such vehicles and their dealers to make similar disclosures.

Recordkeeping Provisions. Ford Motor must maintain records for each vehicle it manufactures indicating the vehicle identification number, the date of manufacture, and the model year, and must make such records available so that Commission staff may determine whether Ford Motor is complying with the provisions of the order.

Distribution of the Order and Compliance. The order contains provisions requiring Ford Motor to distribute copies of it to employees and dealers, to file compliance reports, and to notify the Commission of corporate changes which might affect Ford Motor's compliance obligations.

The purpose of this summary is to provide information to help the public comment on the proposed order; it does not constitute an official interpretation of the complaint or the proposed order or modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16352 Filed 5-24-79; 8:45 am]

BILLING CODE 6750-01-M

[16 CFR Part 13]

[File No. 752 3190]

International Harvester Co.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Chicago, Ill. manufacturer of heavyduty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model years of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company would effectively be required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacturer would have to be permanently affixed to each vehicle and specified information concerning the label would have to be disclosed in Owner's Manuals. Additionally, the company would be required to maintain, for four years, records regarding model year designation standards for each vehicle it manufacturers.

DATE: Comments must be received on or before July 24, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTRACT: FTC/PS, Michael C. McCarey, Washington, D.C. 20580. (202) 523-3948.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explantion thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order To Cease and Desist

In the matter of International Harvester Company, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of International Harvester Company, a corporation, and it now appearing that International Harvester Company, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between International Harvester Company, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent, International Harvester Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and

principal place of business located at 401 North Michigan Avenue, Chicago, Illinois 60611.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

Order

It is ordered that respondent, International Harvester Company, a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this Order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of any such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered that respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year; or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation or representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

a. The characteristics of the vehicle designated, or

b. The date of manufacture (regardless of the extent, if any, of chages in physical characteristics from vehicles of a preceding model year), provided, however, that:

(1) Vehicles whose assembly began before the model year changeover date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants, all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

Provided, however, that nothing in this Order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this Order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this Order.

It is further ordered: 1. That respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. Prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. Requires a model year designation on:

(i) Certificates or Statements of Origin for such vehicles, or

(ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or

(iii) Applications for title or registration of such vehicles.

2. That if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

a. Are not titled or registered, and

b. Are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statement of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered that respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or

2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974);

Provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered that for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period four (4) years after such standards are issued.

It is further ordered that until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after such standard becomes final; *provided, however,* that failure to provide such information shall not be a violation of this Order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered that until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered that respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and

2. The location (or possible locations) of the certification label, and

3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and

4. The location of a vehicle identification number, and

5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered that respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and

b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and

c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered that respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this Order, and to dealers, and branches who sell such vehicles.

It is further ordered that the respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent which may affect compliance obligations arising out of the Order.

It is further ordered that the respondent herein shall within sixty (60) days after service upon them or 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:

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally agreed to accept a consent order from International Harvester. The proposed order prohibits International Harvester from misrepresenting the model years of heavy duty trucks it manufactures. The Commission is

placing the proposed order on the public record for 60 days so that interested persons may comment. Comments received will become part of the public record. After 60 days the Commission will review all comments and decide whether it should accept the order.

To aid public comment, this analysis summarizes International Harvester's alleged misconduct and the provisions of the order.

The Alleged Misconduct

The complaint which accompanies the order alleges that International Harvester misrepresented the true model years of vehicles by "Updating" identifying documents. Specifically, it alleges that:

1. International Harvester would send its franchised dealers, Certificates of Origin for vehicles shipped to the dealers.

2. At the end of a model year, the dealers would send back to International Harvester, Certificates of Origin for vehicles which the dealers had not sold.

3. International Harvester then would supply the dealers with new Certificates of Origin in which model years of the unsold vehicles were updated to show that the vehicles belonged to the upcoming (instead of the previous) model year.

The complaint also alleges that International Harvester would indicate on Certificates of Origin and other documents identifying vehicles sold through company-owned dealerships, that vehicles were of the current model year, when in many instances, they were manufactured during a previous model year.

The Proposed Order

Vehicles Covered. The proposed order covers the following vehicles intended for on-highway use: trucks, truck-chassis, vans, chassis and incomplete vehicles. Throughout the order and in this summary these are referred to simply as "vehicles."

Assigning Model Years. The order requires International Harvester to assign model years to all vehicles shipped to states which provide space on title or registration papers for model year, or which otherwise identify the vehicles by model year on such papers. It requires International Harvester to indicate the model years on the Certificate or Statement of Origin of all vehicles shipped to such states. (As of July 1978, this requirement applies to vehicles shipped to all states except Hawaii.)

This requirement does not apply to chassis or incomplete vehicles International Harvester may sell to motor home or recreational vehicle manufacturers who issue separate Certificates of Origin. If International Harvester does not assign a model year to such chassis or incomplete vehicles, it must put on the Certificate of Origin the words "Model Year" or "Year" followed by "NA" or "Not Applicable" or "None."

The order prohibits International Harvester from "updating" any document or otherwise misrepresenting the model years of any vehicle. In addition, International Harvester must follow a number of conditions in setting model years. These are essentially those required by the Commission's Enforcement Policy Statement which was published in the **Federal Register** on May 25, 1979. These conditions are:

1. In assigning model years International Harvester must follow written standards which it must set for each model, before the model year starts.

2. The standard set for all vehicles of a particular model, however they are sold, must be the same. In particular, the same standard must be used for vehicles sold through factory-owned branches and through independent dealers.

3. A standard once set must be used throughout a model year.

4. A standard must base model year on either date of manufacture or features of the vehicle, and be such that all vehicles manufactured on the same date with the same features have the same model year.

5. The model year must be assigned to each vehicle on or before its date of manufacture.

6. Once a vehicle is assigned a model year, the model year must not be changed, although a mistake in applying a standard may be corrected.

Disclosure of Date of Manufacture and Location of Vehicle Identification Number. International Harvester must either permanently attach a label on each vehicle showing the month and year of manufacture or else provide a later stage manufacturer with information so that the later stage manufacturer may install the appropriate label.

International Harvester must disclose in its Owner's Manual where the label which indicates the date of manufacture is located, and also must disclose at least one place where the vehicle identification number is stamped on the vehicle.

Disclosures about Model Years of Motor Homes and Recreational Vehicles. If International Harvester manufactures chassis or incompete vehicles for motor home or recreational vehicle manufacturers, it must make a number of disclosures in its Owners' Manuals or equivalent documents about how model years of motor homes and recreational vehicles are determined, and request manufacturers of such vehicles and their dealers to make similar disclosures.

Recordkeeping Provisions. International Harvester must maintain records for each vehicle it manufactures indicating the vehicle identification number, the date of manufacture, and the model year, and must make such records available so that Commission staff may determine whether International Harvester is complying with the provisions of the order.

Distribution of the Order and Compliance. The order contains provisions requiring International Harvester to distribute copies of it to employees and dealers, to file compliance reports, and to notify the Commission of corporate changes which might affect International Harvester compliance obligations.

The purpose of this summary is to provide information to help the public comment on the proposed order; it does not constitute an official interpretation of the complaint or the proposed order or modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16353 Filed 5-24-79; 8:45 am]

BILLING CODE 6750-01-M

[16 CFR Part 13]

[File No. 752 3187]

Mack Trucks, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and parctices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, an Allentown, Pa. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model years of trucks, truck-trailers, vans, chassis, and incomplete vehicles. The company would effectively be required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A lable indicating the model

year or date of manufacture would have to be permanently affixed to each vehicle and specified information concerning the label would have to be disclosed in Owner's Manuals. Additionally, the company would be required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

DATE: Comments must be received on or before July 24, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PS, Michael C. McCarey, Washington, D.C. 20580. (202) 523–3948.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order To Cease and Desist

In the matter of Mack Trucks, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Mack Trucks, Inc., a corporation, and it now appearing that Mack Trucks, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Mack Trucks, Inc. by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent, Mack Trucks, Inc., is a corporation organized, exisitng and doing business under and by virtue of the laws of the State of Pannsylvania, with its office and principal place of business located at 2100 Mack Boulevard, Allentown, Pennsylvania 18103.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

Order

It is ordered that respondent, Mack Trucks, Inc., a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this Order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forth with cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate or Origin or other document the model year, if any, of any such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered that respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year; or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation or representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

a. The characteristics of the vehicle designated, or

b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), provided, however, that:

(1) Vehicles whose assembly began before the model year changeover date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants, all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

Provided, however, that nothing in this Order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this Order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposed of this Order.

It if further ordered:

1. That respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. Prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. requires a model year designation on: (i) Certificates or Statements of Origin for such vehicles, or (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or (iii) Applications for title or registration of such vehicles.

2. That if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

a. are not titled or registered, and

b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statement of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered that respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or

2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974);

Provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered that for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period of four (4) years after such standards are issued.

It is further ordered that until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after such standard becomes final; provided, however, that failure to provide such information shall not be a violation of this Order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered that until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered that respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and

2. The location (or possible locations) of the certification label, and

3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and

4. The location of a vehicle identification number, and

5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered that respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to

intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and

b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and

c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered that respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this Order, and to dealers, and branches who sell such vehicles.

It is further ordered that the respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent which may affect compliance obligations arising out of the Order.

It is further ordered that the respondent herein shall within sixty (60) days after service upon them or 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:

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has provisionally agreed to accept a consent order from Mack Trucks, Inc. The proposed order prohibits Mack Trucks from misrepresenting the model years of heavy duty trucks it manufacturers.

The Commission is placing the proposed order on the public record for 60 days so that interested persons may comment. Comments received will become part of the public record. After 60 days the Commission will review all comments and decide whether it should accept the order.

To aid public comment, this analysis summarizes Mack Trucks' alleged misconduct and the provisions of the order.

The Alleged Misconduct

The complaint which accompanies the order alleges that Mack Trucks misrepresented the true model years of vehicles by "updating" identifying documents. Specifically, it alleges that:

1. Mack Trucks would send its franchised dealers Certificates of Origin for vehicles shipped to the dealers.

2. At the end of a model year, the dealers would send back to Mack Trucks, Certificates of Origin for vehicles which the dealers had not sold.

3. Mack Trucks then would supply the dealers with new Certificates of Origin in which model years of the unsold vehicles were updated to show that the vehicles belonged to the upcoming (instead of the previous) model year.

The complaint also alleges that Mack Trucks would indicate on Certificates of Origin and other documents identifying vehicles sold through company-owned dealerships, that vehicles were of the current model year, when in many instances they were manufactured during a previous model year.

The Proposed Order

Vehicles Covered. The proposed order covers the following vehicles intended for on-highway use: trucks, truck-chassis, vans, chassis and incomplete vehicles. Throughout the order and in this summary these are referred to simply as "vehicles."

Assigning Model Years. The order requires Mack Trucks to assign model years to all vehicles shipped to states which provide space on title or registration papers for model year, or which otherwise identify the vehicles by model year on such papers. It requires Mack Trucks to indicate the model years on the Certificate or Statement or Origin of all vehicles shipped to such states. (As of July 1978, this requirement applies to vehicles shipped to all states except Hawaii.)

This requirement does not apply to chassis or incomplete vehicles Mack Trucks may sell to motor home or recreational vehicle manufacturers who issue separate Certificates of Origin. If Mack Trucks does not assign a model year to such chassis or incomplete vehicles, it must put on the Certificate of Origin the words "Model Year" or "Year" followed by "NA" or "Not Applicable" or "None."

The order prohibits Mack Trucks from "updating" any document or otherwise misrepresenting the model years of any vehicle. In addition, Mack Trucks must follow a number of conditions in setting model years. These are essentially those required by the Commission's Enforcement Policy Statement which was published in the **Federal Register** on May 25, 1979. These conditions are:

1. In assigning model years Mack Trucks must follow written standards which it must set for each model, before the model year starts.

2. The standard set for all vehicles of a particular model, however they are sold, must be the same. In particular, the same standard must be used for vehicles sold through factory-owned branches and through independent dealers.

3. A standard once set must be used throughout a model year.

4. A standard must base model year on either date of manufacture or features of the vehicle, and be such that all vehicles manufactured on the same date with the same features have the same model year.

5. The model year must be assigned to each vehicle on or before its date of manufacture.

6. Once a vehicle is assigned a model year, the model year must not be changed, although a mistake in applying a standard may be corrected.

Disclosure of Date of Manufacture and Location of Vehicle Identification Number. Mach Trucks must either permanently attach a label on each vehicle showing the month and year of manufacture or else provide a later stage manufacturer with information so that the later stage manufacturer may install the appropriate level. Mack Trucks must disclose in its Owner's Manual where the label which indicates the date of manufacture is located, and also must disclose at least one place where the vehicle identification number is stamped on the vehicle.

Disclosures about Model Years of Motor Homes and Recreational Vehicles. If Mack Trucks manufactures chassis or incomplete vehicles for motor home or recreational vehicle manufacturers, it must make a number of disclosures in its Owners' Manuals or equivalent documents about how model years of motor homes and recreational vehicles are determined, and request manufacturers of such vehicles and their dealers to make similar disclosures.

Recordkeeping Provisions. Mack Trucks must maintain records for each vehicle it manufactures indicating the vehicle identification number, the date of manufacture, and the model year, and must make such records available so

that Commission staff may determine whether Mack Trucks is complying with the provisions of the order.

Distribution of the Order and Compliance. The order contains provisions requiring Mack Trucks to distribute copies of it to employees and dealers, to file compliance reports, and to notify the Commission of corporate changes which might affect Mack Trucks' compliance obligations.

The purpose of this summary is to provide information to help the public comment on the proposed order; it does not constitute an official interpretation of the complaint or the proposed order or modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16354 Filed 5-24-79; 8:45 am]

BILLING CODE 6750-01-M

[16 CFR Part 13]

[File No. 752 3189]

Paccar, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Bellevue, Wash. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model years of trucks, truck-trailers, vans, chassis, and incomplete vehicles. The company would effectively be required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture would have to be permanently affixed to each vehicle and specified information concerning the label would have to be disclosed in Owner's Manuals. Additionally, the company would be required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

DATE: Comments must be received on or before July 24, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PS, Michael C. McCarey, Washington, D.C. 20580. 202-523-3948.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order to Cease and Desist

In the matter of Paccar, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Paccar, Inc., a corporation, and it now appearing that Paccar, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Paccar, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent, Paccar, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Business Center Building, 777 106fh Avenue, NE., Bellevue, Washington 98004.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this ageement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

Order

It is ordered that respondent, Paccar, Inc., a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of

trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this Order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of any such vehicle; and shall not use a manfacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered that respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year; or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation or representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

a. The characteristics of the vehicle designated, or

b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), provided, however, that:

(1) Vehicles whose assembly began before the model year changeover date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants, all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

Provided, however, that nothing in this Order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this Order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this Order.

It is further ordered: 1. That respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. Prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. Requires a model year designation on: (i) Certificates or Statements of Origin for such vehicles, or (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or (iii) Applications for title or registration of such vehicles.

2. That if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space bank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

a. are not titled or registered, and

b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statment of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered that respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or

2. Comply with the certification requirments of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974);

Provided, however, that if the certification requirements of National Highway Traffic Safety Administation regulation 49 CFR Part 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered that for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period four (4) years after such standards are issued.

It is further ordered that until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after such standard becomes final;

provided, however, that failure to provide such information shall not be a violation of this Order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered that respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and

2. The location (or possible locations) of the certification label, and

3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and

4. The location of a vehicle identification number, and

5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered that respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and

b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and

c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered that respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisins, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this Order, and to dealers, and branches who sell such vehicles.

It is further ordered that the respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent which may affect compliance obligations arising out of the Order.

It is further ordered that the respondent herein shall within sixty (60) days after service upon them or 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:

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally agreed to accept a consent order from Paccar, Inc. The proposed order prohibits Paccar from misrepresenting the model years of heavy duty trucks it manufactures.

The Commission is placing the proposed order on the public record for 60 days so that interested persons may comment. Comments received will become part of the public record. After 60 days the Commission will review all comments and decide whether it should accept the order.

To aid public comment, this analysis summarizes Paccar's alleged misconduct and the provisions of the order.

The Alleged Misconduct

The complaint which accompanies the order alleges that Paccar misrepresented the true model years of vehicles by "updating" identifying documents. Specifically, it alleges that:

1. Paccar would send its franchised dealers Certificates of Origin for vehicles shipped to the dealers.

2. At the end of a model year, the dealers would send back to Paccar, Certificates of Origin for vehicles which the dealers has not sold.

3. Paccar then would supply the dealers with new Certificates of Origin in which model years of the unsold vehicles were updated to show that the vehicles belonged to the upcoming (instead of the previous) model year.

The complaint also alleges that Paccar would indicate on Certificates of Origin and other documents identifying vehicles sold through company-owned dealerships, that vehicles were of the current model year, when in many instances, they were manufactured during a previous model year.

The Proposed Order

Vehicles Covered. The proposed order covers the following vehicles intended for on-highway use: trucks, truck-chassis, vans, chassis and incomplete vehicles. Throughout the order and in this summary these are referred to simply as "vehicles."

Assigning Model Years. The order requires Paccar to assign model years to all vehicles shipped to states which provide space on title or registration papers for model year, or which otherwise identify the vehicles by model year on such papers. It requires Paccar to indicate the model years on the Certificate or Statement of Origin of all vehicles shipped to such states. (As of July 1978, this requirement applies to vehicles shipped to all states except Hawaii.)

This requirement does not apply to chassis or incomplete vehicles Paccar may sell to motor home or recreational vehicle manufacturers who issue separate Certificates of Origin. If Paccar does not assign a model year to such chassis or incomplete vehicles, it must put on the Certificate of Origin the words "Model Year" or "Year" followed by "NA" or "Not Applicable" or "None."

The order prohibits Paccar from "updating" any document or otherwise misrepresenting the model years of any vehicle. In addition, Paccar must follow a number of conditions in setting model years. These are essentially those required by the Commission's Enforcement Policy Statement which was published in the **Federal Register** on May 25, 1979. These conditions are:

1. In assigning model years Paccar must follow written standards which it must set for each model, before the model year starts.

2. The standard set for all vehicles of a particular model, however they are sold, must be the same. In particular, the same standard must be used for vehicles sold through factory-owned branches and through independent dealers.

3. A standard once set must be used throughout a model year.

4. A standard must base model year on either date of manufacture or features of the vehicle, and be such that all vehicles manufactured on the same date with the same features have the same model year.

5. The model year must be assigned to each vehicle on or before its date of manufacture.

6. Once a vehicle is assigned a model year, the model year must not be changed, although a mistake in applying a standard may be corrected.

Disclosure of Date of Manufacture and Location of Vehicle Identification Number. Paccar must either permanently attach a label on each vehicle showing the month and year of manufacture or else provide a later stage manufacturer with information so that the later stage manufacturer may install the appropriate label. Paccar must disclose in its Owner's Manual where the label which indicates the date of manufacture is located, and also must disclose at least one place where the vehicle identification number is stamped on the vehicle.

Disclosure about Model Years of Motor Homes and Recreational Vehicles. If Paccar manufactures chassis or incomplete vehicles for motor home or recreational vehicle manufacturers, it must make a number of disclosures in its Owners' Manuals or equivalent documents about how model years of motor homes and recreational vehicles are determined, and request manufacturers of such vehicles and their dealers to make similar disclosures.

Recordkeeping Provisions. Paccar must maintain records for each vehicle it manufactures indicating the vehicle identification number, the date of manufacture, and the model year, and must make such records available so that Commission staff may determine whether Paccar is complying with the provisions of the order.

Distribution of the Order and Compliance. The order contains provisions requiring Paccar to distribute copies of it to employees and dealers, to file compliance reports, and to notify the Commission of corporate changes which might affect Paccar's compliance obligations.

The purpose of this summary is to provide information to help the public comment on the proposed order; it does not constitute an official interpretation of the complaint or the proposed order or modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16355 Filed 5-24-79; 8:45 am]

BILLING CODE 6750-01-M

[16 CFR Part 13]

[File No. 752 3188]

White Motor Corp.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, an Eastlake, Ohio manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model years of trucks, truck-trailers, vans, chassis, and incomplete vehicles. The company would effectively be required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture would have to be permanently affixed to each vehicle and specified information concerning the label would have to be disclosed in Owner's Manuals. Additionally, the company would be required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

DATE: Comments must be received on or before July 24, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PS, Michael C. McCarey, Washington, D.C. 20580. (202) 523-3948.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order To Cease and Desist

In the matter of White Motor Corporation, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of White Motor Corporation, a corporation, and it now appearing that White Motor Corporation, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices beign investigated.

It is hereby agreed by and between White Motor Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent, White Motor Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 35129 Curtis Boulevard, Eastlake, Ohio 44094.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to

cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

Order

It is ordered that respondent, White Motor Corporation, a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this Order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of any such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered that respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year; or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation or representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards take effect; and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

a. The characteristics of the vehicle designated, or

b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), *provided, however,* that:

(1) Vehicles whose assembly began before the model year changeover date but were completed after such date, may be designated as being of the earlier model year, and

(2) Where a particular model is manufactured in two or more plants, all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

Provided, however, that nothing in this Order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this Order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this Order.

It is further ordered:

1. That respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches, or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. Prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. Requires a model year designation on:

(i) Cetificates or Statements of Origin for such vehicles, or

(ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or (iii) Applications for title or registration of such vehicles.

2. That if respondent, for vehicles sent to any other state, does not designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

a. Are not titled or registered, and

b. Are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statement of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

a. Shall provide a space on such certificates preceded by the word "model year" or "year," and

b. Shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered that respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a

label permanently affixed to each vehicle at manufacture, or

2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974);

Provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 CFR Part 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered that for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period four (4) years after such standards are issued.

It is further ordered that until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after such standard becomes final; provided, however, that failure to provide such information shall not be a violation of this Order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered that respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and

2. The location (or possible locations) of the certification label, and

3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and

4. The location of a vehicle identification number, and

5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered that respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and

b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and

c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis.

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered that respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this Order, and to dealers, and branches who sell such vehicles.

It is further ordered that the respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent which may affect compliance obligations arising out of the Order.

It is further ordered that the respondent herein shall within sixty (60) days after service upon them or 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.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally agreed to accept a consent order from White Motor Corporation. The proposed order prohibits White Motor from misrepresenting the model years of heavy duty trucks it manufactures.

The Commission is placing the proposed order on the public record for 60 days so that interested persons may comment. Comments received will become part of the public record. After the 60 days the Commission will review all comments and decide whether it should accept the order.

To aid public comment, this analysis summarizes White Motor's alleged misconduct and the provisions of the order.

The Alleged Misconduct

The complaint which accompanies the order alleges that White Motor misrepresented the true model years of vehicles by "updating" identifying documents. Specifically, it alleges that:

1. White Motor would send its franchised dealers Certificates of Origin for vehicles shipped to the dealers.

2. At the end of a model year, the dealers would send back to White Motor, Certificates of Origin for vehicles which the dealers had not sold.

3. White Motor then would supply the dealers with new Certificates of Origin in which model years of the unsold vehicles were updated to show that the vehicles belonged to the upcoming (instead of the previous) model year.

The complaint also alleges that White Motor would indicate on Certificates of Origin and other documents identifying vehicles sold through company-owned dealerships, that vehicles were of the current model year, when in many instances, they were manufactured during a previous model year.

The Proposed Order

Vehicles Covered. The proposed order covers the following vehicles intended for on-highway use: trucks, truck-chassis, vans, chassis and incomplete vehicles. Throughout the order and in this summary these are referred to simply as "vehicles."

Assigning Model Years. The order requires White Motor to assign model years to all vehicles shipped to states which provide space on title or registration papers for model year, or which otherwise identify the vehicles by model year on such papers. It requires White Motor to indicate the model years on the Certificate or Statement of Origin of all vehicles shipped to such state. (As of July 1978, this requirement applies to vehicles shipped to all states except Hawaii.)

This requirement does not apply to chassis or incomplete vehicles White Motor may sell to motor home or

recreational vehicle manufacturers who issue separate Certificates of Origin. If White Motor does not assign a model year to such chassis or incomplete vehicles, it must put on the Certificate of Origin the words "Model or Year" or "Year" followed by "NA" or "Not Applicable" or "None."

The order prohibits White Motor from "Updating" any document or otherwise misrepresenting the model years of any vehicle. In addition, White Motor must follow a number of conditions in setting model years. These are essentially those required by the Commission's Enforcement Policy Statement which was published in the **Federal Register** on May 25, 1979. These conditions are:

1. In assigning model years White Motor must follow written standards which it must set for each model, before the model year starts.

2. The standard set for all vehicles of a particular model, however they are sold, must be the same. In particular, the same standard must be used for vehicles sold through factory-owned branches and through independent dealers.

3. A standard once set must be used throughout a model year.

4. A standard must base model year on either date of manufacture or features of the vehicle, and be such that all vehicles manufactured on the same date with the same features have the same model year.

5. The model year must be assigned to each vehicle on or before its date of manufacture.

6. Once a vehicle is assigned a model year, the model year must not be changed, although a mistake in applying a standard may be corrected.

Disclosure of Date of Manufacture and Location of Vehicle Identification Number. White Motor must either permanently attach a label on each vehicle showing the month and year of manufacture or else provide a later stage manufacturer with information so that the later stage manufacturer may install the appropriate label. White motor must disclose in its Owner's Manual where the label which indicates the date of manufacture is located, and also must disclose at least one place where the vehicle identification number is stamped on the vehicle.

Disclosures about Model Years of Motor Homes and Recreational Vehicles. If White Motor manufactures chassis or incomplete vehicles for motor home or recreational vehicle manufacturers, it must make a number of disclosures in its Owners' Manuals or equivalent documents about how model years of motor homes and recreational vehicles are determined, and request manufacturers of such vehicles and their dealers to make similar disclosures.

Recordkeeping Provisions. White Motor must maintain records for each vehicle it manufactures indicating the vehicle identification number, the date of manufacture, and the model year, and must make such records available so that Commission staff may determine whether White Motor is complying with the provisions of the order.

Distribution of the Order and Compliance. The order contains provisions requiring White Motor to distribute copies of it to employees and dealers, to file compliance reports, and to notify the Commission of corporate changes which might affect White Motor's compliance obligations.

The purpose of this summary is to provide information to help the public comment on the proposed order; it does not constitute an official interpretation of the complaint or the proposed order or modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16356 Filed 5-24-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 4]

Proposed Amendement to the Customs Regulations Concerning Fee Schedule for Vessel Services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Recent legislation repealed several statutes under which Customs charged and collected fees for specific services provided to vessels by Customs officers. This legislation authorized the Secretary of the Treasury to establish a new schedule of fees to return to the Government the approximate costs of the services. This document proposes (1) a new fee schedule to be used for the remainder of 1979 and (2) amendments to the Customs Regulations to provide that a revised fee schedule will be published in December 1979, to be used by Customs in charging and collecting fees for services provided to vessels in 1980, and that a new fee schedule will be published in December of each year thereafter for services provided during the following year.

DATE: Comments must be received on or before June 25, 1979.

ADDRESS. Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Carriers, Drawback, and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 95-410, the "Customs Procedural Reform and Simplification Act of 1978", approved October 3, 1978 ("the Act"), repealed sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58; 46 U.S.C. 329, 330, and 333), the statutory authority under which Customs has been charging and collecting fees for specific services provided to vessels by Customs officers. These fees, designated as "Navigation Fees" in section 4.98(a), Customs Regulations (19 CFR 4.98(a)), are as follows:

Fee No. and description of services	A	B
1 Entry of vessel, including American, from foreign port (19 U.S.C. 58):		
(a) Less than 100 net tons	$1.50	.....
(b) 100 net tons and over	2.50	.....
2 Clearance of vessel, including American, to foreign port (19 U.S.C. 58):		
(a) Less than 100 net tons	1.50	.....
(b) 100 net tons and over	2.50	.....
3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest (46 U.S.C. 329, 330)	2.00	$0.10
4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade (46 U.S.C. 329, 330)	2.00	0.10
5 Receiving post entry (19 U.S.C. 58, 46 U.S.C. 330)	2.00	2.00
6 Receiving official bond not otherwise provided for (19 U.S.C. 58)	0.40	.....
7 Certifying payment of tonnage tax for foreign vessels only (19 U.S.C. 58)	0.20	0.20
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated (19 U.S.C. 58)	0.20	0.20

The fees in Column A are those collectible on the Atlantic, Gulf, and Pacific coasts and on the Mississippi River and tributaries; those in Column B are collectible on the northern, northeastern, and northwestern frontiers (Great Lakes, Lake Champlain, and St. Lawrence River).

Because these fees did not cover the costs of providing the services, section 214 of the Act authorized the Secretary of the Treasury to establish a new schedule of fees to be charged and collected for furnishing these services. These fees are to be consistent with section 501 of the Independent Offices Appropriation Act, 1952 (31 U.S.C. 483a), the so-called "User Chargers Statute", which provides that the costs of specific services for private interests shall be reimbursed to the Government.

Interim action was required so that fees could be charged and collected for the services provided, pending the preparation and publication of a new fee schedule. In this regard, on October 12, 1978, Customs published a General Notice in the **Federal Register** (T.D. 78–381; 43 FR 46962), which provided that until a new fee schedule becomes effective, Customs would continue to charge and collect the fees presently set forth in section 4.98(a), Customs Regulations (19 CFR 4.98(a)), for services provided to vessels by Customs officers.

Proposals

1. This document proposes a new schedule of fees which would become effective upon publication in the **Federal Register** as a Treasury Decision and remain in effect for the remainder of calendar year 1979.

2. This document also proposes to amend section 4.98(a), Customs Regulations (19 CFR 4.98(a)), by deleting the existing fee schedule and providing that a General Notice will be published in the **Federal Register** and CUSTOMS BULLETIN in December 1979, setting forth a revised schedule of fees for specific services provided to vessels by Customs officers in 1980, and that a new schedule will be published in December of each year thereafter for services provided during the following year to reflect changes in the rate of compensation paid to the Customs officer performing the service. The revised fee schedule would be based upon the amount of time the average service requires of a Customs officer in the fifth step of a GS–9.

Pertinent Data

The (1) amount of revenue raised in fiscal year 1978 for each service, (2) the estimated length of time in hours reflected in the proposed new fee schedule required by a Customs officer to accomplish each service, and (3) the proposed new schedule of fees follow:

Fee No. and description of Services	Amount collected 1978	Estimated time in hours	Proposed new fee
1 Entry of vessel, including American, from foreign port:			
(a) Less than 100 net tons	$269,151	½	$5.90
(b) 100 net tons and over	(a) and (b)	1	11.90
2 Clearance of vessel, including American, to foreign port:			
(a) Less than 100 net tons	262,570	½	5.90
(b) 100 net tons and over	(a) and (b)	1	11.90
3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest	115,598	1	11.90
4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade	109,091	1	11.90
5 Receiving post entry	81,410	½	5.90
6 Receiving official bond not otherwise provided for	388	¼	3.00
7 Certifying payment of tonnage tax for foreign vessels only	27,201	¼	3.00
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated	3,710	1	11.90
Total	869,119		

Explanation

Section 24.17(d), Customs Regulations (19 CFR 24.17(d)), provides that the reimbursable charge for regular compensation shall be computed in accordance with section 19.5(b), Customs Regulations (19 CFR 19.5(b)), which contains the computation of the rate per hour for regular pay. The charge shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee, with an addition equal to any night pay differential actually payable under section 5545, title 5, United States Code. The ratio of the annual number of working hours charged to Customs appropriation to the net number of annual working days is 137 percent. Therefore, the hourly rate utilized is $11.88, which is 137 percent of the hourly rate of pay of a Customs officer in the fifth step of GS–9.

It is indicated in the legislative history of Pub. L. 95–410 (House Report No. 95–621, 95th Congress, 2nd Session, 1978, p. 28), that the fees to be charged shall be based upon the amount of time the average service requires of a Customs officer in the third step of GS–11. However, Customs has determined that these services generally are provided by a Customs officer in the fifth step of GS–9 and will use this pay rate as the basis for calculating the fees.

The proposed fees have been rounded off to the nearest tenth of a dollar. It also is proposed to eliminate the fees under Column "B" in the present schedule. Fees under Column "B" are collectible on the northern, northeastern, and northwestern frontiers (Great Lakes, Lake Champlain, and St. Lawrence River). Because Congress has repealed sections 329, 330, and 333 of title 46, and section 58, title 19, United States Code, and because the amount of the fee to be charged and collected is to be based on the amount of time required to provide the service and not on when or where the service is performed, Customs has determined that there is no reason to continue the distinction between Column "A" and Column "B" fees. The explanatory material presently set forth in paragraphs 4.98(b) through 4.98(h), Customs Regulations, remains unchanged.

Authority

This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 501, 65 Stat. 290 (31 U.S.C. 483a), Pub. L. 95–410, 92 Stat. 888.

Comments

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, on the proposed new fee schedule and amendments to the Customs Regulations, that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 2335, Washington, D.C. 20229.

This document is not subject to the Department of Treasury directive implementing Executive Order 12044, "Improving Government Regulations" (43 FR 12661), because the subject

matter was under review by Customs before May 22, 1978.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participates in its development.

Proposed Amendments

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

It is proposed to amend § 4.98(a), Customs Regulations (19 CFR 4.98(a)), to read as follows:

§ 4.98 Navigation fees.

(a)(1) The Customs service shall publish a General Notice in the **Federal Register** and Customs Bulletin in December of each year, beginning in December 1979, setting forth a revised schedule of navigation fees for the following services:

Fee No. and description of services

1 Entry of vessel, including American, from foreign port:
(a) Less than 100 net tons.
(b) 100 net tons and over.
2 Clearance of vessel, including American, to foreign port:
(a) Less than 100 net tons.
(b) 100 net tons and over.
3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest.
4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade.
5 Receiving post entry.
6 Receiving official bond not otherwise provided for.
7 Certifying payment of tonnage tax for foreign vessles only.
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.

The published revised fee schedule shall remain in effect throughout the following year.

(2) The fees shall be calculated in accordance with sections 19.5(b) and 24.17(d), Customs Regulations (19 CFR 19.5(b), 24.17(d)), and be based upon the amount of time the average service requires of a Customs officer in the fifth step of a GS–9. The revised fee schedule shall be made available to the public in Customs offices. The respective fees shall be designated in correspondence and reports by the applicable fee number.

* * * * *

George C Corcoran,
Acting Commissioner of Customs.

Approved: May 7, 1979.

Richard J. Davis,
Assistant Secretary (Enforcement & Operations).

[FR Doc. 79–16206 Filed 5–24–79; 8:45 am]
BILLING CODE 4810–22–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food And Drug Administration

[21 CFR Part 20]

[Docket No. 78N–0170]

Therapeutically Equivalent Drugs, Availability of List; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposal Correction.

SUMMARY: This document corrects the proposal to make available a list of all approved drug products, together with therapeutic evaluations of listed products that are available from more than one manufacturer.

FOR FURTHER INFORMATION CONTACT: John Richards, Federal Register Writer (HFC–11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 79–1052 appearing at page 2932 in the **Federal Register** of Friday, January 12, 1979, the following corrections are made:

1. On page 2942, right column, the last sentence in the first paragraph is changed to read "For the remainder, bioequivalence can be presumed on the basis of pharmaceutical equivalence."

2. On page 2942, right column, in the 23d line of the first full paragraph, the word "approval" is changed to read "approved."

3. On page 2943, right column, beginning on the eighth line and ending on the ninth line of the second full paragraph, the phrase "to assure the inactive ingredients in the drug products," is deleted.

4. On page 2944, left column, the 15th line of the first full paragraph is changed to read "equivalence of a drug product at any."

5. On page 2947, center column, beginning on the eighth line and ending on the ninth line, the word "Incentive" is changed to read "Incidence."

6. On page 2948, left column, the eighth line of the last paragraph is changed to read "and therefore would not even be eligible."

7. On page 2951, center column, beginning on the fourth line and ending on the fifth line of the first paragraph, the word "bioequivalence" is changed to read "bioinequivalence."

Dated: May 21, 1979.

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

[FR Doc. 79–16342 Filed 5–24–79; 8:45 am]
BILLING CODE 4110–03–M

[21 CFR Part 870]

[Docket No. 78N–1406]

Classification of Cardiovascular Devices; Development of General Provisions

Correction

In FR Doc. 79–6103 appearing at page 13284 in the issue of Friday, March 9, 1979, in the table appearing on page 13288, in the heading "Subpart E–Cardiovascular surgical Devices" should appear above section 870.4075 and the heading "Subpart F–Cardiovascular Theropeutic Devices" should appear above section 870.5050.

BILLING CODE 1505–01–M

[21 CFR Part 870]

[Docket No. 78N–1414]

Medical Devices; Classification of Continuous Flush Catheters

Correction

In FR Doc. 79–6111, published at page 13298, in the issue of Friday, March 9, 1979, under "Summary" on page 13298, the second sentence should read "The FDA is also publishing the recommendation of the Cardiovascular Device Classification Panel that the device be classified into class II. " and a third sentence should be added to read "The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device."

BILLING CODE 1505–01–M

[21 CFR Part 870]

[Docket No. 78N-1431]

Medical Devices; Classification of Catheter Stylets

Correction

In FR Doc. 79-6128 appearing at page 13314 in the issue of Friday, March 9, 1979, the comment date under "Dates" now reading "May 18, 1979" should have read "May 8, 1979".

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1434]

Medical Devices; Classification of Single-Function, Preprogrammed Diagnostic Computers

Correction

In FR Doc. 79-6131 published at page 13317, in the issue of Friday, March 9, 1979, the U.S. Code cite in the third paragraph, in the third column on page 13317 which now reads "21 U.S.C. 300c" should have read "21 U.S.C. 360c".

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1459]

Medical Devices; Classification of Signal Isolation Systems

Correction

In FR Doc. 79-6156, published at page 13341, in the issue of Friday, March 9, 1979, in paragraph "3." in the third column on page 13341 make the following corrections:

1. In the fifth sentence, after the word "isolation," add "frequency response, accuracy and stability";

2. In the sixth sentence, the word "along" should be corrected to read "alone".

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1467]

Medical Devices; Classification of Hydraulic, Pneumatic, and Photoelectric Plethysmographs

Correction

In FR Doc. 79-6164, published at page 13348, in the issue of Friday, March 9, 1979, in the heading, the docket number reading "[Docket No. 78N-1457]" should have read "[Docket No. 78N-1467]".

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1468]

Medical Devices; Classification of Medical Magnetic Tape Recorders

Correction

In FR Doc. 79-6165, published at page 13349, in the issue of Friday, March 9, 1979, the fifth line from the top of the second column on page 13350 reading "certain characteristics, including accu-" should have read "certain requirements. Performance characteristics including accu-".

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1487]

Medical Devices; Classification of Intra-Aortic Balloon and Control Systems

Correction

In FR Doc. 79-6183, published at page 13369, in the issue of Friday, March 9, 1979, in the fourteenth line from the top of the second column on page 13370, the word "of" should have read "or".

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1378]

Medical Devices; Classification of Cardiopulmonary Bypass Bubble Detectors

Correction

In FR Doc. 79-6248, published on page 13393, in the issue of Friday, March 9, 1979, the last word in the fifth line of number 3. under the heading "Panel Recommendation" in the "Supplementary Information" reading "life-" should have read "lifesupporting nor life-"

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1510]

Medical Devices; Classification of Cardiopulmonary Bypass Vascular Catheters, Cannulas, and Tubing

Correction

In FR Doc. 79-6251, published on page 13394 in the issue of Friday, March 9, 1979, the twelfth line in the "Summary" should have read "into class II. The effects of classifying a device into class II is to provide for the".

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1526]

Medical Devices; Classification of Roller-Type Cardiopulmonary Bypass Blood Pumps

Correction

In FR Doc. 79-6268, published at page 13411, in the issue of Friday, March 9, 1979, in the fourteenth line from the top of the first column on page 13412, the word "of" should have read "or".

BILLING CODE 1505-01-M

[21 CFR Part 870]

[Docket No. 78N-1541]

Medical Devices; Classification of External Cardiac Compressors

Correction

In FR Doc. 79-6283, published at page 13424, in the issue of Friday, March 9, 1979, lines 32 through 36 under paragraph "4." in the first column on page 13425 should have read "of the ribs and sternum (Refs. 5-8); damage to the liver (Refs. 5, 6, 8, and 9), lungs (Refs. 5, 6, and 8), and heart (Refs. 5 and 8); and possible bone marrow emboli (Ref. 8). Howev-".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1231-2]

Requirements for Preparation, Adoption and Submittal of Implementation Plans for Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: This action proposes approving the request of the State of

Minnesota for an 18 month extension of the statutory timetable for the submittal of the portion of its State Implementation Plan (SIP) revision implementing the national secondary ambient air quality standard for total suspended particulates. The following five secondary nonattainment areas are the subject of the extension: Cloquet, East Grand Forks, the Iron Range, Red Wing, and Silver Bay. This request is consistent with the requirements contained in 40 CFR 51.31.

DATES: Comments must be received on or before June 25, 1979.

ADDRESS COMMENTS TO: John McGuire, Regional Administrator, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: Air Programs Branch.

Copies of the request are available for public inspection during normal business hours at the above address and at:

U.S. Environmental Protection Agency, Public Information Reference Unit Room 2922, 401 M Street, SW, Washington, D.C. 20460.

Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota 51113.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Bortzer, Minnesota State Specialist, Air Programs Branch, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353–2205.

SUPPLEMENTARY INFORMATION: On January 8, 1979, the Director of the Minnesota Pollution Control Agency submitted to the Regional Administrator, Region V, a request for a twelve month extension of the submittal date for the portion of the Minnesota State Implementation Plan implementing the national secondary ambient air quality standard for total suspended particulates. On March 9, 1979, the Director of the Minnesota Polution Control Agency submitted additional information and requested that the extension be for eighteen months.

This request for an eighteen month extension fulfills the requirements of 40 CFR 51.31 since a showing has been made by Minnesota that attainment cannot be achieved without emission reductions greater than those which can be achieved through the application of reasonably available control technology. Further, Minnesota has properly given notice of the requested extension to the State of Wisconsin which adjoins the air quality control regions containing Cloquet, the Iron Range, Red Wing, and Silver Bay and to the State of North Dakota which adjoins the air quality control region containing East Grand Forks. Accordingly, the Administrator intends to approve the extension request. If approved, submission of the plan will be due on July 1, 1980.

Interested persons are requested to comment on the approvability of the extension. All comments received will be available for inspection during normal business hours at the regional office.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart Y—Minnesota

1. Section 52.1220(c), is amended to add a new paragraph (13) to read as follows:

§ 52.1220 Identification of Plan

* * * * *

(c) * * *

(13) A request for an extension of the statutory timetable for the submittal of the portion of the Minnesota State Implementation Plan implementing the national secondary ambient air quality standard for total suspended particulates was submitted by the Director of the Minnesota Pollution Control Agency on January 8, 1979 and was supplemented with additional information on March 9, 1979.

2. A new § 52.1235, is added, to read as follows:

§ 52.1235 Extensions

The Administrator hereby extends for eighteen months the statutory timetable for submission of Minnesota's plan for attainment and maintenance of the national secondary standards for total suspended particulates in Cloquet, East Grand Forks, the Iron Range, Red Wing, and Silver Bay. The plan will be due on July 1, 1980.

(42 U.S.C. 7410(b).)

Dated: April 16, 1979.

John McGuire,

Regional Administrator.

[FR Doc. 79-16502 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1235-5]

Notice of Proposed Approval of an Administrative Order Issued By Ohio Environmental Protection Agency To Ford Motor Co., Canton Forge Plant

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: U.S. EPA proposes to approve an Administrative Order issued by the Ohio Environmental Protection Agency to Ford Motor Company, Canton Forge Plant. The Order requires the Company to bring air emissions from its ten forge presses in Canton, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP) by July 1, 1979. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by U.S. EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on U.S. EPA's proposed approval of the Order as a Delayed Compliance Order.

DATES: Written comments must be received on or before June 25, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Cynthia Colantoni, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 353–2082.

SUPPLEMENTARY INFORMATION: Ford Motor Company operates ten forge presses at Canton, Ohio. The Order under consideration addresses emissions from these forge presses which are subject to OAC 3745–17–07 and OAC 3745–17–11. The regulations limit particulate matter emissions, and are part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulations by July 1, 1979 through the installation of electrostatic precipitators.

Because this Order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulations, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Act. U.S. EPA may approve the Order only if it satisfies the

appropriate requirements of this subsection.

If the Order is approved by U.S. EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Ohio SIP.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether U.S. EPA may approve the Order. After the public comment period, the Administrator of U.S. EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Authority: 42 U.S.C. 7413, 7601.

Dated: May 14, 1979.

John McGuire,

Regional Administrator.

The text of the order reads as follows:

Before the Ohio Environmental Protection Agency. In the matter of: Ford Motor Company—Canton Forge Plant; *Order.*

The Director of Environmental Protection (hereinafter "Director") hereby makes the following Findings of Fact and, pursuant to Sections 3704.03 (S) and (I) and 3704.031 of the Ohio Revised Code and in accordance with Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, issues the following Orders, which will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

Findings of fact

1. Ford Motor Company (hereinafter "Ford") is a corporation organized for profit under the laws of the State of Michigan and licensed to do business in the State of Ohio and is engaged in the business of operating an industrial facility at 3707 Georgetown Road, N.E., Canton, Ohio 44730, at which it forges automobile parts from steel billets.

2. Ford owns and operates several forge presses at its Canton Forge Plant, three of which are referenced by the company as Bliss Press Forging Area No. 2 and seven of which are referenced by the company as Spindle Forging Area No. 4.

3. Bliss Press Forging Area No. 2 consists of three Bliss forge presses, three induction heaters, and one iso-thermal anneal and has a maximum rated capacity of 24,000 lbs/hour. Spindle Forging Area No. 4 consists of five Ajax forge presses, two National Forge presses, four induction heaters, eight trim presses, and three forge furnaces and has a maximum rated capacity of 55,000 lbs/hours.

4. Potential emission of air pollutants from each of the forge presses is equal to or greater than one hundred tons per year; therefore, Ford's Canton Forge Plant constitutes a major stationary source as defined in Secton 302(j) of the Clean Air Act, as amended.

5. The operation of the forge presses results in the discharge of particulate matter in excess of the allowable emission limitations set forth in OAC 3745–17–07 and 3745–17–11. At the present time Ford is unable to operate the forge presses in compliance with these allowable emission limitations; pollution control equipment is needed for these forge presses to achieve such compliance.

6. In order to abate the particulate emission from the subject forge presses, Ford has proposed to install electrostatic precipitators.

7. Ford's implementation of the interim control measures contained in the Order below will fulfill the requirements of Section 113(d)(7) of the Clean Air Act, as amended.

8. The compliance schedule set forth in the Orders below requires compliance with applicable emission regulations as expeditiously as practicable.

9. It would be technically and economically unreasonable to require Ford to install and operate opacity monitors prior to the achievement of compliance with the orders below since: (a) Ford is proposing to dismantle the stacks which presently serve the subject forging areas; and (b) the subject forge presses are presently unable to comply with the requirements of OAC 3745–17–07 pertaining to visible emissions and opacity monitors would provide no information which is not already known.

10. The Director's determination to issue the Orders set forth below is based upon his consideration of sufficient reliable, probative and substantial evidence relating to the technical feasibility and economic reasonableness of compliance with such Orders, and their relation to benefits to the people of the state to be derived from such compliance.

Orders

WHEREUPON, after due consideration of the above Findings of Fact, the Director hereby issues the following Orders pursuant to Section 3704.03 (S) and (I) and Section 3704.031 of the Ohio Revised Code and in accordance with Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, which will not take effect until the administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

1. Ford shall achieve compliance with OAC 3745–17–07 and 3745–17–11 by installing electrostatic precipitators to control emissions of particulate matter from the forge presses in Bliss Press Forging Area No. 2 and Spindle Forging Area No. 4.

2. Ford shall bring the subject forge presses into compliance with OEPA Regulations OAC 3745–17–07 and 3745–17–11 no later than July 1, 1979, in accordance with the following schedule:

a. Initiate on-site work related to installation of particulate control equipment (electrostatic precipitators) by February 1, 1979.

b. Complete on-site work related to installation of particulate control equipment (electrostatic precipitators) by June 30, 1979.

c. Achieve final compliance with all applicable state and federal statutes and regulations by July 1, 1979.

3. During the period of effectiveness of this Order, Ford shall use the best practicable methods of emission reduction in accordance with Section 113(d)(7) of the Clean Air Act, as amended. Such interim measures shall include, at a minimum, utilization of existing mechanical collectors and operation and maintenance of the forge presses in accordance with good engineering practice so as to minimize emission of particulate matter and ensure compliance with applicable emission regulations insofar as possible.

4. Ford shall comply with the following monitoring and reporting requirements.

a. A progress report shall be forwarded by first class mail to the Canton Air Pollution Control Agency within five (5) days of the scheduled achievement date of each of the increments of progress specified in the compliance schedule in Order No. 2 above.

Such progress report shall indicate when the applicable increment of progress was achieved and shall contain a detailed explanation of the reasons for any failure to so achieve any increment of progress.

b. Monthly reports shall be submitted to the Canton Air Pollution Control Agency concerning the interim maintenance and operation of the forge presses as well as the progress being made toward achievement of compliance as set forth in Order No. 2 above.

5. Ford is hereby notified that unless it is specifically exempted under the provisions of section 120 of the Clean Air Act, 42 U.S.C. 7420, it shal be required to pay a noncompliance penalty under that section in the event that it fails to achieve final compliance with applicable laws and regulations by July 1, 1979.

6. Nothing in this Order shall be construed as relieving Ford from its obligation to obtain in accordance with applicable statutes and Ohio EPA Regulations, Permits to Operate the subject forging areas. Nothing in this Order shall be construed as waiving or compromising in any way the applicability and enforcement of any statute or regulation applicable to said forging areas, except as specified herein and as provided for in Section 113(d)(10) and (11) of the Federal Clean Air Act, as amended.

These Orders will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

Dated: April 18, 1979.

James F. McAvoy,

Director of Ohio Environmental Protection Agency.

Waiver

Applicant, Ford Motor Company, has reviewed this Order and consents to its terms and conditions. Applicant understands and

agrees that the Director may issue such Order by signing it and entering it upon his Journal, but that such Order will not take effect until it is approved by the Administrator of the United States Environmental Protection Agency. Furthermore, Applicant knowingly and voluntarily waives any right to challenge this Order pursuant to Section 307 of the Clean Air Act, to seek judicial review of this order, to seek judicial review of any subsequent U.S. EPA approval of the Order, or to seek a stay of enforcement of this Order in connection with any judicial review of the Ohio S.I.P. or portions thereof. This includes the waiver of any right to a hearing before the Ohio EPA, and the right to contest the reasonableness or lawfulness of this Order before the Environmental Board or Review of any court of competent jurisdiction.

Ford Motor Company.

Dated: January 30, 1979.

Robert V. Vincent,
Assistant Secretary.

[FR Doc. 79-16501 Filed 5-24-79; 8:45 am]
BILLING CODE: 6560-01-M

[40 CFR Part 65]

[Docket No. VII-79-DCO-8; FRL 1210-4]

Notice of Proposed Approval of an Administrative Order Issued by the Kansas Department of Health and Environment to Venture Corp., Great Bend, Kans.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Kansas Department of Health and Environment (KDHE) to Venture Corporation, Great Bend, Kansas. The order requires the company to bring air emissions from its portable asphalt plant in Great Bend and other locations in Kansas into compliance with certain regulations contained in the federally-approved Kansas State Implementation Plan (SIP) by June 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before June 25, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, Enforcement Division, 324 East 11th Street, Kansas City, Missouri 64106, telephone 816/374-2576.

SUPPLEMENTARY INFORMATION: Venture Corporation operates a portable asphalt plant at Great Bend and various other locations in Kansas. The order under consideration addresses emissions from the facility which is subject to Kansas Air Pollution Emission Control Regulation 28-19-50A, Opacity Requirements. The regulation limits the emissions of particulate, and is part of the federally approved Kansas State Implementation Plan. The order requires final compliance with the regulation by June 1, 1979, through conversion of the hot mix batch plant to a drum mix plant.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Kansas SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the order in 40 CFR Part 65.

Authority: 42 U.S.C. 7413, 7601.

Dated: April 13, 1979.

David R. Alexander,
Deputy Regional Administrator, Region VII.

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.211 to reflect approval of the following Order.

2. The text of the order reads as follows:

State of Kansas, Department of Health and Environment

Notice of Revised Order

March 22, 1979.

Venture Corporation
Its Successors or Assigns
P.O. Box 1486
Great Bend, Kansas 67530
Certified Mail Number: 799878
Attention: Mr. Orville Spray, President

Gentlemen: On November 8, 1978, Violation Notice and Corrective Order 78-41 was issued to your firm. The issuance of the order was for observed excessive emissions from the pugmill and drum, and the scrubber stack of the Cedarapids Model No. FA hot mix asphalt batch plant which at that time was located one-half mile east of Highway 281, adjacent to the Rock Island Railroad tracks in North Pratt, Kansas. The requirements of the order were that the subject hot mix plant was to be brought into compliance with Regulation 28-19-50A. Opacity Requirements or an approvable schedule submitted for bringing the subject hot mix plant into compliance with Regulation 28-19-50A. by January 1, 1979 or cease any further operation of the plant.

On January 3, 1979, your firm submitted to the Department an approvable time schedule for achieving compliance. Also submitted to the Department on January 3, 1979, were plans for converting the subject hot mix batch plant to a drum mix plant. The plans for modification were approved by the Department on January 9, 1979.

Your firm is hereby notified that the corrective order contained in the third paragraph of the November 8, 1978 notification is being revised as follows:

"In accordance with the provisions of K.S.A. 65-3011(a), you are hereby notified of this violation. You are ordered to bring the emissions from the pugmill and drum, and scrubber stack into compliance with the provisions of Regulation 28-19-50A. by June 1, 1979, according to the following schedule.

1. On-site construction or installation of emission control equipment or process change to be initiated by April 1, 1979.

2. On-site construction or installation of emission control equipment or process change to be completed by May 1, 1979.

3. Final compliance with Kansas Air Pollution Emission Control Regulations by June 1, 1979.

Until final compliance, as specified, is achieved, your are also ordered to comply with the following interim requirements.

1. You are required to notify the Department of the status of each increment of compliance within five (5) days after the specified date of compliance.

2. During the term of the order there are no practical methods of emission control which can be initiated."

As provided for in K.S.A. 65–3011, you are advised of the right to request a hearing concerning this order. Any such request for a hearing must be submitted to the Department, in writing, within fifteen (15) days of receipt of this order.

Failure to comply with the requirements of this order will constitute a violation of the order and require that the matter be referred to the State Attorney General's Office for enforcement proceedings under the provisions of K.S.A. 65–3018.

You are also further advised that, at this time, the Federal Clean Air Act, as amended, now provides that operators of sources which are not brought into compliance with the provisions of the State's regulations by July 1, 1979 will be subject to federally imposed noncompliance penalties, under the provisions of Section 120 of the Act, in addition to any other enforcement actions.

Any questions pertaining to these matters should be referred to Raymond Buergin, Chief, Air Engineering and Enforcement Section, Bureau of Air Quality and Occupational Health, Topeka, Kansas at (913) 862–9360.

Sincerely,

Melville W. Gray, P.E.,

Director of Environment.

[FR Doc. 79–16504 Filed 5–24–79; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Parts 441 and 447]

Medicaid Program; Reimbursement for Eyeglasses and Hearing Aids

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: The proposed regulations would require Medicaid agencies to establish an acquisition cost (AC) program, a volume purchase plan (VPP), or some combination of both as a method of purchasing eyeglasses and hearing aids for Medicaid recipients. Payments to providers under an AC program would be limited to the lower of actual acquisition cost plus a reasonable dispensing fee, or the provider's usual and customary charge to the general public.

The proposed regulations would also set conditions for purchase of hearing aids by Medicaid agencies by requiring that, before payment is made, a recipient must have a medical examination and, if recommended by a physician, a hearing test and a hearing aid evaluation by an audiologist. The regulations would also require a 30-day trial wearing period for Medicaid recipients who obtain hearing aids.

The purpose of the proposed regulations is to lower program costs while maintaining or improving the quality of hearing and vision care provided to Medicaid recipients.

DATES: Consideration will be given to written comments received on or before July 24, 1979.

ADDRESSES: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, Post Office Box 2366, Washington, D.C. 20013.

In commenting, please refer to MMB–217–P. Agencies are requested to submit comments in duplicate. Beginning two weeks from today, the public may review the comments on Monday through Friday of each week,, from 8:30 a.m. to 5:00 p.m. in Room 523 of the Department's offices at 330 C Street SW, Washington, D.C., telephone 202–245–0950.

FOR FURTHER INFORMATION CONTACT: Henry Spiegelblatt, 202–245–0384.

SUPPLEMENTARY INFORMATION:

Background

During the past decade, the Department, the Federal Trade Commission, the Congress, and several consumer groups have investigated the production and delivery systems for eyeglasses and hearing aids. They have generally concluded that restrictive practices in these industries often result in high prices.

Medicaid payments by Federal and State governments for eyeglasses and hearing aids total about $100 million annually (about $70 million for eyeglasses and $30 million for hearing aids). This is less than one percent of total Medicaid expenditures (about $20 billion in fiscal year 1978), but still a large amount of taxpayer dollars. Current Federal Medicaid regulations allow states to pay customary or prevailing charges for eyeglasses and hearing aids (42 FR 447.352). HCFA wants to reduce these costs where possible while maintaining quality services.

Statutory Authority

The statutory authority for regulating payments for eyeglasses and hearing aids is Section 1902(a)(30) of the Social Security Act, which says that State payments for medical services will not exceed "reasonable charges consistent with efficiency, economy, and quality of care".

The statutory provisions that define vision and hearing services as part of medical assistance are Section 1905(a)(12), which authorizes payments for "prescribed drugs, dentures, and prosthetic devices; and eyeglasses . . .", and Section 1905(a)(13), which authorizes payment for "other diagnostic, screening, preventive, and rehabilitative services". The statutory authority for setting conditions for payment for a specific service is Section 1102, which permits the Secretary to publish regulations "necessary to the efficient administration" of the functions with which he is charged under the Act.

Intent To Regulate

Three years ago the Medicaid Bureau contracted with the National Institute for Advanced Studies (NIAS) to do several studies on how to improve Medicaid reimbursement policy for selected services, including eyeglasses and hearing aids. Their findings and recommendations were used as the basis for publishing a Notice of Intent to Issue Proposed Rulemaking (NOI) on August 31, 1978 (43 Fr 38877–38880).

We received 342 comments on the NOI from a spectrum of sources, including 17 State Medicaid agencies, several State Crippled Children's programs and Maternal and Child Health programs, State Vocational Rehabilitation programs, State public health speech and hearing centers otolaryngologists, audiologists, hearing aid manufacturers, hearing aid dealers, ophthalmologists and optometrists, opticians, optical manufacturers, optical wholesale fabricators, consumer groups and private citizens. These comments were considered before we prepared these proposed regulations.

Many commenters misunderstood the nature of the NOI. They assumed that the NIAS recommendations represented the Department's proposals. This is not so. The intent of an NOI is to involve interested parties in the regulation-making process at an early point, before any proposals are actually made.

Based on our analysis of the comments we received on the NOI, we are now presenting proposed regulations.

Summary of Proposed Regulations

We propose to require that payments for hearing aids and eyeglasses be made on an acquisition cost (AC) basis, volume purchase plan (VPP) basis, or a combination of both. A State would pay providers no more than—

(1) The amounts allowed under a VPP; or

(2) The lower of the amounts allowed under an AC program or the provider's usual and customary charge to the public.

Under an AC program, a State would pay actual acquisition costs, and would be free to set dispensing fee(s), but we expect the fee(s) would be based on the result of surveys of actual costs of eyeglasses and hearing aid dispensing operations, including costs of services, operation, overhead and reasonable profit. We expect that most States would set fixed Statewide dispensing fees, but States would be free to set variable dispensing fees. Under a VPP, payment would be based on a contract price, plus a reasonable dispensing fee to the provider.

In addition, we propose to require that before payment is made for any hearing aid all potential candidates must first have—

(1) A medical examination from a physician;

(2) If recommended by a physician, a hearing test and a hearing aid evaluation from an audiologist; and

(3) A 30-day trial wearing period.

These proposed requirements are explained further in the "Medical and Audiological Evaluation" section of the preamble. We believe these requirements taken together represent the best way to eliminate payments for unnecessary hearing aids, to assure that recipients only get the aids they really need, to assure that recipients are successfully adjusting to the aids where possible, and to assure that the aids are of satisfactory quality.

Issues and Responses To Comments

Two issues raised by the NIAS recommendations received the most comments: volume purchasing as a reimbursement method, and mandatory audiological evaluations for prospective hearing aid wearers. We will discuss the reimbursement issues first, since this was our major interest in publishing the NOI. We were surprised at the volume of response on the audiological evaluation issue, because we were not aware how controversial this issue is. We did not originally intend to add to the Medicaid regulations governing definition of health services and qualifications for health practitioners. However, after reviewing all the comments on this issue and reading the public record, we have decided to propose additional requirements to protect hearing-impaired Medicaid recipients from improper hearing testing and fitting of hearing aids.

Volume Purchasing

Most commenters, including several State Medicaid agencies, did not like the idea of the Department imposing any kind of volume purchasing requirement on State Medicaid programs. They tended to view such a requirement as an undesirable, unwarranted and perhaps even illegal intrusion into the free marketplace. They felt it would result in lowering product quality, reducing product availability, denying recipient and provider freedom of choice, and creating a more expensive bureaucracy for controlling the system. They also felt the requirement would lead to monopolies, damage to small independent businesses, and higher prices for both the Medicaid program and the general public. Some commenters felt it would set a bad precedent for national health insurance. The few States that have tried VPP (including Alabama, Arkansas, Tennessee, Texas, and Washington) like it, and a few others, including two with large programs, expressed interest in trying it.

Since the overall response to VVP was so negative, we have decided to propose giving States a choice of using either an AC or a VPP program for reimbursement.

We want to make clear that, though VPP may not appeal to States for political or economic reasons, legally it is a viable option. Some commenters suggested that it was in violation of the Medicaid statutory provision guaranteeing Medicaid recipients freedom of choice of health care providers. We do not believe this is true. Section 1902(a)(23) of the Social Security Act requires Medicaid State plans to provide "that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person qualified to perform the service or services required . . . who undertakes to provide him such services." The regulations at 42 CFR 431.51 essentially repeat the statutory requirement.

Freedom of choise is a concept which exists for the benefit of recipients, not for the benefit of providers or suppliers. As long as a Medicaid agency does not deny any choices that recipients have, volume purchasing is permissible. The State is free to require that Medicaid providers obtain their products from designated suppliers that have agreed to furnish the products at contract prices. The State is also free to retain title to the supplies (e.g., durable medical equipment) and either store them in a centralized warehouse or arrange with the manufacturer to ship them to Medicaid providers.

Optical wholesaler groups cautioned that VPP for eyeglasses would virtually restrict competition to two large companies and that Medicaid agency contracts with these firms would violate existing antitrust judgments. We believe that States should be aware of these judgments, and that bidding for VPP contracts should be as open and competitive as possible.

One optical wholesaler group suggested that States that contract through competitive bidding should not be allowed to restrict bids to in-State laboratories and supliers, because that unfairly limits competition.

Because there is no law prohibiting this practice, States may restrict Medicaid payments to in-State suppliers only.

Several commenters warned that, although Medicaid accounts for a relatively small amount of their total business volume (about 2.5 percent of the total eyeglasses market nationally), VPP would set a "dangerous" precedent for government regulation of purchases under future national health insurance or expanded Medicare coverage. While we are sensitive to Medicaid's position as a pacesetter for future Federal health care policy, we do not accept the argument that current Medicaid policy necessarily determines what future national health insurance or Medicare policy will look like. Moreover, we are convinced that VPP, at least on a small scale, is a worthwhile approach.

Many commenters echoed the theme that volume purchasing would destroy competition in the industries, and that government should not interfere in the free marketplace. We believe that bidding for Medicaid contracts will encourage rather than discourage competition, as long as the government purchases do not amount to a disproportionate share of the industries' sales.

This brings us to the question of the effect of volume purchasing on the quality and availability of the products, and on the dispensing services provided to Medicaid recipients. We believe this depends on how well the bid is written, how careful the State is in awarding the contract, how well the State monitors

the contract, and how well the State deals with its provider groups. If the bid is prepared with care, if the winning firm is held accountable to the terms of the contract (with penalty clauses for breaking the terms), and if dispensers are paid a fair fee for their services, then VPP can work, and it can save money. We believe Washington State has demonstrated this with annual savings of almost $100,000 on a $350,000 eyeglasses program, to the general satisfaction of the State, most of the optical community, and the recipients.

Some commenters said VPPs would raise professional fees for refractions performed by ophthalmologists and optometrists, and would raise dispensing fees, because of economic pressures for providers to recoup lost revenues. We agree that VPPs will usually generate pressures to increase professional service charges and dispensing fees, and that States that do not hold the line on these fees will realize no net savings. On the other hand, States that feel they should raise professional service payments or dispensing fees to more reasonable levels could, with VPP, proceed to raise fees with confidence that they are effectively controlling payments for the devices at the same time.

Several commenters expressed concern the VPP would upset the present delivery system so much that the quality of services would inevitably suffer. Much of this fear seemed to be based on the assumption that Medicaid programs would adopt the distribution system used by the Veterans' Administration (VA)—Volume purchasing and warehousing with centralized dispensing by salaried public employees through clinics. States do not have the option of using a VA-type dispensing system because Medicaid recipients are entitled to free choice of providers and cannot be required to go to public clinics. Also, we think that States will not want to incur the administrative costs involved in warehousing products and controlling inventory in a centralized distribution system.

On the contrary, volume purchasing under Medicaid programs usually involves minimal disruption of the present delivery system. The State buys in quantity from the supplier, who agrees to supply participating providers with the items at the agreed-upon prices. The supplier bills the State regularly (e.g. once a month) for all the items supplied, and the providers bill the State for the dispensing services provided.

Many commenters argued that VPP would severely limit the selection of eyeglass frames available to Medicaid recipients and would result in stigmatizing recipients with "welfare" glasses. Commenters pointed out that this would be contrary to the intent of Medicaid to provide recipients with mainstream care comparable to that provided to the general public. While we do not believe that States should furnish expensive designer fashion frames, we agree that VPPs should preserve recipient dignity by providing a large enough selection of frames so the recipients cannot be easily identified as wearing "welfare" glasses. We leave this judgement to the discretion of the State agencies.

Several commenters suggested that recipients be allowed to pay providers money in addition to the amount allowed for payment by the State, so recipients could get more expensive glasses if they wanted them. This would ordinarily be prohibited under our current regulations (42 CFR 447.15), which require that Medicaid providers must accept payment from the Medicaid agency as payment in full for covered services. The purposes of this provision is to protect the recipient from being charged for covered services. We have not proposed a change in this regulation at this time, because we are concerned about recipients being improperly influenced to purchase more expensive items than they need. However, we welcome further comment on this point.

A few commenters said that VPP would require two separate systems for reimbursement, one for the devices and one for repairs. Any basic repairs associated with the original purchase of the product should be covered under warranty and made by the contractor, but States should allow separate payments for additional repairs required. Sometimes payments for minor repairs are routinely included in the dispensing fee.

Several commenters remarked on the feasibility of distributing hearing aids under VPP. We agree that States should consider VPP for both hearing aids and eyeglasses, and have proposed this as an option in these regulations.

Acquisition Cost (AC)

While a few States objected strongly to any Federal regulations limiting State discretion in paying for eyeglasses and hearing aids, most States and provider groups seemed amenable to an AC program. Most commenters viewed a manadatory AC program for eyeglasses and hearing aids as a better option than a mandatory VPP requirement.

The Department's relatively successful MAC drug program serves as a precedent for an AC program for eyeglasses and hearing aids. However, instead of establishing reimbursement limits at the lowest unit price at which a particular product is widely and consistently available, as is done in the MAC drug program, we are proposing that States pay for eyeglasses and hearing aids on the basis of actual acquisition cost to the provider as verified by a copy of the supplier's invoice. States now using this system claim that it allows them to effectively control costs for the devices, and providers are pleased where States use current wholesale price lists in setting upper limits for payments.

Most State agencies agreed with the NIAS observation that, by separating payments for goods and services, an AC program prevents substitution of cheap materials and padding of unnecessary services. AC for hearing aids will also prevent payment to dealers for hearing testing services which have already been provided by audiologists.

Under the proposed rule the State would be responsible for setting reasonable dispensing fees. We hope that States would make surveys of actual operating costs as is now required under the MAC drug program, although States would be free to negotiate fees with provider groups. We plan to commission a national study of dispensing costs for eyeglasses and hearing aids and provide this information to the States, but the States would still retain responsibility for setting the fees, as under the drug program.

Many commenters urged that we specify what services will be included in the dispensing fee. We agree that a minimum level of services should be specified by States, but do not wish to bind States to a Federal minimum. We plan to include a suggested list of services in guidelines on the final regulations.

Comments Requested on Reimbursement Provisions

Because the VPP and AC methods of purchasing eyeglasses and hearing aids will be new to many States, we request comments on the impacts that these regulations will have in States that will be required to change their existing reimbursement policies.

We have also proposed a provision specifying that States may pay audiologists either for professional services or for the hearing aid, but not for both. We have done this to discourage the creation of prescriber-sellers among audiologists. We request

comments on the need for and expected impact of this provision.

Medical and Audiological Evaluation

We received most comments on the NIAS recommendation that Medicaid require recipients to get a professional hearing test and hearing aid evaluation before paying for a hearing aid.

Individual clinical audiologists and the American Speech and Hearing Association welcome this requirement as a major step in improving hearing health care. Individual ear specialists, the American Council of Otolaryngology, hearing aid dealers, the National Hearing Aid Society, hearing aid manufacturers, and the Hearing Industries Association view a mandatory audiological evaluation as an impractical, costly and unnecessary requirement inconsistent with Federal regulations already issued by the Food and Drug Administration (FDA).

Nearly all commenters agreed that before a hearing-impaired person buys a hearing aid, he should first get a medical examination from a physician, preferably an otolaryngologist, to determine if he has an organic disorder that can be treated with medicine or surgery. The FDA published regulations on February 15, 1977 (42 FR 9286), which require individuals to obtain written medical clearance before buying a hearing aid, unless they are over 18 and choose to waive this requirement.

We propose to require medical clearance for Medicaid recipients, on the grounds that this approach appears to be in the best interest of the patient, and since public funds are involved, we wish to protect both the recipient and the public purse. Without a medical examination, a hearing aid might be prescribed improperly, cover up a treatable medical condition, result in greater hearing loss to the patient, and lead to additional costs for extended later treatment. We agree that private citizens who pay for their own aids should have the option of refusing an examination, but believe that when public funds are involved, we have the obligation to ensure that the recipient gets the best possible care. Moreover, most third party hearing aid programs, both Federal and private, require this type of examination before they will pay for a hearing aid.

Once a hearing-impaired person has been medically evaluated, he may or may not be a candidate for a hearing aid. The person's hearing loss must be measured and an evaluation must be made to determine if a hearing aid will help the person, and if so, which specific aid or type of aid will help most.

Controversy exists over who is qualified to do the testing and evaluation. Some believe that hearing testing and hearing aid evaluation should be done by otolaryngologists and audiologists, not by hearing aid dealers.

Many audiologists commented that, unlike most dealers, they use sophisticated testing procedures and calibrated equipment in controlled sound environments, which are critical to quality hearing testing and hearing aid evaluation. Audiologists also commented that they are trained to look at the total speech and hearing communication needs of the hearing-impaired person, not just the need for a hearing aid. Aural therapy and post-fitting counselling, for example, sometimes make the difference between whether or not a person successfully adjusts to the aid.

On the other side of the issue, many commenters said that fitting hearing aids is more art than science, and therefore a mandatory audiological evaluation is unreasonable and constitutes an unnecessary expense.

Many commenters expressed concern over the availability of audiologists, especially in rural areas. This does not appear to be a major problem, since most States now require recipients to see otolaryngologists or audiologists, and States have not reported any serious difficulty in helping recipients see them.

Under the proposed regulations, the State would not pay for a hearing aid until the recipient has had a medical examination and, if recommended by a physician, a hearing test and a hearing aid evaluation from an audiologist. We believe a physician who has examined the individual is in the best position to determine whether a professional audiological evaluation is needed to assure that the individual's problem is adequately treated. We note that, although the proposed regulations do not require audiological evaluations in all cases, they do not prohibit States from requiring them.

We also propose to require that recipients be given a 30-day trial period to see if they can successfully adjust to wearing a hearing aid. The 30-day trial lease-purchase plan is a widely-accepted practice within the industry, and is endorsed by the National Hearing Aid Society. At the end of the 30-day trial period, the recipient and the physician must sign a statement saying they are satisfied with the aid. This is a common practice among Medicaid agencies and private insurance programs.

Hearing aid dealers are also an integral part of the hearing health team. We are persuaded by dealers' arugments that extended post-fitting counseling is something that they can do well. We believe States should allow payment for these ongoing counseling services in the dealers' dispensing fee. For example, a few States and one of the United Auto Workers' contractors include in their dispensing fees to the dealer payment for follow-up visits and adjustments for six months following the fitting of the aid.

Hearing Aid Quality and Selection

Some audiologists agreed with the NIAS recommendation that Medicaid adopt a hearing aid quality selection system like the VA's to deal with the problem of uneven hearing aid quality. The hearing aid manufacturers, the dealers, and some audiologists objected to this recommendation, claiming that the quality of hearing aids was generally very good and that manufacturer quality control standards have upgraded the products in recent years. The FDA pointed out that its regulation addresses the quality of hearing aids, and that they plan to examine samples of hearing aids to determine the extent to which the aids meet the performance claims made in their labeling. In addition, the FDA plans to conduct quality audits at the manufacturing sites to determine if hearing aid manufacturers are complying with new device manufacturing practice regulations.

In light of the consensus that hearing aid quality is no longer a major problem and the fact that the FDA is planning to monitor hearing aid quality under its new regulations, we have decided not to propose any quality assurance regulations in our new rule. We believe that the FDA regulations governing this area should provide adequate assurance that recipients receive only quality aids.

Related to the concern about quality was the concern among many commenters that Medicaid's adoption of a VA-type hearing aid selection system might overly restrict the number and kinds of aids available for reimbursement, which might result in persons not receiving aids most appropriate to their needs. Several commenters said that the list of VA-approved aids would be insufficient for the Medicaid population, whose hearing aid needs were more varied than those of the veteran population. We agree that hearing aid providers should be free to choose aids for their patients from the whole range available, within the upper limits placed on payments by the Medicaid agencies. For this reason, we

do not propose use of a VA-type hearing aid selection system.

Prior Authorization and Utilization Review

We considered proposing additional requirements for prior authorization (prepayment screening) and utilization review (postpayment auditing) to obtain additional savings on payments for eyeglasses and hearing aids. A few ophthalmic dispensers said that some recipients get several pairs of glasses from different dispensers in order to have a selection to wear, and a few opticians said that some optometrists order glasses with minor prescription changes in order to make more money from Medicaid. Also, some States allow payment for a new pair of glasses every year, though most adults do not need a new pair that often.

We decided not to propose any new Federal regulations in these areas, because we do not want to usurp traditional State prerogatives, and the current Federal regulations on control of the utilization of Medicaid services (42 CFR Part 456) suffice. Instead, we plan to include suggestions for improving prior authorization and utilization review procedures in guidelines on the final regulations.

A. 42 CFR Part 441 is amended as set forth below:

1. The table of contents for Subpart A is revised as set forth below:

Subpart A—General Provisions

Sec.
441.1 Purpose.
441.10 Basis.
441.11 Continuation of FFP for institutional services.
441.13 Prohibitions on FFP: Institutionalized individuals.
441.15 Home health services.
441.20 Family planning services.
441.30 Optometric services.
441.31 Hearing aid services.
441.40 End-stage renal disease.
* * * * *

2. § 441.10 is revised by adding a new paragraph (f) to read as follows:

§ 441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:
* * * * *

(f) Sections 1102, 1902(a)(30), 1905(a)(12), and 1905(a)(13) for hearing aid services (§ 441.31).
* * * * *

3. A new § 441.31 is added to read as follows:

§ 441.31 Hearing aid services.

The State plan must provide that, before the agency pays for a hearing aid—

(a) A recipient must receive a medical examination from a physician and the physician must certify the need for a hearing aid;

(b) If the physician recommends it, the recipient must receive a hearing test and a hearing aid evaluation from an audiologist. For this purpose, an audiologist is a nonmedical rehabilitation specialist who has a certificate of clinical competence from the American Speech and Hearing Association or who meets the education and experience requirements for the certificate;

(c) The recipient must be given a 30-day trial wearing period; and

(d) the recipient and physician must sign a statement after the 30-day trial wearing period indicating their satisfaction with the hearing aid and the fitting.

B. 42 CFR Part 447 is amended by revising the table of contents of Subpart C and by adding a new § 447.355 to read as follows:

Subpart C—Payment Methods and Upper Limits for Specific Services

* * * * *

Other Noninstitutional Services

Sec.
447.351 Selected medical services, supplies, and equipment: Upper limits.
447.352 Other noninstitutional services: Upper limits.
447.355 Eyeglasses and hearing aids.
* * * * *

§ 447.355 Eyeglasses and hearing aids.

(a) If the agency provides eyeglasses or hearing aids under § 440.120 of this chapter—

(1) The agency must establish an acquisition cost (AC) program, volume purchase plan (VPP), or a combination of both to pay for eyeglasses and hearing aids;

(2) The agency must pay providers no more than—

(i) The amounts allowed under a VPP; or

(ii) The lower of the amounts allowed under an AC program or the provider's usual and customary charge to the public; and

(3) For each recipient, the agency may pay an audiologist either for professional services or for a hearing aid, but not for both.

(b) The agency must make payment under an AC program on the basis of actual acquisition cost, as verified by a copy of the invoice from the supplier, plus a reasonable dispensing fee, as determined by the agency. An agency may vary the dispensing fees for provider subgroups.

(c) The agency must make payment under a VPP on the basis of the agreed-upon price, as stated in the contract between the agency and the manufacturer(s) or wholesaler(s), plus a reasonable dispensing fee to the provider, as determined by the agency. An agency may vary the dispensing fees for provider subgroups.

(Section 1102 of the Social Security Act (42 U.S.C. 1302)). (Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: Mar. 5, 1979.

Leonard D. Schaeffer,

Adminstrator, Health Care Financing Administration.

Approved: May 12, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79-16360 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-35-M]

FEDERAL MARITIME COMMISSION

[46 CFR Part 547]

[Docket No. 75-6]

Policy and Procedures for Environmental Protection; Discontinuance of Proceeding

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of Proceeding.

SUMMARY: The Commission has determined that this proceeding, initiated by notice of proposed rulemaking of March 24, 1975 (40 FR 13005) should be discontinued and superceded by a new proposed rulemaking designated as Docket No. 79-51.

DATES: Effective May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: None.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79-16357 Filed 5-25-79; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1056]

[Ex Parte No. MC-19 (Sub-No. 34)]

Household Goods Transportation (Storage-in-Transit Charges)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rule.

SUMMARY: The Commission proposes to change the way that storage-in-transit (SIT) charges are assessed on household goods moving in interstate or foreign commerce. We propose to modify the existing rule to require assessment of SIT charges on a daily rather than a 30-day basis. By this notice we are seeking public comment on the proposed change.

DATES: Comments are due July 24, 1979.

ADDRESS: An original and 15 copies, if possible, of comments should be sent to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley (202) 275-7348.

SUPPLEMENTARY INFORMATION: Each year the Commission receives a number of complaints concerning the storage-in-transit (SIT) charges of household goods carriers and freight forwarders operating in interstate or foreign commerce. The SIT charges complained of are assessed on a minimum 30-day basis, even if the goods are only stored for one day. Furthermore, each time the storage period exceeds a 30-day period a charge is incurred for another 30-day period. The complaints allege that the practice is unfair and contend that charges should only be assessed for the number of days which the goods are actually stored.

We are aware of the fact that the present method of assessing SIT charges has been in existence for a number of years, but this in itself is no assurance that the practice is fair or reasonable. A fundamental principle of ratemaking is that a transportation charge can only be collected as compensation for a corresponding service. When no service is performed, no charge is warranted.

We propose to amend the Commission's rules to provide that SIT charges be assessed on a daily basis. Under the proposed new rule, charges could only be assessed for the number of days that the goods are actually stored in transit. The proposed change would affect SIT valuation charges, which are based on the storage charge, but it would not affect other related charges such as pickup charges to move the goods to the storage point or warehouse handling charges.

In preparing this proposal, the Commission has been unable to determine any justification for the present practice. Carriers and forwarders of household goods are being made parties to this proceeding and are requested to furnish any justification which they might have for the continued use of the present practice. In addition, the Commission would like to receive any information regarding the financial impact which adoption of the proposal would have on these carriers and forwarders. The public is requested to comment on whether adoption of the proposal would benefit it. In order to assure that the interest of members of the public who use the services of carriers and forwarders of household goods is represented, the Commission's Special Counsel is directed to participate in this proceeding.

If the proposed regulation is adopted as a result of this proceeding, it will be necessary to determine if all existing provisions inconsistent with the new rule should be removed from tariffs. The Commission would like to receive comments on this issue and suggestions as to how it could be resolved.

This proposed rulemaking does not appear to affect significantly the quality of the human environment.

§ 1056.3 [Amended]

Accordingly, we propose to amend § 1056.3(b) of Chapter X of Title 49 of the Code of Federal Regulations by adding, between the second and third sentence, a new sentence reading as follows: "Charges for storage-in-transit shall be stated in an amount per 100 pounds per day."

Decided: May 16, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp, and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-16507 Filed 5-24-79; 8:45 am]

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Notices

Federal Register
Vol. 44, No. 103
Friday, May 25, 1979

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

Food and Nutrition Service

Demonstration and Evaluation Projects for the Special Supplemental Food Program for Women, Infants and Children (WIC)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Food and Nutrition Service is notifying State and local agencies, profit and nonprofit organizations, universities, consumer organizations and individuals that funds are available for demonstration and evaluation projects for the Special Supplemental Food Program for Women, Infants and Children (WIC). The notice describes the types of projects the Food and Nutrition Service (FNS) is interested in funding and sets forth the standards used by FNS to determine which projects will be funded.

FOR FURTHER INFORMATION CONTACT: Jennifer R. Nelson, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

NOTICE: Notice is hereby given that, in accordance with sectioin 17 of the Child Nutrition Act of 1966, as amended by the Child Nutrition Amendments of 1978 (Pub. L. 95–627), funds will be committed to evaluate WIC Program performance and health benefits through a contractual arrangement with one of the following entities: State and local agencies, profit and nonprofit organizations, universities, consumer organizations or individuals. Applications will also be accepted from State and local agencies, nonprofit organizations, universities, consumer organizations, and individuals for grants to conduct demonstration projects or evaluations of the Special Supplemental Food Program for Women, Infants and Children (WIC).

Section 3 of Public Law 95–627, enacted November 10, 1978, amends section 17(g) of the Child Nutrition Act of 1966 to authorize the Secretary of Agriculture to use for any fiscal year ½ of 1 percent, not to exceed $3,000,000, of the sums appropriated for the program for the purpose of evaluating program performance, evaluating health benefits, and the administration of demonstration (pilot) projects, including projects designed to meet the special needs of migrants, Indians, and rural populations. The WIC Program has been allocated $550,000,000 for the fiscal year ending September 30, 1979; therefore, for fiscal year 1979 a maximum of $2,750,000 may be allocated for demonstrated projects and evaluation studies.

I. *Contract for Evaulation of Program Performance and Health Benefits*

The fiscal year 1979 funds set aside for the one contract to evaluate program performance and health benefits will not be awarded under this notice. Rather, this notice is a statement of intent that a portion of the $2,750,000 funds will be made available for the contract for a large-scale evaluation of the WIC Program. The contract will be carried out in optional phases over more than one fiscal year, each optional phase being funded in the fiscal year during which the phase is being carried out. Funds will be committed through one contractual arrangement with one of the following: State and local agencies, profit and nonprofit organizations, universities, consumer organizations or individuals. Technical proposals to perform the evaluation under this notice will be in accord with specifications established by FNS and will be solicited through Requests for Proposals. Announcement of this contractual action will be published in the Commerce Business Daily. Prospective offerors wishing to submit proposals may request to be put on the bidders list by contacting the Contracting Officer at the address shown in Part II (C) of this notice. Telephone requests to be placed on the bidders list will not be honored.

This in-depth evaluation will be structured to assess the impact of the WIC Program on the health and nutritional status of women, infants and children over a period of years. In order to carry out the evaluation, factors such as length of program participation, nutritional status of the participants at the time of entry into the program, and utilization of health services will be assessed.

The study may also examine characteristics of the program delivery system that affect participants. Factors such as project size, staffing patterns and availability of other nutrition services in the local agency may be included in the evaluation in order to determine the relationship of such factors to program impact on the participants.

II. *Grants for Demonstration Projects and Evaluations*

A. *General Information and Projects of Particular Interest to FNS.*—The second portion of the $2,750,000 funds will be utilized for grants for demonstration projects or program evaluation studies (other than that specified in I of this notice). Demonstration projects are projects conducted on a trial basis in one or more areas of the United States for pilot or experimental purposes, designed to test whether program changes might increase the efficiency of the program or improve the delivery of benefits to participants. A demonstration project may test new methods in the operation of the WIC Program. Such demonstration projects:

a. Must be consistent with general program regulations although specific requirements of the regulations may not apply, if determined necessary by FNS for purposes of a demonstration project. The inapplicability of any specific requirements will be specified in the Federal Register. In no circumstances, however, will participant eligibility be altered or program benefits be reduced, or any provision of law not be applied.

b. May not exceed 18 months.

c. Must have direct application to WIC Program operations and have the potential of being able to apply results to the WIC Program in other geographical areas throughout the United States.

d. Must have the potential to provide results that can be used in connection with legislation, regulations, instructions, or guidance materials for the WIC Program.

Evaluation studies are designed to assess program operations or to

evaluate the impact of food supplementation, nutrition education or the effect of WIC on the health care utilization patterns of program participants. Such evaluations may be conducted as a part of a demonstration project or as an independent review of current program operations.

The Department will consider all demonstration and evaluation projects submitted and will attempt to fund a variety of projects. However, for fiscal year 1979 the Department is particularly interested in projects in the following program areas:

1. *Native American State Agency WIC Program Model.* Presently the Department makes direct Federal-State Agreements with 24 Indian State agencies. These Indian tribes, bands, groups and inter-tribal councils operate the Program in their jurisdictions and generally provide health services in conjunction with the Indian Health Service of the U.S. Department of Health, Education and Welfare. The Indian State agency situation is not representative of the other State agencies, and conditions exist which often make the administration of the Program more difficult. These include geographical, cultural, dietary, and language differences which require unique approaches.

The Department is interested in a demonstration project designed to develop an Indian management model which would provide innovative approaches for Indian agencies to use in overcoming their difficulties. The central goal of such a model would be to enable Indian State agencies to deliver efficiency the WIC Program to eligible participants in their jurisdictions. The model could serve as a basis upon which presently operating Indian State agencies could alter their program operations and upon which future agencies could be planned. The Department believes that the availability of an Indian State agency management model would enhance the service to Program participants among Indian groups.

2. *Breastfeeding Education Model.* The Department believes that breastfeeding should be encouraged among WIC participants and is interested in a demonstration project designed to provide pregnant women with information concerning the advantages of breastfeeding as well as encouragement for the breastfeeding woman.

The nutritional and immunological advantages of breastfeeding should be stressed; however, due to the societal changes within the last few decades the emotional support which the WIC staff can provide to the new mother may be even more critical. Some women find the prospect of breastfeeding frightening or unappealing and may not receive the encouragement needed from relatives, friends, or husbands. The project could be structured to provide some of the support that our extended family culture used to supply. The project might also include the participation of the woman's friends and family.

Ideally such a project will result in a series of techniques and materials which can be used as models for other agencies to adapt to their circumstances. Added strength would be given to such a project if it included an evaluation component measuring the success of the breastfeeding education and encouragement.

3. *Evaluation of Health Services Utilization in Rural Areas and Among Migrant Farmworkers.* The WIC Program must be operated as an adjunct to existing health facilities. However, given the great variations in the availability of health services in the United States, local communities have had to explore a large number of alternative methods to ensure health availability to WIC participants. State and local WIC administrators have achieved delivery of WIC benefits in a number of medically underserved rural and high impact migrant farmworker areas through flexible, imaginative arrangements with a variety of Community Action Program (CAP) agencies, welfare agencies and referrals from private physicians. The administrators should be proud of their achievement, because the target WIC population has not been required to suffer from gaps in public health care. Unfortunately, areas with the greatest need for WIC are most likely to be medically underserved. WIC has acted as a magnet in some rural areas and has drawn health care services for low-income women and children into these areas for the first time. It is appropriate to continue to bring WIC into unserved and underserved areas through a variety of arrangements with health care providers.

Additionally there are widespread indications that the WIC Program is drawing people into the health care setting for the first time and is increasing the variety and frequency of health care utilization among the target population.

The Department is interested in a project to evaluate these service patterns among the rural and migrant farmworker populations. Added strength would be given to such project if it was broad enough to encompass a variety of rural health care arrangements; for example, private physicians, CAP agencies, health departments and migrant health clinics, and a variety of methods used to increase health care utilization; for example, providing transportation, child care, and flexible clinic hours, etc.

4. *Utilization of USDA Commodities in the WIC Program Project.* P.L. 95-627 amends section 17(l) of the Child Nutrition Act of 1966 to include provisions authorizing the Secretary to donate to the WIC Program foods (commodities) available under Section 416 of the Agriculture Act of 1949 including, but not limited to, dry milk, or purchased under Section 32 of the Act of August 24, 1935, at the request of a State agency. The Secretary is also authorized by that subsection to purchase and distribute, at the request of the State agency, supplemental foods including products specifically designed for pregnant, postpartum, and breastfeeding women, or infants, with funds appropriated for the WIC Program.

Section 416 of the Agriculture Act of 1949 authorizes the Department to donate commodities to State agencies for distribution to needy persons. Section 32 of the Act of August 24, 1935 authorizes the Secretary of Agriculture to encourage the domestic consumption of agricultural commodities or products by diverting them from the normal channels of trade and commerce. Therefore, a wide variety of foods are available for distribution to WIC Program participants.

The Department must determine how best to implement the commodities section of WIC Program legislation, Section 17(p) of the Child Nutrition Act of 1966. There are certain logistical problems with purchasing and distributing commodities for the WIC Program. The Department currently purchases and distributes most commodities to States for distribution in the Commodity Supplemental Food Program in carload quantities (4,000 cases). A State must accept carload shipments or make arrangements with a contiguous State, through FNS Regional Offices, to split shipments. This is done to encourage vendor participation as well as to minimize transportation costs. Because of the packaging and labeling requirements contained in government contracts, vendors are reluctant to bid on less than carload shipments. Additionally, the WIC Program Administrative Cost Study, released in July 1978, revealed that only 2 percent of WIC local agencies utilize a direct distribution delivery system. Therefore,

many State and local agencies may not have adequate facilities available for storage of commodities.

The Department believes that a demonstration project designed to assess the feasibility of and participant satisfaction with various arrangements would be appropriate at this time. The resultant models should be flexible enough to be utilized by other WIC Programs.

B. *Eligible Grantees.*—The projects or evaluations may be initiated and carried out by State or local agencies, nonprofit organizations, universities, consumer organizations, or individuals. A State agency or local agency project may be conducted by the State or local agency itself or by qualified organizations within the State, such as nonprofit professional associations, universities, or individuals.

C. *Grant Application Procedures.*—An original and two copies of the application for a grant shall be submitted in accordance with grant application procedures described in OMB Circular No. A–102. The application shall be submitted on two forms entitled, "Application for Federal Assistance (Non-Construction Programs)." These forms, SF–424 and AD–623, shall not be accepted by FNS unless all parts of the forms have been completed by the applicant. The completion of all parts of these forms by the applicant ensures compliance by the applicant with the requirements for grant applications in OMB Circular No. A–102. Requests for these forms should be addressed to:

Contracting Officer, Administrative Services Division, Food and Nutrition Service, Room 790, GHI Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Clearinghouse procedures prescribed in Part I of OMB Circular No. A–95 (41 FR 2052) are required.

The completed application must be received at the address shown above not later than 60 days after publication of this notice. To assure an acknowledgment of the receipt of applications, applicants may enclose a stamped, self-addressed envelope or postcard referenced to the application.

Applications for grants should include, but need not be limited to, the following:

1. A brief but complete statement of the proposed demonstration project or evaluation study.

2. The objectives of the study, including hypotheses to be tested and specific questions to which answers will be sought.

3. Target population to be studied; for example, Indian groups or rural populations.

4. Procedures to be used. Include, as appropriate, outline of the project, population sample to be studied, data to be gathered and methods of analysis to be used.

5. Geographical location of intended demonstration or evaluation projects, bearing in mind the priority set on projects with national or regional impact.

6. Anticipated practical application of the findings of the project and feasibility of transfer to other geographical areas.

7. A time schedule for the project and its major phases.

8. The capability of the applicant to conduct the project based upon:

a. A description of the qualifications of staff;

b. Availability of necessary facilities, staff, and other resources;

c. Administrative and supervisory capacity;

d. Knowledge of or previous experience in conducting demonstration or evaluation projects.

9. Where support of other agencies is necessary for the successful completion of the objectives of the study, include a statement of the extent of cooperation required and written or oral assurances by such agencies.

10. A detailed budget statement for the grant period including sources of funds to be used other than the grant funds.

11. Provision for the issuance of a final report to be submitted to FNS, and which, as a minimum, shall contain the following:

a. Explanation of the results of the project in terms of the project objectives.

b. Explanation of the manner in which the objectives were met, including all methods employed.

c. Where applicable, description of the temporary and permanent changes which occurred in the WIC Program under study as a result of the project.

d. Recommendations as to the future use of methods and findings of the project.

e. Copies of any audiovisual and printed material, or other materials used in the project.

f. A financial statement showing the amount actually expended under each budget heading listed in the original project plan.

D. *Grant Management.*—Grants will be administered under the provisions of OMB Circular No. A–102 for State or local governments or OMB Circular No. A–110 for institutions of higher education and nonprofit organizations.

E. *Grant Approval.*—Applications will be reviewed by a panel composed of qualified persons selected by FNS not involved in designing the projects or studies. The panel will include representatives from FNS and persons outside FNS with expertise in WIC Program operations, nutrition education, or evaluation techniques.

Applications will be evaluated according to the following criteria:

1. The significance of the evaluation or demonstration project as it relates to assessing WIC Program performance, improving the delivery of benefits to participants, or evaluating food supplementation, nutrition education or health benefits or program participation.

2. The conceptual development and clarity of measurable objectives.

3. Probable effectiveness of the proposal to achieve the project objectives based upon:

a. A complete description of the project purposed; project hypotheses; demonstration or evaluation design; and plans for implementation;

b. The adequacy of the work plan, indicating tasks, scheduling, and methodology;

c. A technical evaluation plan consistent with the objectives stated.

4. The capability of the applicant to conduct the project based upon:

a. A description of the qualifications of staff;

b. Availability of necessary facilities, staff, and other resources;

c. Administrative and supervisory capacity;

d. Knowledge of or previous experience in conducting demonstration or evaluation projects.

5. For demonstration projects, potential benefits in relation to projected costs and potential regional or nationwide application.

6. The relationship of the proposal to other similar demonstration or evaluation efforts.

Within 120 days after publication of this notice, the Food and Nutrition Service will notify in writing each applicant for grants regarding the acceptance or rejection of its application. This written notification will include the names of recipient organizations, amounts of grant awards, and brief summaries of funded demonstration projects or evaluations.

Signed in Washington, D.C., on May 18, 1979.

Carol Tucker Foreman,

Assistant Secretary.

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Office of the Secretary

Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Jefferson National Forest is hereby extended and re-described as described below and all lands within the Jefferson National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated as part of the Jefferson National Forest.

Jefferson National Forest, Kentucky, Virginia, and West Virginia

Unit 1

Beginning at a point in the center of James River on the Amherst-Bedford County line and midway between the mouth of Battery and Otter Creeks; thence to and up Battery Creek through Bedford County to line 3–4 of tract 218; thence with tract 218, passing corners 4, 5 and 6 thereof, to where Battery Creek crosses line 6–7; thence up Battery Creek to corner 1 of tract 620; thence with tract 620 to corner 4 thereof on an old road; thence with old road to the eastern end of tract 327; thence southerly a straight line to corner 1 of tract 58; thence around the eastern side of tract 58 to corner 8 thereof which is also corner 44 of tract 50; thence southwesterly with tract 50 to corner 28 thereof; thence southeasterly a straight line to the junction of Routes 638 and 640 about one-half mile northwest of Sedalia; thence westerly with Route 640 approximately eight miles to a point opposite the mouth of Dry Branch; thence northwesterly to and up Dry Branch to the Blue Ridge Parkway at a point formerly known as Corner 1 of N.F. tract 147; thence in general southwesterly and northwesterly directions along lands of the Blue Ridge Parkway formerly known as N.F. tracts 147, 146, 67c, 237, 237a, 811, 820, 27a, 810, 67b, 148, 69, 150, 115, 67d, 813 and A–1 to corner 2 of tract A–1 on old road; thence northwesterly with old road to the Bedford-Botetourt county line on top of the Blue Ridge; thence northwesterly with said county line and Blue Ridge to corner 4 of Blue Ridge Parkway lands formerly known as Forest Service tract 88; thence northerly with tract 88 to corner 5 thereof; thence northwesterly a straight line to corner 7 of Blue Ridge Parkway lands formerly known as F.S. tract 82; thence northwesterly with tract 82 to corner 5 thereof on Route 695; thence southerly with Route 695 to its junction with Route 680; thence northwesterly with Route 680 to its junction with Route 693; thence southwesterly with Route 693 to its junction with Route 617; thence northwesterly and southwesterly with Route 617 to its junction with Route 697; thence southwesterly with Route 697 to its junction with U.S. Highway 460; thence southwesterly with U.S. Highway 460 crossing the Bedford-Botetourt County line and continuing through Botetourt County, to its junction with Route 652; thence northwesterly with Route 652 to its junction with the Norfolk and Western Railroad; thence northeasterly with the Norfolk and Western Railroad to its junction with Route 651 at Troutville; thence northeasterly with Route 651 to Stony Battle Creek; thence easterly a straight line to the southwest end of Route 711; thence northeasterly with Route 711 to its junction with Route 647; thence easterly with Route 647 to Rabbit Run; thence down Rabbit Run to the Norfolk and Western Railroad; thence northeasterly with the Norfolk and Western Railroad to Route 645; thence northeasterly with Route 645 to its junction with Route 643; thence southeasterly with Route 643 approximately seven-tenths mile to an unnamed fork of Alex Run; thence northeasterly with said unnamed fork approximately one-half mile to a low divide; thence northeasterly down an unnamed fork of Laurel Run to the junction of Routes 643 and 625; thence southeasterly and northeasterly with Route 625 to its junction with Route 43; thence northerly with Route 43 to the Norfolk and Western Railroad; thence northeasterly with the Norfolk and Western Railroad to Route 622 at Solitude; thence northerly with Route 622 to the center of James River below Rocky Point; thence down the center of James River to the beginning.

Unit II

Beginning at a point on the Virginia-West Virginia State line at the corner of Monroe County, West Virginia and Alleghany and Craig Counties, Virginia; thence with the Alleghany-Craig County line to the corner of Alleghany, Botetourt and Craig Counties; thence with the Alleghany-Botetourt County line to Route 621; thence southeasterly through Botetourt County with Route 621 to its intersection with Route 615 at Strom; thence southeasterly with Route 615 to U.S. Highway 220 about three-fourths of a mile north of Eagle Rock; thence northeasterly with the height of land, to and along Rathold Mountain and Sheets Mountain, to Mill Creek about one-eighth of a mile below the mouth of Limestone Hollow; thence northeasterly with the height of land, to and along Sandbank Mountain and North Mountain to the western corner of Rockbridge County on North Mountain; thence northeasterly, along the top of North Mountain with the Botetourt-Rockbridge County line and Rockbridge-Alleghany County line to Route 770 on top of said mountain; thence southeasterly with Route 770 to Collierstown and Route 251; thence with Route 251 to its intersection with Route 644; thence southerly with Route 644 to its junction with Route 612; thence southerly with Route 612 to its junction with Route 662; thence southerly with Route 662 to its junction with Route 661; thence southerly with Route 661 to its junction with Route 611; thence southerly with Route 611, crossing the Botetourt-Rockbridge County line and through Botetourt County to its intersection with U.S. Highway 11; thence southwesterly with U.S. Highway 11 to the center of the bridge across James River at Buchanan; thence up the center of James River to U.S. Highway 220 at Eagle Rock; thence southwesterly with U.S. Highway 220 to its junction with Route 681; thence southwesterly with Route 681 to its junction with Route 682; thence northwesterly with Route 682 to its junction with Route 684; thence southwesterly with Route 684 to its junction with Route 655; thence southwesterly with Route 655 to its junction with Route 666; thence southwesterly with Route 666 to its junction with Route 600; thence southwesterly with Route 600, crossing the Botetourt-Roanoke County line and through Roanoke County, to its junction with Route 779; thence southwesterly with Route 779 to its junction with Route 320; thence northwesterly with Route 320 via Catawba Sanatorium to its junction with Route 698; thence southwesterly with Route 698 to its junction with Route 311; thence southwesterly with Route 311 to its junction with Route 624; thence southwesterly with Route 624 crossing the Montgomery-Roanoke County line

and thru Montgomery County to its junction with Route 649; thence westerly with Route 649 to Toms Creek; thence down Toms Creek to Tract 855; thence clockwise around tract 855 to Toms Creek; thence down Toms Creek to Route 624; thence southwesterly with Route 624 to its junction with Route 655; thence with Route 655 to its junction with Route 652 at Longshop; thence westerly with Route 652 to its junction with Route 625; thence westerly crossing the New River and the Montgomery-Pulaski County line at McCoys Ferry to Route 600; thence southerly through Pulaski County with Route 600 to Back Creek; thence up Back Creek approximately one-half mile southwest of its junction with Route 643; thence westerly approximately one mile to Bentley's Branch; thence down Bentley's Branch to Route 738; thence with Route 738 to Tract 318; thence clockwise around tracts 318, 1014, and 318 to corner 124 of tract 318; thence southerly approximately one hundred feet in a straight line to the Norfolk and Western Railroad; thence easterly with the Norfolk and Western Railroad to corner 1 of tract 369; thence southerly with tract 369 to corner 3; thence easterly in a straight line to corner 9 of tract 369; thence with tract 369 to corner 10; thence easterly in a straight line to corner 13 of tract 369; thence with tract 369 to corner 17 on Route 610; thence southwesterly with Route 610 to a point where it enters tract 372; thence southerly with tract 372 to corner 2; thence southerly crossing the Pulaski-Wythe County line and through Wythe County to Route 726; thence westerly with Route 726 to its junction with Route 613; thence northerly with Route 613 to its junction with Route 610; thence westerly with Route 610 to its junction with Route 712; thence northwesterly approximately one mile with Route 712 to its junction with an unnumbered road; thence southerly with unnumbered road to Route 610 approximately one-half mile west of Max Meadows; thence northwesterly with Route 610 to Cove Creek about three miles west of Max Meadows; thence up Cove Creek to Route 603; thence northerly with Route 603 to its junction with Route 600; thence southwesterly with Route 600 to its junction with Route 659; thence southwesterly with Route 659 to its junction with Route 661; thence southwesterly with Route 661 to its junction with Route 600; thence southwesterly with Route 600 to its junction with U.S. Highway 52, thence with U.S. Highway 52 to its junction with Route 680; thence southwesterly with Route 680 to its junction with Route 617; thence southwesterly with Route 617, crossing the Smyth-Wythe County line and through Smyth County, to a point south of the southeasterly corner of Hungry Mother State Park; thence northerly and westerly to and with lines of said park to Route 16; thence northerly with Route 16 to its junction with Route 610; thence northeasterly with Route 610 crossing the Bland-Smyth County line and through Bland County to its junction with the old road leading through Rich Valley; thence northeasterly with said old road to its junction with Route 622; thence northeasterly in a straight line approximately six and one-half miles up the southern side of Poglesong Valley to Route 622, approximately one-half mile south of Effna; thence easterly in a straight line to the junction of U.S. Highway 52 and Route 617; thence southeasterly and northeasterly with Route 617 to its junction with Route 656 about one and one-fourth miles south of Bland; thence northwesterly with Route 656 to its junction with Route 605 at Bland; thence easterly with Route 605 to its junction with Route 604; thence northeasterly with Route 604 to its junction with Route 608; thence southeasterly and northeasterly with Route 608 to its junction with an old road at about one and one-half miles south of Crandon Post Office; thence easterly with old road to its junction with Route 738; thence northeasterly with Route 738 to its junction with Route 670; thence northeasterly with Route 670, crossing the Bland-Giles County line and through Giles County to its junction with Route 667; thence northeasterly with Route 667 to its junction with an old road about one mile southeast of White Gate Post Office; thence northeasterly a straight line to point in center of bridge where Route 100 crosses Walker Creek; thence northeasterly with an old road passing the Springdale School to its junction with Route 654; thence northeasterly with Route 654 to its junction with Route 622 near Trigg; thence northeasterly with Route 622 to New River at mouth of Bear Spring Branch; thence to and up the center of New River to the corner of Giles-Pulaski and Montgomery Counties; thence northeasterly with Giles-Montgomery County line to the corner of Craig, Giles and Montgomery Counties; thence northeasterly with the Craig-Montgomery County line to a point on line 9–10 of tract 565a; thence northeasterly and southeasterly with said tract to corner 1 on the Craig-Montgomery County line; thence northeasterly with county line passing corners of tract 35a and 565 to corner 24 of tract 565; thence leaving the Craig-Montgomery County line and through Craig County with tract 565, passing corners 25–28 thereof, to a point on top of Sinking Creek Mountain on line 28–29 of tract 565; thence northeasterly with the top of Sinking Creek Mountain to corner 13 of tract 91; thence northwesterly and northeasterly with tract 91 to corner 22 thereof on top of Sinking Creek Mountain; thence continuing northeasterly with the top of said mountain to corner 1 of tract 513; thence with tract 513 passing corners 2 and 3 to corner 4 thereof on top of Sinking Creek Mountain; thence northeasterly with the top of Sinking Creek Mountain to Corner 229 of Tract 35a; thence northerly with tract 35a passing corners 230 and 1 thereof to corner 2 of tract 35a; thence westerly a straight line to corner 7 of tract 20; thence northwesterly with tract 20 to the top of Johns Creek Mountain; thence southwesterly with the top of Johns Creek Mountain passing corners of tract 20 to corner 19 of said tract; thence southwesterly and northwesterly with tract 20 to corner 22 thereof on top of Johns Creek Mountain; thence southwesterly with the top of Johns Creek Mountain to corner 5 of tract 10a–II; thence southwesterly with tracts 10a–II, 10a, 357 and 10c to corner 3 of tract 10c; thence due south to a point on Route 662; thence southerly with Route 662 to the junction with Route 42; thence southerly with Route 42 about one-tenth of a mile to its intersection with an old road; thence westerly with said old road approximately eight tenths mile; thence southwesterly in a straight line to corner 1 of tract 10–IV; thence clockwise with tracts 10–IV and 1103 to the Craig-Giles County line; thence northwesterly with the Craig-Giles County line to Route 601; thence southwesterly through Giles County with Route 601 to its intersection with Route 602; thence southwesterly with Route 602 to its junction with Route 700; thence southwesterly with Route 700 approximately one-half mile to its junction with Route 607; thence northwesterly a straight line to the junction of Route 623 and an unnumbered road on Little Stony Creek; thence northwesterly a straight line to the junction of Route 635 and 641; thence northwesterly and southwesterly with Route 641 to its junction with old Route 641 just southeast of Clendennin Creek; thence with old Route 641 along the Norfolk and Western Railroad to its junction with U.S. 460; thence northwesterly with U.S. 460 to corner 1 of tract 973; thence clockwise with tracts 973 and 968 to the Virginia-West Virginia State line; thence northeasterly

with the Virginia-West Virginia State line and Peters Mountain to a point on said line approximately two miles southeast of Zenith, West Virginia; thence leaving the State line and passing through Monroe County, West Virginia along Peters Mountain and alternately clockwise around tracts 899a, 899e, 899f to the Virginia-West Virginia State line; thence along the State line to the place of beginning.

Unit III

Beginning at a point on the West Virginia-Virginia state line common to Mercer and Giles Counties and approximately two miles west of New River; thence through Giles County a straight line due south to Route 61; thence a straight line easterly to corner 179 of tract 106; thence with tract 106 passing corners 180 to 208 and corners 1 to 17 of said tract to corner 2 of tract 729; thence easterly, southerly and westerly with tract 729 to corner 19 of tract 106; thence with tract 106 passing corners 20 to 39 of said tract to corner 1 of tract 111; thence southwesterly with tract 111 on top of Brushy Mountain to corner 70 of tract 106 and the Giles-Bland County line; thence through Bland County southwesterly with tract 106 passing corner 82 of said tract to a point on Route 606; thence southerly with Route 606 to its junction with Route 42; thence southwesterly with Route 42 to the Bland-Smyth County line; thence continuing southwesterly, through Smyth County, with Route 42 to its junction with Route 91 at Broadford Post Office; thence southwesterly with Route 91 to its junction with Route 633; thence northwesterly and southwesterly with Route 633 to its junction with Route 613; thence northwesterly and southwesterly with Route 613, to the Smyth-Washington County line; thence southwesterly through Washington County with Route 613 to its junction with Route 80; thence southwesterly with Route 80 to its junction with Route 689; thence southwesterly with Route 689 to its junction with U.S. Highway 19; thence northwesterly with U.S. Highway 19 to the Russell-Washington County line on the top of Clinch Mountain; thence northeasterly along the top of Clinch Mountain and Rich Mountain with the Washington-Russell County line to a point where said county line leaves Rich Mountain; thence through Russell County northeasterly with the top of Rich Mountain and Beartown Mountain to Mutters Gap; thence northeasterly with the top of Clinch Mountain, crossing the Russell-Tazewell County line through Tazewell County along the top of Spur Short Mountain to the height of land at head of Tumbling Creek; thence southwesterly with the height of land between Tumbling Creek and Wards Cove to the common corner of Russell, Smyth, and Tazewell Counties; thence northeasterly with the Tazewell-Smyth County line and the top of Clinch Mountain, through Tazewell County to corner 46 of tract 726; thence northeasterly with tract 726 passing corners 47 through 52 to corner 1 on the east end of Hutchinson Rock on Garden Mountain; thence southwesterly with tract 726 passing corners 2 through 19 to corner 20; thence southeasterly, northeasterly and northwesterly with Garden Mountain around Burkes Garden to the junction of Routes 666 and 623; thence northwesterly and southwesterly with Route 623 to its junction with Route 61; thence southwesterly with Route 61 to its junction with U.S. Highway 19; thence northeasterly with U.S. Highway 19 about thirteen miles to its junction with Route 650 near St. Clair School; thence northeasterly with Route 650 to its junction with Route 102; thence northeasterly with Route 102 to the Virginia-West Virginia state line near Bluefield; thence southeasterly and northeasterly with the Virginia-West Virginia state line to the point of beginning.

Unit IV

Beginning at Class A Corner 689 a Forest Service standard concrete monument, also corner 3 of tract 2 on the Virginia-Tennessee State line; thence northerly, easterly and northeasterly with tract 2 to corner 64 thereof; thence northeasterly a straight line to Route 604 at Cole; thence southeasterly and northeasterly with Route 604 crossing the Smyth-Washington County line and through Smyth County to Dry Fork; thence easterly a straight line to corner 38 of tract 131; thence southeasterly a straight line to corner 8 of tract 2a; thence northeasterly with tract 2a to East Fork (Hopkins Branch); thence down East Fork to Hopkins Branch to Route 656; thence northeasterly with Route 656 to Route 650; thence northwesterly with Route 650 to its intersection with Route 657; thence northwesterly with Route 657 to its intersection with Route 658; thence northeasterly with Route 658 to the corporate limits of Marion; thence easterly with the corporate limits of Marion to Route 16; thence easterly with Route 16 to its junction with Route 688; thence northeasterly with Route 688 to its junction with Route 622; thence northeasterly a straight line to an unnumbered primitive road in Waddle Hollow; thence northeasterly with unnumbered road to Route 615; thence northeasterly and southeasterly with Route 615, crossing Wythe-Smyth County line and through Wythe County to its junction with Route 670; thence southeasterly with Route 670 to its intersection with Route 749; thence southwesterly with Route 749 crossing the Smyth-Wythe County line and through Smyth County to its junction with Route 614 at Cedar Springs; thence southwesterly with Route 614 to its junction with Route 612; thence northeasterly and southeasterly with Route 612, crossing the Smyth-Wythe County line and through Wythe County to its junction with Route 749; thence easterly with Route 749 to Route 619 at Speedwell; thence easterly with Route 619 to where said route crosses Cripple Creek; thence down Cripple Creek to line 32–33 of tract 40–III; thence with lines of tract 40–III reversed, to where Cripple Creek crosses line 30–31; thence down Cripple Creek to junction of Route 643 and 642 at Eagle; thence easterly with Route 642 to Route 644; thence southeasterly with Route 644 to Route 601 south of Ivanhoe; thence southerly with Route 601 to the Carroll-Wythe County line; thence northeasterly with Carroll-Wythe County line to the east bank of New River; thence up the east bank of New River through Carroll County to the termini of a farm road on the east bank of New River; thence southeasterly with farm road and Route 636 to the first bridge across an unnamed branch; thence southerly a straight line to the north abutment of Buck Dam; thence up the east bank of New River to the mouth of Poor Branch; thence up Poor Branch to Route 635; thence southerly with Route 635 to its junction with a private road at a point less than one-tenth mile before reaching the intersection of Routes 635 and 740; thence southwesterly a straight line to the center of New River opposite the mouth of Crooked Creek; thence up the center of New River to a point opposite the mouth of Little Brush Creek; thence up Little Brush Creek to Route 94; thence southerly with Route 94 to its junction with Route 604; thence westerly with Route 604 crossing the Carroll-Grayson County line and through Grayson County, deviating along the South boundary of the Mt. Rogers National Recreation Area at one point, to its junction with Route 805 near bench mark 2543; thence northwesterly with Routes 805 and 604 to Fallville; thence westerly with Route 604 to its junction with Route 805; thence westerly and northwesterly with Route 805 to the South boundary of the Mt. Rogers

National Recreation Area; thence westerly along said south boundary to U.S. Highway 21; thence southwesterly with U.S. Highway 21 to Route 791; thence southwesterly with Route 791 to its junction with Route 792; thence northwesterly with Route 792, deviating along the South boundary of the Mt. Rogers National Recreation Area at one point, to its junction with Route 661; thence southerly with Route 661 to its junction with Route 658 near Union Church at road elevation 2670; thence southwesterly with Route 658, through Comers Rock, to a point southeasterly of the mouth of Carico Branch on Elk Creek; thence northwesterly a straight line passing the mouth of Carico Branch to a point on Jerry Creek at benchmark 3387; thence southwesterly a straight line to the Intersection of Route 16 and Route 603 at Troutdale; thence southeasterly with Route 16 to its junction with Route 730; thence southwesterly with Route 730 to its junction with Route 740; thence southwesterly with Route 740 to its junction with U.S. Highway 58; thence westerly with U.S. Highway 58 to Wilson Creek; thence up Wilson Creek to the mouth of Quebec Branch; thence southwesterly a straight line to the junction of Route 755 and U.S. Highway 58 at Park, after deviating at certain points in a clockwise manner around tracts 2212, 2211a, 1037, 2082, 2081, 2119, 2078, 2026, 2084, 2024 and 2229; thence southwesterly with U.S. Highway 58 to Green Cove Creek at bench mark 3259; thence down Green Cove Creek to the mouth of Buckeye Branch; thence up Buckeye Branch to the Tennessee-Virginia State line; thence westerly with the Tennessee-Virginia State line to the point of beginning.

Unit V

Beginning on the Kentucky-Virginia state line at a point common to Harlan and Letcher Counties, Kentucky, and Wise County, Virginia; thence with the Harlan-Letcher County line to Poor Fork of Cumberland River; thence up Poor Fork of Cumberland River to the mouth of Little Joe Day Branch; thence up Little Joe Day Branch to its source; thence directly across Pine Mountain to the source of an unnamed branch; thence down said unnamed branch to Cowan Creek near bench mark 1434; thence down Cowan Creek about two and one-half miles to a point near bench mark 1184 at mouth of Bartesta Branch coming in from the east; thence up said branch, across low divide and down a branch flowing northerly to its mouth at a point on Little Cowan Creek; thence up Little Cowan Creek about one mile to where a road leaves said Creek in a northerly direction; thence along said road to the North Fork of Kentucky River; thence up the North Fork of Kentucky River to the mouth of Cram Creek; thence up Cram Creek about one and one-half miles to where a road leaves said creek in a northeasterly direction; thence along said road, crossing the heads of Pine Creek and Bottom Fork, down Laurel Fork, up North Fork of Kentucky River, through Payne Gap and down Little Elkhorn Creek to a point in Elkhorn Creek at Jenkins, Kentucky, near bench mark 1527; thence down Elkhorn Creek, crossing the Letcher-Pike County line and continuing through Pike County to the junction of Elkhorn Creek and Russell Fork; thence up Russell Fork about one-fourth mile to a bridge at Elkhorn City; thence along height of land southeast of Beaver Creek to head of a drain; thence down said drain about one-fourth mile to Trace Fork; thence down Trace Fork about one-half mile to its junction with Abes Fork of Grassy Creek; thence down Abes Fork to Grassy Creek, a point on the Virginia-Kentucky state line common to Pike County, Kentucky, Buchanan and Dickenson Counties, Virginia; thence along the Buchanan-Dickenson County line to height of land near the head of Hunts Creek; thence southwesterly through Dickenson County along height of land northwest of Barts Lick Creek and southwest of Camp Branch and Little Lick Creek to Barts Lick Creek; thence down Barts Lick Creek about one-half mile to Russell Fork; thence crossing Russell Fork to the mouth of Pound River; thence up Pound River, crossing the Dickenson-Wise County line and continuing through Wise County to the mouth of the North and South Forks of Pound River; thence up the South Fork of Pound River to Route 671; thence southwesterly with Route 671 to its junction with Route 620; thence southerly with Route 620, along the Guest River, to Route 623; thence southwesterly with Route 623 to Route 610; thence westerly with Route 610 about one-half mile to an unnumbered road; thence westerly with unnumbered road to the headwaters of Black Creek; thence southerly with an unnumbered road along Black Creek to U.S. Highway 23 at Blackwood; thence easterly with U.S. Highway 23 to the corporate limits of Norton; thence easterly around the south side of Norton to tract 19; thence easterly with tract 19 to corner 9 of tract 19–I; thence passing through corners 8, 7, and 6 of tract 19–I to corner 5 of said tract, a point on line 6–7 of tract 19; thence easterly with tract 19 to Class A Corner 746; thence northerly a straight line to the Interstate Railroad right-of-way; thence easterly with the Interstate Railroad right-of-way to a point where it intersects line 5–6 of tract 312; thence with tract 312 to Class A corner 781, a point in the middle of Guest River; thence easterly with the middle of Guest River to corner 26 of tract 19, a point opposite the mouth of Burns Creek; thence southeasterly with tract 19 and Burns Creek to the Interstate Railroad; thence easterly with the Interstate Railroad to the Guest River; thence down the Guest River to the mouth of Mill Creek; thence easterly with Route 662 to Route 699; thence easterly with Route 699 to corner 4 of tract 19a; thence in a general easterly direction with tract 19a to Class A corner 750, a point in the Guest River; thence southeasterly down the Guest River to the Wise-Scott County line continuing with the Guest River and through Scott County to the Clinch River; thence down the Clinch River to the mouth of Little Stoney Creek; thence up Little Stoney Creek to bench mark 1353; thence northerly to Route 72; thence southwesterly with Route 72 to its junction with Route 653; thence southwesterly with Route 653 to tract 1059; thence clockwise with tract 1059 to the top of Buckner Ridge and continuing westerly to Route 653 west of Buckner Ridge Lookout; thence southwesterly with Route 653 to its junction with old U.S. Highway 23; thence southwesterly with old U.S. Highway 23 to its junction with U.S. Highway 58 approximately one-half mile southeast of Duffield; thence a straight line northwesterly to Cain Gap on Powell Mountain, a point on the Scott-Lee County line; thence northwesterly with the top of Powell Mountain and the Scott-Lee County line, entering Lee County and continuing to the top of Wallen Ridge, approximately one mile southwest of Lovelady Gap; thence northwesterly a straight line to the junction of Route 619 and Route 642; thence northeasterly with Route 642 to its junction with U.S. Highway 58; thence northeasterly with U.S. Highway 58 crossing the Lee-Wise County line and through Wise County to the junction of Route 608 approximately one-half mile southwest of Cadet; thence southeasterly a straight line to the junction of Route 609 and old U.S. Highway 23 at Irondale; thence northeasterly with Route 609 to its junction with Route 612; thence northeasterly with Route 612 to its junction with Route 616; thence southeasterly with Route 616 to its junction with Route 602; thence northeasterly with Route 602 to its junction with Route 610; thence

northeasterly with Route 610 to its junction with Route 612; thence westerly a straight line to Class A corner 702 which is also corner 13 of tract 19e; thence southwesterly and northerly with tracts 19e and 3a to corner 8 of tract 3a; thence southwesterly a straight line to corner 29 of tract 19f; thence southwesterly with tract 19f to Class A corner 707; thence southwesterly a straight line to corner 1 of tract 19g; thence southwesterly around the corporate limits of Big Stone Gap, passing corner 1 of tract 252 to the Louisville and Nashville Railroad; thence southwesterly to Route 739; thence southwesterly with Route 739 to its junction with Route 605; thence southwesterly with Route 605 crossing the Lee-Wise County line into Lee County to bench mark 1467; thence across Powell River to Route 621 and southwesterly with Route 621 to its junction with U.S. Highway 421; thence northwesterly with Route 421, through Pennington Gap to its junction with Route 606; thence northeasterly with Route 606 to its junction with Route 627; thence northerly with Route 627 to Trace Gap on Black Mountain and the Kentucky-Virginia state line; thence northeasterly and northerly with the state line to the point of beginning.

Unit VI

Land lying in the Abingdon and Goodson Magisterial Districts of Washington County, on the southeast shores of South Holston Lake, north of and adjacent to the Virginia-Tennessee state line, and being all that land which lies above the 1742-foot (MSL) contour and is contiguous to and on the lakeward side of a line described as follows: Beginning at a point in the 1742-foot contour on the southeast shore of South Holston Lake and in the boundary between the lands of the United States of America and Charles K. Brown.

From the initial point with the United States of America's boundary line, S. 25°04'E., approximately 20 feet to a point (Coordinates: N. 120,969; E. 978,608) in the 1747-foot contour; S. 21°59'E., 332 feet to a point at the top of a ridge; S. 24°24'W., 872 feet to a history stump; S. 30°29'E., 834 feet; S. 39°52'W., 137 feet; S. 42°21'W., 55 feet; S. 55°15'W., 374 feet; S. 22°30'W., 671 feet to a chestnut stump at the top of a ridge; with the top of a ridge as it meanders in a general southesterly direction approximately along the following bearings and distances: S. 47° E., 390 feet, S. 35° E., 305 feet to a point in the center of a junction of ridges, S. 84°37'E., 155 feet to a 30-inch chestnut oak tree in the center of a junction of ridges, S. 27° E., 160 feet, S. 5° W., 570 feet; leaving the top of the ridge, S. 11° W., 630 feet; S. 20°46'E., 475 feet to a 6-inch chestnut oak tree (Coordinates: N. 115,865; E. 978,781) at the top of a ridge; with the top of a ridge as it meanders in a general westerly direction approximately along the following bearings and distances: S. 66° W., 340 feet, N. 85° W., 310 feet, S. 34° W., 465 feet, S. 74° W., 245 feet, N. 63° W., 210 feet to a 14-inch pine tree in the center of a junction of ridges, N. 70° W., 550 feet, N. 41° W., 675 feet to a 3-inch oak tree, N. 71° W., 280 feet to a pine stump in the center of a junction of ridges, N. 10° E., 230 feet, N. 6° W., 210 feet to a point in the center of a junction of ridges, N. 40° W., 330 feet, N. 31° W., 300 feet to an oak stump in the center of a junction of ridges, N. 82° W., 200 feet feet to a 12-inch post oak tree in the center of a junction of ridges, S. 62°24'W., 749 feet to an 8-inch hickory tree, S. 21°33'W., 142 feet to a 14-inch red oak tree, S. 44°47'W., 444 feet to a 14-inch pine tree, S. 34° W., 130 feet to a 12-inch pine tree, S. 57° W., 430 feet, Due west 320 feet, S. 65° W., 310 feet; leaving the top of the ridge, S. 14°50' W., 305 feet to a 24-inch oak snag; S. 75°06'W., 386 feet to a 6-inch hickory tree (Coordinates: N. 115,461; E. 973,100) at the top of a ridge; with the top of the ridge as it meanders in a general southwesterly direction approximately along the following bearings and distances: S. 5° E., 480 feet, N. 87° W., 320 feet, S. 47° W., 450 feet, S. 14° W., 580 feet to a chestnut stump (Coordinates: N. 114,114; E. 972,396) in the Virginia-Tennessee state line; leaving the United States of America's boundary and the top of the ridge, with the Virginia-Tennessee state line, N. 88°38'W., approximately 1307 feet, passing a metal marker in the 1747-foot contour at 1282 feet, to a point in the 1742-foot contour on the southeast shore of an inlet of South Holston Lake.

There are hereby expressly EXCEPTED AND EXCLUDED from the land described above 21.5 acres, more or less, being those portions of the said land which lie below elevation 1747 (MSL).

The land described above, after giving effect to the exclusion above noted, contains 453. acres, more or less.

Note.—The positions of corners and directions of lines for the lands are referred to the Virginia (South) Coordinate System. The contour-elevation is based on MSL Datum as established by the USC and GS Southeastern Supplementary Adjustment of 1936.

The areas described extend the boundaries by 2398.84 acres and eliminate 1336.34 acres.

Effective Date: This order shall become effective on the date of its publication in the Federal Register.

Dated: May 17, 1979.

David G. Unger,

Deputy Assistant Secretary for Conservation, Research, and Education.

[FR Doc. 79-16384 Filed 5-24-79; 8:45 am]

BILLING CODE 3410-11-M

Change in Boundary of National Forest

Pursuant to authority vested in me by section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the Boundary of the George Washington National forest is hereby extended and re-described as described below and all lands within the George Washington National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such act, are hereby designated for administration as part of the George Washington National Forest.

George Washington National Forest, Virginia and West Virginia

Unit I (Main Section)

Beginning at a point on the Virginia-West Virginia state line at the corner of Monroe County, West Virginia and Alleghany and Craig Counties, Virginia; thence northwesterly with the Virginia-West Virginia state line to tract #16a; thence clockwise with tract #16a and #16a–III to the said state line; thence northwesterly with said state line to corner common to Monroe and Greenbrier Counties, West Virginia, and Alleghany County, Virginia; thence northeasterly with the Virginia-West Virginia state line to corner 11 of Tract #361–III, a point on top of Alleghany Mountain in the Virginia-West Virginia State line; thence easterly and northeasterly with Tract #361–III to corner 1 thereof; thence westerly and northerly along height of land and old road to U.S. Highway #250; thence easterly with U.S. Highway #250 to Back Creek; thence southwesterly with Back Creek to Highland-Bath County line; thence southeasterly with Highland-Bath County line to Cow Pasture River; thence northeasterly up

Cow Pasture River and down South Fork of South Branch of Potomac River to Mouth of Stony Run northeast of Oak Flat, West Virginia; thence northeasterly in a straight line to Rough Run crossing of West Virginia State Route #3; thence northeasterly with said Route #3 to Hardy-Pendleton County line; thence southeasterly with said County line to Virginia-West Virginia state line; thence northeasterly and southeasterly with said state line to intersection of Virginia State Route #259 (also West Virginia State Route #259); thence a straight line northeasterly to Corner 37 of Tract #1e; thence with said tract northeasterly to Corner 34 thereof; thence a straight line northeasterly to Corner 8 of Tract #51; thence northeasterly with said Tract #51 to Corner 2 thereof; thence a straight line northeasterly to Corner 5 of Tract #53; thence continuing northeasterly with lines of Tracts #53, 127, 30, 52 and 198 to Corner 6 of Tract #198; thence a straight line northeasterly to intersection of West Virginia State Route #14 and State Route #259 in Lost River; thence a straight line southeasterly to Corner 7 of Tract #454; thence a straight line northeasterly to Corner 3 of Tract #132; thence continuing northeasterly with Tracts #132 and 131a to Corner 1 of Tract #131a; thence in a straight line northeasterly to Corner #14 of Tract #132; thence northeasterly with Tract #132 to Corner 17 thereof; thence a straight line northeasterly to Hommon triangulation station; thence a straight line northeasterly to intersection of Three Springs Run and Lost River near McCauley, West Virginia; thence northeasterly down Lost River, passing the River Sinks, to a point northwesterly of Corner 6 of Tract #135; thence a straight line southeasterly to Corner 6 of Tract #135; thence easterly with Tract #135 to Corner 4 thereof; thence a straight line southeasterly to Corner 1 of Tract #492; thence easterly with Tract #492 and northeasterly with Tract #452 to Corner 4 thereof; thence a straight line southeasterly to Corner 22 of Tract #91a; thence southeasterly and northeasterly with Tracts #91a and #91–I to Corner 8 of Tract #91–I; thence a straight line northerly to Corner 2 of Tract #99g; thence northwesterly with said Tract #99g to Corner 1 thereof; thence a straight line southwesterly to Corner 2 of Tract #491; thence northwesterly with said Tract #491 to Corner 4 thereof; thence a straight line northwesterly to Cacapon River; thence northeasterly down Cacapon River, entering Hampshire County, West Virginia, to West Virginia State Route #16 (Capon Springs Road); thence southeasterly with said road passing Capon Springs Resort to point where West Virginia State Route #16 enters Tract #81c; thence southeasterly and southwesterly with Tract #81c to a point where West Virginia State Route #16 leaves said tract; thence southerly with West Virginia State Route #16 and Virginia State Route #609, passing from Hampshire County, West Virginia into Frederick County, Virginia to State Route #55; thence easterly with State Route #55 to State Route #603; thence southerly with State Route #603 to State Route #600; thence southwesterly with State Route #600 to junction with State Route #602; thence a straight line southwesterly to Corner HPH 32 of Tract #70; thence southerly with said Tract #70, entering Shenandoah County, to Corner HPH 25 thereof; thence a straight line southwesterly to Corner 4 of Tract #75b–2; thence a straight line southerly to Corner 2 of Tract #75a; thence a straight line southeasterly to Corner 3 of Tract #361; thence a straight line southeasterly to Corner 10 of Tract #75c; thence southeasterly with said Tract #75c to Corner 11 thereof; thence continuing southeasterly in the same straight line to a point northeast of Corner 4 of Tract #80; thence a straight line southwesterly to Corner 4 of Tract #80; thence a straight line southwesterly to Corner 1 of Tract #84; thence southwesterly with said Tract to Corner 6 thereof; thence a straight line southwesterly to Corner 26 of Tract #78a; thence a straight line southwesterly to Corner 102 of Tract #100a; thence a straight line southwesterly to Corner 154 of Tract #100a; thence with said tract to Corner 155 thereof; thence a straight line southwesterly to Corner 160 of Tract #100a; thence a straight line westerly to Corner 172 of Tract #100a; thence westerly with said Tract to Corner 174 thereof; thence a straight line southwesterly to Corner 23 of Tract #100b; thence a straight line southwesterly to Corner 29 of Tract #100b; thence southwesterly with Tract #100b and #148 to Corner 3 of Tract #148; thence a straight line westerly to Corner 2 of Tract #100b; thence with said Tract #100b westerly and northeasterly to Corner 10 thereof; thence a straight line north to State Route #691; thence northwesterly with State Route #691 to State Route #717; thence a straight line southwesterly to Corner 208 of Tract #100a; thence a straight line westerly to Corner 24 of Tract #100a; thence a straight line southerly to Corner 36 of Tract #100a; thence a straight line southwesterly to junction of State Route #717 and Bull Gap Road; thence southwesterly with State Route #717 to State Route #720; thence a straight line southwesterly to Corner 12 of Tract #113; thence southwesterly with said Tract #113 to State Route #717; thence southerly with State Route #717 to State Route #263 at Powder Springs; thence southwesterly with State Route #263 to Orkney Springs, Virginia, and State Route #610; thence southwesterly with State Route #610 to intersection with boundary of Tract #163; thence southeasterly with said Tract #163 to Corner 8 thereof; thence a straight line southerly entering Rockingham County to Corner 10 of Tract #608; thence southeasterly and southwesterly with said Tract to Corner 5 thereof; thence southerly to Tract #1682d; thence clockwise around said tract to a point located north of Corner 5 of Tract #30 c–VI; thence a straight line southerly to Corner 5 of Tract #30c–VI; thence southwesterly with said Tract to Corner 1 thereof; thence a straight line southwesterly to Corner 6 of Tract #30c–V, also Corner 1 of Tract #1682c; thence clockwise around Tract 1682c to Sours Run; thence continuing southwesterly down Sours Run and Reunions Creek to Kline Hollow; thence a straight line northwesterly to Corner 11 of Tract #662f; thence a straight line northwesterly to Corner 23 of Tract #32b; thence a straight line southeasterly to junction State Route #817 and unnumbered road at Reedy Run about 1¾ miles southwest of Genoa; thence southerly with State Route #817 to Shoemaker River; thence a straight line easterly to Corner 2 of Tract #315a; thence northeasterly with Tracts #315a and #662h to Corner 3 of Tract #662h; thence a straight line northeasterly to Corner 2 of Tract #662h–I; thence northeasterly with said tract to Corner 3 thereof, a point in State Route #612; thence northeasterly with State Route #612 to Hebron Church; thence a straight line southeasterly to Corner 8 of Tract #668; thence southeasterly with said Tract #668 to Corner 7 thereof; thence continuing southeasterly on a projection of line 8–7 of Tract #668 to a point in a line extending from highway bridge over the Shenandoah River at Cootes Store to Corner 27 of Tract #30d; thence a straight line southwesterly to the said Corner 27 of Tract #30d; thence a straight line southwesterly to Corner 3 of Tract #336; thence southwesterly with said Tract of Corner 6 thereof; thence a straight line southwesterly to Corner 1 of Tract #16; thence a straight line southwesterly, entering Augusta County to Corner 12 of Tract #8; thence southwesterly with said Tract to Corner 13 thereof; thence a straight line

southwesterly to Corner 7 of Tract #3a; thence southwesterly with said Tract to Corner 8 thereof; thence in a straight line southwesterly to Corner 3 of Tract #47–I; thence southwesterly with said Tract of Corner 7 thereof; thence a straight line southwesterly to Corner 14 of Tract #552; thence a straight line southwesterly to Corner 4 of Tract #552; thence a straight line southwesterly to Corner 5 of Tract #504; thence southwesterly with said Tract to Corner 4 thereof; thence a straight line southwesterly to a point on the Chesapeake and Ohio Railroad in Buffalo Gap southeasterly of the junction of State Route #42 and State Route #668; thence southwesterly with the C&O Railroad to a point southeast of Corner 6 of Tract #518; thence a straight line southwesterly, deviating at certain points clockwise around Tract #1668, to Corner 6 of Tract #519; thence a straight line southwesterly to Corner 16 of Tract #488A; thence southwesterly with said Tract #448A to Corner 14 thereof; thence a straight line southwesterly to Corner 9 of Tract #488B; thence southwesterly with said Tract to Corner 8 thereof; thence a straight line southwesterly to Corner 4 of Tract #516; thence a straight line southwesterly to Corner 1 of Tract #484; thence a straight line southwesterly to Corner 5 of Tract #489 in or near the Augusta-Rockbridge County Line; thence southeasterly with said County Line to State Route #42; thence southwesterly with State Route #42; through Rockbridge County, to State Route #39 at Goshen; thence southwesterly with State Route #39 to State Route #780; thence southwesterly with State Route #780, deviating clockwise at 2 places around Tract #1310a, to Corner 1 of Tract #1310; thence southeasterly to Corner 4 thereof; thence southwesterly with said tract to U.S. Highway #60; thence following U.S. Highway #60 southeasterly to Interstate #64; thence northeasterly with Interstate #64 to Corner 5 of Tract #1682b; thence southwesterly with said tract to U.S. Highway #60; thence to State Route #646 at Denmark; thence southerly with State Route #646 to State Route #770 at Collierstown; thence northwesterly with State Route #770 to top of North Mountain and Alleghany-Rockbridge County line; thence southwesterly with Alleghany-Rockbridge and Botetourt-Rockbridge County line and top of North Mountain to the western corner of Rockbridge County on North Mountain; thence continiuing southwesterly into Botetourt County along top of North Mountain and Sandbank Mountain to a point in Mill Creek about one-eighth mile below mouth of Lime Stone Hollow; thence southwesterly to and along Sheets and Rathole Mountains to U.S. Highway #220 about three-fourths mile north of Eagle Rock; thence northwesterly to and with State Route #615 to State Route #621 at Strom; thence northwesterly with State Route #621 to Alleghany-Botetourt County line; thence southwesterly with Alleghany-Botetourt County line to the corner of Alleghany-Botetourt-Craig Counties; thence westerly with Alleghany-Craig County line to the point of beginning.

Unit II (Blue Ridge Mountain Section)

Beginning at a point in U.S. Highway #501 opposite the junction of the Maury River with the James River near Glasgow, Rockbridge County, Virginia; thence northeasterly with the U.S. Highway #501 to State Route #663; thence northwesterly with State Route #663 to Davidson Run; thence southwesterly with said run to Maury River; thence northerly with said River to Belle Cove Branch; thence southeasterly with Belle Cove Branch to Corner 3 of Tract #2a–III; thence southeasterly with Tracts #2a–III, #2a and #2 to U.S. Highway #501; thence northeasterly with U.S. Highway #501 to Lowry Run, just south of Buena Vista, Virginia; thence southeasterly up Lowry Run to line 7–8 of Tract #7; thence northeasterly with said Tract #7 to Corner 2 thereof; thence a straight line northwesterly to Corner 18 of Tract #3; thence north easterly with said Tract to Corner 16–H thereof; thence a straight line northeasterly to Corner 16–A of Tract #3; thence northeasterly with said Tract to Corner #16 thereof; thence a straight line northeasterly to Corner 7 of Tract #13; thence northeasterly with said Tract to South Fork Chalk Mine Run; thence down said Run to Chalk Mine Run; thence northerly up said Run to boundary of Tract #13; thence northerly with said Tract to Corner 24 thereof; thence a straight line northwesterly to a point at confluence of Stony Run and South River, about 1¼ miles southwest of Cornwell; thence northeasterly up South River and Saint Marys River, entering Augusta Country, to State Route #608, about ½ mile northeast of Pkin; thence northeasterly with State Route #608 to State Route #610 approximately ½ mile southeast of Stuarts Draft, Virginia; thence southeasterly with State Route #610 to Back Creek at Sherando; thence northerly down Back Creek to State Route #624, ¾ mile east of Lyndhurst; thence northeasterly with State Route 624 to a point northwest of Corner 1 of Tract #546; thence a straight line southeasterly passing through Corner 1 of Tract #546 to Corner 2 of said tract; thence easterly with said Tract #546 to Corner 3 thereof; thence a straight line southeasterly passing through Swannanoa triangulation station to a point on State Route #610; thence southwesterly with State Route #610 to bench mark 2182; thence a straight line southeasterly, entering Nelson County, to junction of State Route #609 with State Route #151; thence with State Route #151 south and southwesterly to State Route #627; thence southwesterly with State Route #627 to State Route #664; thence westerly with State Route #664 to State Route #680; thence southwesterly with State Route #680 to Cub Creek, about one mile south of Ramsey Gap; thence a straight line westerly to Corner 4 of Tract #642; thence a straight line southwesterly to Corner 18 of Tract #119; thence a straight line southwesterly to Corner 1 of Tract #495; thence a straight line southwesterly, entering Amherst County, to Corner 38 of Tract #538f; thence southwesterly with said Tract to Corner 27 thereof; thence a straight line southwesterly to junction of State Routes #621 and #625, about 2 miles west of Lowesville, thence southerly with route #625 to State Route #627; thence westerly with State Route #627 to State Route #617; thence southerly with State Route #617 to State Route #631; thence southwesterly with State Route #631 to U.S. Highway #60; thence westerly with U.S. Highway #60 to State Route #635 at Dodd's Store; thence a straight line southwesterly to Corner 3 of Tract #19; thence southwesterly with Tracts #19 and #117 to Corner 6 of Tract #117; thence a straight line southwesterly to Corner 2 of Tract #16; thence a straight line southerly to junction of State Route #647 and State Route #649, about 2 miles southwest of Pedlar Mills; thence westerly with State Route #647 to Corner 2 of Tract #507 thence southwesterly with said Tract to Corner 9 thereof; thence a straight line southwesterly to the James River at the mouth of Thomas Mill Creek; thence northwesterly up James River with Amherst-Bedford County line to the junction of James River and Maury River; thence a straight line northeasterly to the point of beginning.

Unit III (Massanutten Section)

Beginning at a point where Virginia State Route #675 crosses the North Fork of the Shennandoah River about one mile east of Edinburg, Shenandoah County, Virginia; thence northeasterly down the river to Corner 3 of Tract #410 on east bank of river; thence a straight

line northeasterly to Corner 9 of Tract #1a–1b; thence northeasterly with Tracts #1a–1b, 1a–II and 1a–I to Corner 3 Tract #1a–I; thence a straight line northeasterly to Corner 5 of Tract #65; thence northeasterly with said tract to Corner 4 thereof; thence a straight line northeasterly to Corner 6 of Tract #68–I; thence northeasterly with said Tract to Corner 7 thereof; thence a straight line northeasterly to Corner 33 of Tract #68; thence a straight line northeasterly to Corner 26 of Tract #68; thence northeasterly with said Tract to Corner 20 thereof; thence a straight line northeasterly to Corner 2 of Tract #160; thence northeasterly with said Tract to Corner 3 thereof; thence a straight line northeasterly to Corner 6 of Tract #160; thence a straight line northeasterly to junction of State Routes #1201 and #55, about 1 mile southeast of Strasburg, Virginia, thence easterly with State Route #55, entering Warren County to State Route #678 at Waterlick; thence southwesterly with State Route 678 to State Route #613, about ¼ mile northwest of fish hatchery; thence southerly with State Route #613 to a point opposite a big bend in the South Fork of Shenandoah River called The Point; thence a straight line easterly to said river; thence southwesterly up the river, entering Page County, to Corner 1 of Tract #1612; thence clockwise around said Tract to Corner 5 thereof; thence continuing up the river to a pont opposite Corner 11 of Tract #79; thence northwesterly a straight line to said Corner 11; thence with the boundary of Tract #79 to Corner 13 thereof; thence a straight line southwesterly to Corner 11 of Tract #17a; thence a straight line southwesterly to Corner 2 of Tract #583; thence southwesterly with said Tract to Corner 3 thereof; thence a straight line southwesterly to Corner 4 of Tract #37–I; thence a straight line easterly to a point where State Route #615 leaves U.S. Highway #211; thence a straight line southwesterly to Corner 9 of Tract #97; thence southwesterly with Tracts #97, #39 and #90 to Corner 23 of Tract #90; thence a straight line southwesterly to Corner 19 thereof; thence southwesterly with said Tract to Corner 13 thereof; thence a straight line southwesterly to Corner 10 of Tract #90; thence southwesterly with said Tract to Corner 9 thereof; thence a straight line southwesterly to Corner 5 of Tract #90; thence southwesterly with said Tract to Corner 54 thereof; thence a straight line due south to Page-Rockingham County Line; thence northwesterly with said line county line to Tract #90; thence a straight line southeasterly to Corner 5 of Tract #828; thence southwesterly with said Tract to Corner 6 thereof; thence a straight line southwesterly to Corner 11 of Tract #595; thence southwesterly with said Tract to Corner 9 thereof; thence a straight line southwesterly to Corner 45 of Tract #90, also Corner 1 of Tract #1551; thense clockwise with Tract #1551 to a point on a straight line between Kaylor Knob and Laird's Knob; thence northwesterly on said straight line to Laird's Knob; thence a straight line northwesterly to junction of State Routes #723 and #722; thence northeasterly and northwesterly with State Route #722 to State Route #620; thence northeasterly with State Route #620, entering Shenandoah County, to U.S. Highway #211; thence easterly with said Highway approximately one tenth mile to a point where State Route #620 leaves U.S. Highway #211; thence a straight line northeasterly to junction of old road and State Route #699 about ¼ mile southeast of Walkers Chapel; thence a straight line northeasterly to Corner 10 of Tract #600; thence northerly with said Tract to Corner 1 thereof; thence a straight line northeasterly about 1 mile to a bend in North Fork Shenandoah River; thence northerly and westerly down said River to the point of beginning.

Unit IV (Laurel Fork Section)

Beginning in the Virginia-West Virginia State Line at the corner common to Pocahontas and Pendleton Counties, West Virginia, and Highland County, Virginia, on top of the Allegheny Mountain; thence southeasterly with Pendleton-Highland County line, also State line, to Straight Fork; thence southwesterly up Straight Fork, entering Highland County, Virginia, to State Route #642; thence westerly with State Route #642 to Virginia-West Virginia State line; thence northerly with State line to the point of beginning.

The areas described add 1492.69 acres and eliminate 1668.25 acres.

Efffective Date: This order shall become effective on the date of its publication in the **Federal Register.**

Dated: May 17, 1979.

David G. Unger,

Deputy Assistant Secretary for Conservation, Research, & Education.

[FR Doc. 79-16385 Filed 5-24-79; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Sunflower Electric Cooperative, Inc., Hays, Kans.; Proposed Loan Guarantee

Under the authority of Public Law 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $9,678,000 to Sunflower Electric Cooperative, Inc., Hays, Kansas. The loan funds will be used to finance a project consisting of a 55.7 MW combustion turbine generator unit and related costs.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Arthur J. Schnose, Manager, Sunflower Electric Cooperative, Inc., P.O. Box 980, Hays, Kansas 67601.

In order to be considered, proposals must be submitted on or before June 25, 1979 to Mr. Schnose. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Sunflower Electric and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 18th day of May, 1979.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 79-16386 Filed 5-24-79; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Mt. Hope Watershed, Kans.; Deauthorization of Federal Funding

Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation

Service Guidelines (7 CFR 622). Federal funding for the Mt. Hope Watershed, Reno and Sedgwick Counties, Kansas, is hereby deauthorized.

A notice of intent not to file an environmental impact statement for deauthorization of Federal funding was published on January 15, 1979. Appropriate committees of Congress and concerned Federal, State, and local agencies were notified of the proposed deauthorization at least 60 days prior to the effective date. No objections to deauthorization or expressions of support to complete the project have been made known to the Soil Conservation Service.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Public Law 83–566, 16 USC 1001–1008.)

Dated: May 4, 1979.

Victor H. Barry, Jr.,

Deputy Administrator for Programs Soil Conservation Service.

[FR Doc. 79-16394 Filed 5-24-79; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjuction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
May 16, 1979	35556	Allegheny Airlines, Inc., Washington National Airport, Hangar No. 11, Washington, D.C. 20001. Application of Allegheny Airlines, Inc. requests the Board pursuant to Section 401 of the Act and Part 201 of the Board's Economic Regulations for an amendment of its certificate of public convenience and necessity for Route 97 so as to authorize it to engage in scheduled nonstop air transportation of persons, property, and mail between the terminal point Atlanta, Georgia, and the terminal point Nashville, Tennessee. Answers and Conforming Applications are due on June 13, 1979.
May 16, 1979	35560	Continental Air Lines, Inc., Los Angeles International Airport, Los Angeles, California 90009. Application of Continental Air Lines, Inc. Pursuant to section 401 of the Act for issuance of a certificate of public convenience and necessity authorizing it to engage in nonstop foreign air transportation of persons, property and mail between the terminal point Los Angeles, California and the terminal points Rio de Janeiro and Sao Paulo, Brazil. Answers due May 30, 1979. Conforming Application of Continental Air Lines, Inc. in Docket 35560 to the application of Braniff Airways, Inc. in Docket 35455.
May 17, 1979	35566	Air New England, Inc., c/o V. Michael Straus, Esq., Suite 401, 1001 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of Air New England, Inc. requests the Board pursuant to Section 401 of the Act for amendment of its certificate of public convenience and necessity for Route 172 so as to allow nonstop service in the Boston, Massachusetts-Cleveland, Ohio market. Answers and Conforming Applications due on June 14, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16404 Filed 5-24-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-5-135; Docket No. 35581]

Cleveland-San Jose/Oakland

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79–5–135) Cleveland-San Jose/Oakland Show Cause Proceeding.

SUMMARY: The Board is proposing to award new and improved authority between the points Cleveland and San Jose/Oakland to American, North Central, Southern, Ozark and Northwest, and any other fit, willing and able applicant whose fitness, willingness and ability can be established by officially noticeable data.

The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by June 22, 1979, 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 the issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 35581.

In addition, copies of such filings should be served on American Airlines, North Central Airlines, Southern Airways, Ozark Air Lines and Northwest Airlines.

FOR FURTHER INFORMATION CONTACT: Arthur B. Barnes, Bureau of Pricing & Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5198.

SUPPLEMENTARY INFORMATION: Objections should also be served upon American Airlines, North Central Airlines, Southern Airways, Ozark Air Lines, Northwest Airlines, and the Mayors of Oakland and San Jose.

The complete text of Order 79–5–135 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79–5–135 to that address.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16406 Filed 5-24-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79–5–125; Docket 35569 et al.]

Fort Myers-Atlanta/Tampa; Order To Show Cause

Fort Myers-Atlanta/Tampa Show-Cause Proceeding; Docket 35569; Applications of: Northwest Airlines, Inc., Delta Air Lines, Inc.; Dockets 31213, 31529 & 33222 for certificate authority.

Order To Show Cause

By Order 79–4–77, April 12, 1979, we made final our tentative findings in Order 79–1–100, in part, and granted the relevant portions of applications of Northwest Airlines, Allegheny Airlines, Ozark Air Lines, Southern Airways, Eastern Air Lines, and United Air Lines for new or improved authority between Fort Myers, on the one hand, and Chicago, Boston, New York, Philadelphia, Baltimore, and Washington, on the other.[1] We did not address ourselves to the objection filed by Northwest and the Fort Myers Parties to Order 79–1–100; we will do so now.

They objected to our omitting the Tampa-Fort Myers market from our tentative findings. Since the market was in issue in the *Florida Service Case*, Docket 33091, we declined to include it in the show-cause order. For the same reason we did not include the Atlanta-Fort Myers market, which Delta pointed to in its response to the joint objection. Both Northwest and Delta are applicants in the formal proceeding (Dockets 33198 and 33222, respectively), which is now ready for an initial decision by the law judge. We have now determined that where the same city-pair market is the subject of a formal proceeding and a subsequent show-cause proceeding, we will complete processing of the show-cause requests at the time that the final decision in the formal proceeding concludes that authority should be awarded to all fit, willing and able applicants. If such a conclusion is reached in the formal proceeding, the authority awarded in the show-cause proceeding subject to the conditions subsequent will become effective at the same time as the authority awarded in the formal case. If the final decision in the formal case reaches a different result, the overlapping authority sought in the show-cause proceeding would not become effective. Our decision to proceed in this manner is based primarily on the consideration that the applicants in the formal proceeding should not be disadvantaged by the receipt of authorty after subsequent applications have been processed under show-cause procedures.

As a result, we tentatively find that, if a final decision is reached in the *Florida* case, which awards authority to all fit, willing and able applicants in these two markets, it is consistent with the public convenience and necessity to grant such authority to any applicants for it in the show-cause proceeding. We establish the *Fort Myers-Atlanta/Tampa Show-Cause Proceeding*, Docket 35569, to deal with potential applications for such authority.[2]

We expect any new applicants for this authority to file, within 15 days of the date of service of this order, an application and motion to consolidate which contains the data we require.[3]

We will allow interested persons 30 days from the date of service of this order to (1) comment on the tentative findings and conclusions set forth here, and (2) respond to any applications filed in this proceeding. Replies to the comments and responses shall be due within 15 days after that.

Accordingly:

1. Except to the extent granted here, we deny the joint petition of Northwest Airlines and the Fort Myers Parties for reconsideration of Order 79–1–100;

2. Except to the extent granted here, we deny the joint petition of Delta Air Lines and the Fort Myers Parties for an order to show cause in Docket 33222;

3. We institute the *Fort Myers-Atlanta/Tampa Show-Cause Proceeding*, Docket 35569, to consider new applications for unrestricted authority in the markets in issue should multiple awards be made in the *Florida Service Case*, Docket 33091;

4. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings and conclusions set forth here, to file in Docket 35569 and serve upon all persons listed in paragraph 8, no later than June 20, 1979, 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; answers shall be due no later than July 2, 1979;

5. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further actions;[4]

6. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

7. Additional carriers desiring this authority should file applications and motions to consolidate with Docket 35569 along with the supporting data set forth in footnote 3 by June 5, 1979;

8. We will serve copies of this order on Northwest Airlines, Delta Air Lines, Eastern Air Lines and the Fort Myers Parties.

We will publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–16405 Filed 5–24–79; 8:45 am]

BILLING CODE 6320–01–M

[Order 79–5–134]

Allegheny Airlines et al.; Order

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79–5–134.

SUMMARY: The Board is proposing to grant New Orleans-Cleveland and Pittsburgh nonstop authority to Allegheny Airlines and Northwest Airlines, New Orleans-Cleveland, Detroit and Pittsburgh nonstop authority to Continental Air Lines and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. Further, the Board is granting exemption authority to Allegheny Airlines so as to permit it to serve the New Orleans-Cleveland and Pittsburgh markets *pendente lite* on a conditional basis. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than June 21, 1979, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

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[1] United's application was limited to the Chicago-Fort Myers market.

[2] Except to the extent granted by our action in this order, we will deny the joint petition of Delta and Fort Myers Parties for an order to show cause in Docket 33222. We have already dismissed the Atlanta/Tampa-Fort Myers portions of Delta's application in Docket 31529 and the Tampa-Fort Myers portion of Northwest's application in Docket 31213 (see Order 79–1–100). Northwest is an applicant in the *Florida Service Case* for Atlanta/Tampa-Fort Myers authority, and Delta seeks Atlanta-Fort Myers authority in the same proceeding. Thus, their requests for this authority are being considered there. Should Delta decide that it wants Tampa-Fort Myers authority, it is free to file another application and a motion to consolidate with the *Fort Myers-Atlanta/Tampa Show-Cause Proceeding*. We note, however, that Delta indicated in a letter to us (see Order 79–4–77) that, despite the omnibus nature of its application in Docket 31529, it really wants only Atlanta-Fort Myers authority. Since the application encompasses several other Fort Myers markets, we expect Delta to file a pleading requesting either dismissal of its application or further procedures of some kind.

[3] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[4] Since we are providing for the filing of objections to this order, we will not entertain petitions for reconsideration.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than June 6, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35580, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Richard E. Clusman, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., Washington, D.C., 20428, (202) 673-5216.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Allegheny Airlines, Continental Air Lines and Northwest Airlines.

The complete text of Order 79-5-134 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-5-134 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board, May 17, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16407 Filed 5-24-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Water Use in Manufacturing: 1978; Water Use in the Mineral Industries: 1978; Consideration

Notice is hereby given that the Bureau of the Census is planning to conduct, as part of the 1977 Economic Censuses, a sample survey on industrial water use in 1978 under authority of title 13, United States Code, sections 131, 224, and 225. This survey will provide detailed information on water intake, recirculation, and discharge, as well as costs incurred in water treatment. The information reported in this survey will be tabulated by industry, State, and water use region for 1978. The last such survey covered the year 1973.

The sample will include all manufacturing and mining operations that reported water intake of 20 million gallons or more in the 1977 Censuses of Manufactures and Mineral Industries.

In developing the form for this survey, companies, trade associations, and government agencies were contacted to determine that the data requested were both important and available from company records. It was generally agreed that the data are both useful and reportable without undue burden.

Some of the companies asked to review the draft form suggested that water use data could be obtained from the applications for permits filed with the Environmental Protection Agency under the National Pollutant Discharge Elimination System (NPDES). It is not possible to develop data of the type provided by this survey from the NPDES permits. The NPDES data were collected for regulatory purposes and are not organized so that they may be readily retrieved and tabulated for statistical purposes. In addition, the NPDES data cover only direct dischargers, excluding plants that discharge to a public utility sewer. Therefore, it is necessary to conduct a special survey to obtain data on quantities of water used by all large industrial users.

This survey shall begin not earlier than July 24, 1979.

Copies of the proposed forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of this survey should be submitted in writing to the Director of the Bureau of the Census within 60 days after the date of this publication to receive consideration.

Dated: May 22, 1979.

Daniel B. Levine,

Acting Director, Bureau of the Census.

[FR Doc. 79-16403 Filed 5-24-79; 8:45 am]

BILLING CODE 3510-07-M

Economic Development Administration

Intent To Prepare Environmental Impact Statement

Notice is hereby given that, pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Economic Development Administration (EDA) of the U.S. Department of Commerce will prepare an environmental impact statement (EIS) on the proposed Sevier County (Tennessee) Inter-City Water Connection Plan, Phase I.

The proposal involves construction of water mains connecting the towns of Gatlinburg, Pigeon Forge, and Pittman Center. Also, included in the project are pumping stations and water storage reservoirs. In the future, phases II and III of this system will expand the Pittman Center service area and service to Sevierville. Sevier County is adjacent to and its economy, to a large extent, dependent upon the Great Smoky Mountain National Park.

Alternative water sources, pipeline routes and sizes will be analyzed.

Pursuant to CEQ regulations, a scoping meeting will be held near the project both to inform interested parties and to solicit their comments. A notice will be published in Knoxville and local newspapers two weeks prior to the meeting indicating the time, date, and location of the scoping meeting.

Comments and questions regarding the proposed water system or the EIS should be addressed to Michael Dorrington, EIS Coordinator, Room 7217 (EDA), U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202/377-5339.

Dated: May 22, 1979.

Robert Hall,

Assistant Secretary for Economic Development.

[FR Doc. 79-16451 Filed 5-24-79; 8:45 am]

BILLING CODE 3510-24-M

Industry and Trade Administration

Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, June 12, 1979, at 1:30 p.m. in Conference Room A, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975. On October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

The Subcommittee meeting agenda has four parts:

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Review of comments on 1979 Leipzig Fair picture book.

(4) Review of recent COMECON advances in mini and micro computer technology.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: May 22, 1979.

Lawrence J. Brady,

Acting Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 79–16464 Filed 5–24–79; 8:45 am]

BILLING CODE 3510–25–M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, June 12, 1979, at 9:00 a.m. in Conference Room A, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was initially established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

The Subcommittee meeting agenda has five parts:

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

Review of Subcommittee recommendations on distribution license computer parameters in light of recent revisions announced.

(4) Review of other Subcommittee recommendations.

(5) Discussion and preparation of Subcommittee position paper on the qualified general/product distribution license.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: May 22, 1979.

Lawrence J. Brady,

Acting Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 79–16463 Filed 5–24–79; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

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 (Public Law 94–265), will hold its 23rd regular meeting to consider: (1) Discussion of relevant issues with respect to the Spiny Lobster Fishery Management Plan (FMP) prior to submission to the Secretary; (2) applications for foreign fishing to be conducted during 1979, off the coast of the United States; (3) status reports on the following FMP's: Shallow-Water Reef Fishes, Migratory Coastal Pelagics, Mollusks, Deep-Water Reef Fishes, and Billfishes; (4) HR 3852 to amend the FCMA of 1976 (Public Law 94–265); (5) legal and biological opinions on highly migratory species; (6) other Council business.

DATES: The meeting will convene on Wednesday, June 13, 1979, at 9 a.m. and will adjourn at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Hotel Pierre, 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: May 21, 1979.

Winfred H. Meibolhm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-16516 Filed 5-24-79; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletion from Procurement List.

SUMMARY: This action deletes from Procurement List 1979 commodities produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 25, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 6, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (44 FR 20737) of proposed deletion from Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby deleted from Procurement List 1979:

Class 7920

Mophead, Wet: 7920-00-634-0202; 7920-00-634-0203.

C. W. Fletcher,

Executive Director

[FR Doc. 79-16387 Filed 5-24-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement Lists 1979; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1979 commodities to be produced by workshops for the blind and other severely handicapped.

COMMENT MUST BE RECEIVED ON OR BEFORE: June 27, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 7220.

Mat, Floor, Plastic: 7220-00-457-6046; 7220-00-457-6054.

C. W. Fletcher,

Executive Director.

[FR Doc. 79-16388 Filed 5-24-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1979 commodities to be produced by workshops for the blind or other severly handicapped.

EFFECTIVE DATE: May 25, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 27, 1978 and March 16, 1979, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (43 FR 55274 and 44 FR 16030) of proposed additions to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1979:

Class 7210.—Pillow, Bed: 7210-00-119-5358.

Class 1005.—Swab, Small Arms Cleaning: 1005-00-912-4248; 1005-00-288-3565.

C. W. Fletcher,

Executive Director

[FR Doc. 79-16389 Filed 5-24-79; 8:45 am]

BILLING CODE 6820-33-M

COMMISSION ON CIVIL RIGHTS

New Hampshire 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 conference of the New Hampshire Advisory Committee (SAC) of the Commission will convene at 9 a.m. and will end at 6 p.m., on June 18, 1979, at Plymouth State College, Plymouth, New Hampshire.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New York Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this conference is to have a consultation on battered women.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 22, 1979

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-16391 Filed 5-24-79; 8:45 am]

BILLING CODE 6335-01-M

Vermont 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 planning meeting of the Vermont Advisory Committee (SAC) of the Commission will convene at 7:30 pm and will end at 9:00 pm, on July 10, 1979, Tavern Motor Inn, Box 278, 100 State Street, Montpelier, Vermont 05602.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New York Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 22, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-16392 Filed 5-24-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Supplement to the Final Environmental Statement for Corpus Christi Ship Channel, Texas, 45-Foot Federal Project

AGENCY: Galveston District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Supplement.

SUMMARY: 1. The proposed action to be addressed in the Draft Environmental Supplement is to designate additional disposal sites for use during deepening of the Inner Harbor portion of the Corpus Christi Ship Channel to the authorized 45-foot depth. The proposed action would provide additional disposal capacity in areas which would substantially reduce environmental damages to the Corpus Christi-Nueces Bay estuarine system.

2. Alternatives to the proposed action to be considered in the Draft Environmental Supplement include various locations and combinations of locations to be used as disposal areas for the placement of dredged material. The no action alternative will also be considered.

3.a. Coordination of the project has included circulation of a draft environmental statement which was filed 8 February 1971 and a final environmental statement was filed on 7 May 1971. Additional coordination has included consultation with local governing entities, the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Texas Parks and Wildlife Department.

b. The issues, identified during past coordination and participation, which are being considered in depth include: (1) effects of placing dredged material in Nueces Bay, and (2) potential effects of future contaminated return flows from contained disposal areas entering Nueces Bay.

c. Coordination and consultation will continue with appropriate local, State, and Federal agencies and the interested public.

d. Other environmental consultation and review will be conducted in accordance with various laws and regulations.

4. A meeting to determine the scope of the Draft Environmental Supplement is scheduled for July 1979 in the Corpus Christi, Texas area and appropriate participants will be advised of the time, date and location.

5. The Draft Environmental Supplement is scheduled to be available for public review in November 1979.

ADDRESS: Questions about the proposed action and Draft Environmental Supplement can be answered by Mr. C. R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553, (713) 763-1211, extension 492.

Dated: May 16, 1979.

Jon C. Vanden Bosch,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-16344 Filed 5-24-79; 8:45 am]

BILLING CODE 3710-GK-M

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Sabine-Neches Waterway, Texas, Civil Works Navigation Improvement Project

AGENCY: Galveston District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. The proposed action to be addressed in the DEIS is improvements to the Sabine-Neches Waterway, Texas, Federal Navigation Project in southeast Texas. The proposed project would provide more efficient waterborne commerce in the general area including the Cities of Port Arthur and Beaumont.

2. Alternatives to be considered in the DEIS include deepening and widening several reaches of the existing navigation channel, alternate methods of transporting petroleum, alternate means of dredging and disposal, and no action. Widening by 100 feet and deepening by 5- and 10-foot increments will be intensely investigated.

3.a. Coordination of the project has included a public meeting, individual consultation with local governing entities, and a planning aid document from the U.S. Fish and Wildlife Service. A public meeting was held in Port Arthur, Texas on 19 May 1977 to obtain public views and preferences on alternative plans. Proposed plans will be developed in accordance with Corps of Engineers regulations, considering the views expressed by the public and agencies of the local, State, and Federal governments. Details of the proposed plan will be presented at another public meeting prior to submission of a Feasibility Report through Corps of Engineers channels to Congress for consideration.

b. Some important environmental considerations to be analyzed as a result of past coordination and participation include: (1) safety provisions of the waterway to protect human lives and the environment, (2) erosion control, (3) effects of sedimentation on sport and commercial fishing, (4) reduction of disposal areas required, and (5) increases of the salt budget to Sabine lake to increase shrimp landings.

c. Coordination and consultation will continue with appropriate local, State, and Federal agencies and the interested public.

d. Other environmental consultation and review will be conducted in accordance with various laws and regulations.

4. A public meeting specifically to determine the scope of the DEIS will not be held. However, all previous and future input to studies for the project will be considered in the scoping process.

5. The DEIS is scheduled to be available to the public in December 1979.

ADDRESS: Questions about the proposed action and DEIS can be answered by Mr. C. R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553, (713) 763-1211, extension 492.

Dated: May 15, 1979.

Jon C. Vanden Bosch,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-16343 Filed 5-24-79; 8:45 am]

BILLING CODE 3710-GK-M

Office of the Secretary

Defense Science Board Task Force on Enduring Strategic Command Control and Communications

The Defense Science Board Task Force on Enduring Strategic Command Control and Communications will meet in closed session on 21-22 June 1979 in Washington, D.C.

The mission of the Defense Science board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs to the Department of Defense.

A meeting of the Task Force on Enduring Strategic Command Control

and Communications has been scheduled for 21–22 June 1979 to draft final report to the Secretary of Defense.

In accordance with 5 U.S.C. App. I § 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

May 22, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-16390 Filed 5-24-79; 8:45 am]

BILLING CODE 3810-70-M

Defense Science Board Task Force on EMP Hardening of Aircraft

The Defense Science Board Task Force on EMP Hardening of Aircraft will meet in closed session 20–21 June 1979 at Wright-Patterson Air Force Base, Dayton, Ohio.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will review hardening of U.S. aircraft against EMP and related subjects and will provide recommendations for appropriate actions.

In accordance with 5 U.S.C. App. I § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: May 22, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-16461 Filed 5-24-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Intent To Revise Transmission Rates; Request for Public Comment

AGENCY: Department of Energy, Bonneville Power Administration.

ACTION: Notice of Intent to Revise Transmission Rates.

SUMMARY: Bonneville Power Administration (Bonneville) is in the initial stages of developing adjusted rates for the transmission of electric power of other entities over Federal facilities. It is presently anticipated that the adjusted rates will become effective July 1, 1980, or as soon thereafter as possible. At this time, Bonneville is seeking comments and recommendations from the public which can be used to assist in the development of the transmission rate adjustment proposal.

Bonneville expects to have its initial proposed rate adjustments formulated prior to December 1979 and will publish a notice announcing their availability. The notice will also announce a schedule for information and comment forums. At the information forums, Bonneville will explain its proposal, while the comment forums will allow the public an opportunity to present both oral and written comments on the proposal.

DATES: Effective date: May 25, 1979. Written recommendations concerning the development of Bonneville's initial proposal for adjusted transmission rates will be accepted through June 25, 1979.

FOR FURTHER INFORMATION CONTACT: Public Involvement Coordinator, Bonneville Power Administrator, P.O. Box 12999, Portland, Oregon 97212; 503–234–3361, extension 4261.

SUPPLEMENTARY INFORMATION:

Background

Bonneville, as an agency of the Federal Government, owns and operates approximately 80 percent of the high-voltage electric transmission grid of the Pacific Northwest. It transmits electric power for both privately owned and publicly owned Pacific Northwest utilities, Federal agencies, and its direct-service industrial customers. Bonneville also provides transmission services to its customers outside the Pacific Northwest. Bonneville is now undertaking studies to support changes to the currently effective transmission rates for three types of transmission service. These three types of transmission services generally involve: (1) Moving electric power from points of generation to load or between other points of supply and delivery on a firm transmission basis. Current contracts provide this service for periods of up to 50 years. (2) Moving energy on an incidential basis when there is excess capacity. Current contracts for this service provide for short-term energy transfers and usually provide for termination by the customer on 1 year's notice and by Bonneville on 3 years' notice. (3) Moving electric power over specified transmission facilities. Bonneville will also examine the adequacy of current charges for other transmission related services.

The anticipated transmission rate adjustments are needed to cover increasing transmission costs. It is further anticipated that the adjusted rates will be substantially higher than the rates currently in effect. However, these costs generally represent only a small portion of a utility's total costs, and it is expected that the increase would have minimal impact on ultimate consumers who buy from the utility.

The present rates for the three services described above were approved on an interim basis and are in effect until June 30, 1979. The revenues now being collected under these rates are subject to refund, pending a final ruling by the Federal Energy Regulatory Commission (FERC). Because a number of Bonneville's contracts for transmission service restrict the frequency of rate increases to once each 3 years, the earliest that rates for such contracts can be changed is July 1, 1980, 3 years from the date the current transmission rates were approved on a conditional basis by the Federal Power Commission on June 10, 1977.

Bonneville expects to schedule public forums regarding its adjusted transmission rate proposals when they have been formulated and will accept written comments until 15 days after the last public forum. All comments and recommendations will be considered by Bonneville in developing its revised proposal.

During the current phase of the rate development process, Bonneville is seeking comments and recommendations from the public concerning future transmission rates. Specifically, Bonneville requests views regarding: (1) methods for the equitable allocation of costs of the Federal transmission system between Federal and non-Federal power utilizing the system; and (2) rate design alternatives which meet Bonneville's revenue needs, and promote the development of regional transmission facilities that are the most economically efficient and environmentally appropriate, and meet sound engineering criteria.

FOR FURTHER INFORMATION CONTACT: The Public Involvement Coordinator, Bonneville Power Administrator, P.O. Box 12999, Portland, Oregon 97212, 503–234–3361, extension 4261. Submit any written recommendations concerning future Bonneville transmission rates to

the preceding address no later than June 25, 1979.

Dated: May 11, 1979.

Ray Foleen,

Acting Administrator.

[FR Doc. 79-16456 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

THE DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-TA-79-3]

Aminoil; Issuance of Proposed Decision and Order

Notice is hereby given that the Economic Regulatory Administration has issued to Aminoil USA, Inc. a Proposed Decision and Order with regard to an application for incentive prices pursuant to 10 CFR 212.78, the Tertiary Enhanced Recovery Program. Under the provisions of 10 CFR 205.98, such a Decision and Order must be published in the **Federal Register.** Interested parties have thirty calendar days from the date of publication to submit objections or comments. Upon review of any matters submitted, we may issue a final Decision and Order in the form proposed, issue a modified proposed or final Decision and Order, or take other appropriate action. All parties offering objections or comments will be notified of the action taken and will be furnished a copy of that action. Objections or comments should cite the Docket number and be addressed to: Administrator, Economic Regulatory Administration, Department of Energy, Washington, D.C. 20461, Attention: Chief, Branch of Crude Oil Production.

As required a copy of the Proposed Decision to Aminoil USA, Inc. is supplied below in this Notice. The original of that document contains information which is arguably confidential under 18 U.S.C. 1905. Such information has been deleted from the copy here published.

In addition, a copy of the text of the Proposed Decision and Order together with a copy of Aminoil's application is available in the Public Docket Room, Room B-120, 2000 M Street, N.W., Washington, D.C., between 1:00 p.m. and 5:00 p.m., Monday through Friday, and in the Department of Energy Reading Room, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Dated: May 17, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

Proposed Decision and Order of the Department of Energy, Application for Price Incentives, Tertiary Enhanced Recovery Project 392—Lower Main Zone Project; Name of Petitioner: Aminoil USA, Inc.*

Background

On March 2, 1979, R. J. Reynolds Industries, Inc. on behalf of Aminoil USA, Inc. (Aminoil) submitted to the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) an application for incentive pricing under the Tertiary Enhanced Recovery Program of 10 CFR 212.78 with respect to crude oil production from its Alkaline Flood Project in the Lower Main Zone of the offshore area of the Huntington Beach Field of Orange County, California.

The Huntington Beach Oil Field is the second largest field in the Los Angeles Basin. Since its discovery in 1920, about 980,000,000 barrels of crude have been taken from the field. An estimated 100,000,000 barrels of reserves remain in place. Located approximately 40 miles southeast of Los Angeles, the field straddles the coast line in the western portion of the City of Huntington Beach with a major portion of the field lying seaward from the shoreline. A two mile salient into the San Pedro Channel was discovered in 1930.

Production from the lower Main Zone of this salient was pursued by primary methods from 1940 to 1969. 7,700,000 barrels of crude were produced during this period. Waterflooding was initiated in 1969 and by 1972 the entire Lower Main Zone had been waterflooded. By 1977 the total water injected had reached twice the pore volume of the Zone, and the water-oil ratio had reached 30 to 1 under an injection rate of 450,000 barrels per day. An additional 4,000,000 barrels were produced by waterflooding.

In 1977, after having studied and rejected other methods of enhanced oil recovery, Aminoil prepared for an alkaline flood of the Lower Main Zone. For a pilot project, which is the subject of this application, Aminoil determined upon an offshore area within the State of California PRC 392.1 Lease. Two sides of the project area are bounded by faults impermeable to fluid migration. The project area is located so that there are no known "thief zones" which would cause inefficient oil displacement due to bypassing.

The project area thus controlled occupies a tract of roughly 1,700 acres about 700 feet seaward from mean high tide.

In the 392 Lower Main Zone Project area, which has twelve wells drilled directionally at 20 degrees from onshore, Aminoil began pre-flush injection in June, 1978. Commencement of alkaline chemical injection has been tentatively scheduled for August, 1979.

Aminoil has requested that the pricing incentives of Section 212.78 be granted for the incremental crude oil production from this project.

Findings and Analysis

A. Section 212.78 provides that the "incremental crude oil" from a "qualified tertiary enhanced recovery project" may be sold at prices not subject to the ceiling price limitations of Subpart D of Part 212. In order for crude oil production from a particular project to be priced in accordance with the price rule of Section 212.78, ERA must certify the project as a qualified tertiary enhanced recovery project. Prior to granting this certification, Section 212.78(d) requires ERA to determine that (1) the project involves one of the enhanced oil recovery techniques listed in the definition of a qualified tertiary recovery project set forth in Section 212.78(c) and (2) the project would not be economic at the otherwise applicable ceiling prices. With respect to a project that is initiated prior to receipt of the required certification, Section 212.78(b)(2) provides an additional requirement that certification will be granted only if (1) a producer affirms that it intends to discontinue the project (or the particular high-cost phase of the project) because continuation would be uneconomic at the otherwise applicable ceiling prices and (2) there has been a material change of circumstances since the initiation of the project. If ERA grants certification, it must also determine the amount of non-incremental crude oil (as defined in Section 212.78(c)) that will result from the project.

B. Aminoil has furnished information indicating that it has analyzed the characteristics of the reservoir in which the project is located and has, after examining alternative techniques, selected alkaline flooding as an enhanced oil recovery technique appropriate to the geological structure, stratigraphy, rocks and rock-fluid systems of that reservoir. Its application

*The original of this Decision and Order contains informatin which is arguably confidential under 18 U.S.C. 1905. Such information has been deleted from this copy.

describes a multi-year program of fluid injection with specified chemical concentrations in specified target volumes. This program also provides for surface facility installations and well work to further the project.

The State of California Division of Oil and Gas has reviewed the Aminoil proposal and states that all operations are being conducted in accordance with California's regulatory requirements. The Division notes that the engineering, geological and performance data are representative of the Lower Main Zone and it encourages the use of an alkaline waterflooding process to maximize recovery.

Inasmuch as alkaline waterflooding is one of the techniques listed in Section 212.78(c), we have determined that the 392 Lower Main Zone Alkaline Flood Project meets the first requirement for certification as a qualified tertiary enhanced recovery project.

C. Aminoil has submitted data indicating that the 392 Lower Main Zone Project will be an uneconomic venture unless the market price is available for incremental crude oil from the project. These data indicate that under existing ceiling price regulations the project will generate a negative annual cash flow for eleven of the next thirteen years. The relevant data are summarized in Figure 1 attached to this Decision and Order. Under optimistic incremental production expectations, the discounted rate of return over the predictable life of the project is negative.

Based on the information submitted by Aminoil, we have determined that the 392 Lower Main Zone Project meets the second requirement for certification, namely that the project is uneconomic under current price controls because the expected rate of return under the most salutary production expectations yields a financial loss.

D. Since an alkaline waterflood has already been initiated with respect to the 392 Lower Main Zone Project, the requirements of Section 212.78(b)(2) must be met prior to ERA's granting certification. On the basis of submissions by Aminoil, we have determined that these requirements have been met. Aminoil affirms that not only will the alkaline flood program be abandoned if incentive prices for incremental crude are not forthcoming, but also that secondary recovery (waterflooding) will not be resumed. Five producing wells would be immediately shut in and all water injection discontinued. The remaining three wells would decline at a rate of 45 percent per year until the economic limit is passed, probably in the third quarter of 1979. All production from the project area would then cease. Aminoil has submitted information showing that a continuation of waterflooding after terminating the alkaline flood program would be conducted at an economic loss of ——— per year under optimistic production expectations.

Aminoil has stated that it expected to obtain stripper prices for tertiary oil from the Lower Main Zone project. The expectation was based on the language of the Energy Conservation and Production Act of August 14, 1976. That Act directed the President to promulgate regulations providing incentives for bona fide tertiary enhanced recovery techniques "as soon as practicable after the date of enactment". These regulations were not adopted until September 1, 1978 and contained the requirements of Section 212.78(b)(2) with respect to projects already initiated.

Thus, the expected circumstances under which Aminoil initially undertook the project, namely obtaining uncontrolled prices for incremental crude early in 1977, failed to materialize. Moreover, since making original plans and projections, Aminoil states that well workover costs have turned out to be ——— times the original estimates, and operating expenses are rising ——— percent per year as against ——— percent used in the initial calculations. These factors represent a material change in circumstances.

E. In evaluating Aminoil's application, we have taken full cognizance of Aminoil's contract with ERDA, by which Aminoil received $497,000 for performing some special operations during the preparatory phases of the subject project. Thus, ERA's analysis of Aminoil's application relates only to Aminoil's share in that project.

F. Aminoil asks that the 392 Lower Main Zone Project be certified to receive the uncontrolled price for all incremental crude from the date of initially undertaking the project, namely December 13, 1976. In prior proposed Decisions and Orders we have adopted the policy of certifying a project to receive the incentive for incremental crude oil from the date on which the complete application was submitted. We believe this policy should be continued with respect to Aminoil.

It is, therefore, ordered that: 1. The 392 Lower Main Zone Project, operated by Aminoil USA, Inc. for itself and other working interests, producing crude oil from the Lower Main Zone Under California State Lease PRC 392.1 in the Huntington Beach Field of Orange County, California is declared to be a qualified Tertiary Enhanced Recovery project within the meaning of 10 CFR 212.78.

2. Crude oil produced each month from the 392 Lower Main Zone Project in excess of the following schedule of "Non-Incremental Crude" is not subject to the ceiling price limitations of 10 CFR, Part 212, Subpart D:

Monthly Nonincremental Crude Volumes

Year and month	Barrels
1979:	
March	7,130
April	6,600
May	6,510
June	4,200
July	3,880
August	3,720
September	3,510
October	1,710
November	1,560
December	1,520
1980:	
January	1,490
February	1,290
March	1,360
April	1,200
May	1,180
June	1,080
July	1,090
Thereafter	0

3. The Base Production Control Level (BPCL) for the State of California PRC 392.1 Lease upon and after issuance of this Order shall be the BPCL for that property prior to such issuance, provided that:

(i) the separately measured total production from that property (other than from the 392 Lower Main Zone Project) plus the "Non-Incremental Crude" as shown in the schedule in 2 above, shall be credited against that BPCL, and

(ii) Aminoil hereafter measures separately the production from the 392 Lower Main Zone Project and California State PRC 392.1 Lease excluding the 392 Lower Main Zone Project.

4. This certification is based on the presumed validity of statements, assertions, and documentary materials submitted by Aminoil. It is based on Aminoil's implicit assurance that all actual and projected costs reported by the firm have been determined on an arm's length basis and represent fair and reasonable market price valuations for the expenditures involved, that all actual and projected production figures have been derived from reliable records or made on the basis of generally acceptable engineering practice, and that every effort has been made to insure that all cost revenue and production estimates are reasonably accurate.

5. This order will continue in effect from the date of this order so long as Aminoil pursues the alkaline flood program in the Lower Main Zone of the

Huntington Beach Field within the project area as described in its application, provided that it may be revoked or modified at any time upon a determination that the factual basis underlying the application is materially incorrect.

Issued in Washington, D.C., May 17, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

Figure 1.—*Aminoil 392—Lower Main Zone Project; Annual Project*

Year	Production (1,000 bbls)		Total income $1,000	Total costs $1,000	Cash flow $1,000
	Lower tier[1]	Upper tier[2]			
1979					( )
1980					( )
1981					( )
1982					( )
1983					( )
1984					( )
1985					( )
1986					( )
1987					( )
1988					( )
1989					( )
1990					( )
1991					( )

[FR Doc. 79-16460 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Mandatory Petroleum Price Regulations; Delegation of Enforcement Authority to the State of Connecticut

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Delegation Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has delegated to the Governor of Connecticut the authority to enforce the provisions of 10 C.F.R. Subpart F, Part 212, and ancillary provisions of DOE regulations, with respect to the pricing practices of independent retailers of gasoline in Connecticut.

EFFECTIVE DATE: May 21, 1979.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Room B-110, 2000 M Street, NW., Washington, D.C. 20461, (202) 634-2170.

Leon Snead, Office of Enforcement Policy and Planning, Economic Regulatory Administration, Room 5204C, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-6990.

SUPPLEMENTARY INFORMATION:

I. Delegation of Authority and Letter to Governor of Connecticut.

II. Governor of Connecticut's Letter Requesting Authority from DOE.

Issued in Washington, D.C. on May 17, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Department of Energy, Delegation Order No. 0204-4-R3 to the Governor of the State of Connecticut

Pursuant to the authority vested in me as Administrator of the Economic Regulatory Administration (ERA) by the Department of Energy Organization Act (Pub. L. 95-91) and Delegation Order No. 0204-4 from the Secretary of Energy (delegating enforcement authority), there is hereby delegated to the Governor of Connecticut, in accordance with the provisions of the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159), as amended, the authority vested in me by law to enforce the provisions of 10 C.F.R. Subpart F, Part 212, and ancillary provisions of DOE regulations, with respect to the pricing practices of independent retailers of gasoline in Connecticut. The ancillary provisions are 10 C.F.R. §§ 210.61, 210.62, 210.92; and 10 C.F.R. §§ 212.128, 212.129.

The authority delegated herein to the Governor of Connecticut shall authorize her to:

A. Take all investigatory and administrative enforcement action which is available to the ERA under 10 C.F.R. § 210.91 and 10 C.F.R. Part 205 of DOE regulations.

B. Further delegate this authority, in whole or in part, as may be appropriate.

In exercising the authority delegated by this Order, the delegate shall be governed by the rules and regulations of the DOE and the policies and procedures prescribed by the Secretary of Energy, the Administrator of the Economic Regulatory Administration, and the Assistant Administrator for Enforcement.

There is no delegation to the Governor of the State of Connecticut of the authority to issue rules or regulations.

Nothing in this order precludes the Administrator of the ERA from exercising any of the authority so delegated whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

Further, nothing in this order precludes the Administrator of the ERA from withdrawing the delegated authority at any time.

This order is effective May 21, 1979.

Issued in Washington, D.C. on May 17, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Department of Energy,
Washington, D.C. 20461

Honorable Ella T. Grasso,
Governor of Connecticut, Hartford, Connecticut

Dear Governor Grasso: Thank you for your letter of May 7, 1979, requesting that the Department of Energy delegate to the State of Connecticut the authority to enforce Federal price regulations at retail gasoline pumps.

We are delegating to you on a trial basis the authority to enforce gasoline prices at the retail level within the State of Connecticut. We believe that the added resources of the State in the enforcement of price regulations at the retail level will bring greater protection to the consumer. There is all the more need for such increased protection in light of current market uncertainties.

In conjunction with this delegation, I am requesting that the appropriate State office provide the Assistant Administrator for Enforcement with a periodic status report. By this means, both Connecticut State officials and the Department of Energy can keep abreast of the progress we are making with this program.

I understand that the Office of Enforcement is working with the Connecticut Under Secretary for Energy to arrange for appropriate training. We will be glad to provide any further assistance you desire in setting up the enforcement program. We also agree to continue our scheduled activity in your State until State personnel actually initiate enforcement activities.

Please have your staff call Mr. Barton Isenberg, Assistant Administrator for Enforcement, (202) 254-8740, if you would like to discuss this matter further.

Sincerely,

David J. Bardin,

Administrator, Economic Regulatory Administration.

Mr. David J. Bardin,
Administrator, Economic Regulatory Administration, Department of Energy, Washington, D.C.

May 7, 1979.

Dear Mr. Bardin: Thank you for your recent letter concerning governmental efforts to protect consumers from possible illegal gasoline prices at the pump. I share your concern in this regard. As a State, we are

most concerned with the increasing need for adequate monitoring and enforcement in this area.

For this reason I am requesting that the authority of the Administrator of the Economic Regulatory Administration under existing legislation (the Department of Energy Organization Act, Pub. L. 95–91 as amended; the Emergency Petroleum Allocation Act of 1973, Pub. L. 93–153; and the Economic Stabilization Act of 1970 as amended, Pub. L. 52–210 to determine the compliance of retailers of motor gasoline with the mandatory petroleum price regulation, 10 CFR 212.91 et seq.), be delegated to the State of Connecticut.

While it is my understanding that our participation at the retail level will allow Federal resources to be directed toward effective enforcement at the refiner/wholesaler level, I would request that the interim activity scheduled to be conducted in this State be continued until the assigned State agency personnel actually initiate enforcement activities.

If you have any questions regarding Connecticut's efforts in this matter, please contact Thomas Fitzpatrick, Under Secretary for Energy, Office of Policy and Management at (203) 566–2800.

With best wishes,

Cordially,

Ella Grasso,

Governor.

[FR Doc. 79–16511 Filed 5–24–79; 8:45 am]

BILLING CODE 6450–01–M

Mandatory Petroleum Price Regulations; Delegation of Enforcement Authority to the State of Rhode Island

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Delegation Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has delegated to the Governor of Rhode Island the authority to enforce the provisions of 10 CFR Subpart F, Part 212, and ancillary provisions of DOE regulations, with respect to the pricing practices of independent retailers of gasoline in Rhode Island.

EFFECTIVE DATE: May 21, 1979.

FOR FURTHER INFORMATION CONTACT: William Webb (Office of Public Information), Room B–110, 2000 M Street, NW., Washington, D.C. 20461 (202) 634–2170; Leon Snead, Office of Enforcement Policy and Planning, Economic Regulatory Administration, Room 5204C, 2000 M Street, NW., Washington, D.C. 20461 (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Delegation of Authority and Letter to Governor of Rhode Island

II. Governor of Rhode Island's Letter Requesting Authority from DOE

Issued in Washington, D.C. on May 17, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Department of Energy Delegation Order No. 0204–4–R2 to the Governor of the State of Rhode Island

Pursuant to the authority vested in me as Administrator of the Economic Regulatory Administration (ERA) by the Department of Energy Organization Act (Pub. L. 95–91) and Delegation Order No. 0204–4 from the Secretary of Energy (delegating enforcement authority), there is hereby delegated to the Governor of Rhode Island, in accordance with the provisions of the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended, the authority vested in me by law to enforce the provisions of 10 CFR Subpart F, Part 212, and ancillary provisions of DOE regulations, with respect to the pricing practices of independent retailers of gasoline in Rhode Island. The ancillary provisions are 10 CFR §§ 210.61, 210.62, 210.92; and 10 CFR §§ 212.128, 212.129.

The authority delegated herein to the Governor of Rhode Island shall authorize him to:

A. Take all investigatory and administrative enforcement action which is available to the ERA under 10 CFR § 210.91 and 10 CFR Part 205 of DOE regulations.

B. Further delegate this authority, in whole or in part, as may be appropriate.

In exercising the authority delegated by this Order, the delegate shall be governed by the rules and regulations of the DOE and the policies and procedures prescribed by the Secretary of Energy, the Administrator of the Economic Regulatory Administration, and the Assistant Administrator for Enforcement.

There is no delegation to the Governor of the State of Rhode Island of the authority to issue rules or regulations.

Nothing in this order precludes the Administrator of the ERA from exercising any of the authority so delegated whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

Further, nothing in this order precludes the Administrator of the ERA from withdrawing the delegated authority at any time.

This order is effect May 21, 1979.

Issued in Washington, D.C., on May 17, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Honorable J. Joseph Garrahy, Governor of Rhode Island, Providence, Rhode Island 02903, May 17, 1979.

Dear Governor Garrahy: On behalf of Secretary Schlesinger thank you for your letter of April 25, 1979, requesting that the Department of Energy delegate to the State of Rhode Island the authority to enforce Federal price regulations at retail gasoline pumps.

We are delegating to you on a trial basis the authority to enforce gasoline prices at the retail level within the State of Rhode Island. We believe that the added resources of the State in the enforcement of price regulations at the retail level will bring greater protection to the consumer. There is all the more need for such increased protection in light of current market uncertainties.

In conjunction with this delegation, I am requesting that the appropriate State office provide the Assistant Administrator for Enforcement with a periodic status report. By this means, both Rhode Island State officials and the Department of Energy can keep abreast of the progress we are making with this program.

I understand that the Office of Enforcement is working with the appropriate Rhode Island State officials to arrange for appropriate training. We will be glad to provide any further assistance you desire in setting up the enforcement program.

Please have your staff call Mr. Barton Isenberg, Assistant Administrator for Enforcement, (202) 254–8740, if you would like to discuss this matter further.

Sincerely,

David J. Bardin,

Administrator, Economic Regulatory Administration.

The Honorable James R. Schlesinger, Secretary of Energy, Washington, D.C., April 25, 1979.

Dear Mr. Secretary: I have read with interest in the Federal Register the letter to you from Governor Brendan T. Byrne of March 9, 1979 in which he requested that the authority of the Administrator of the Economic Regulatory Administration under existing legislation (the Department of Energy Organization Act, P.L. 95–91 as amended; the Emergency Petroleum Allocation Act of 1973, P.L. 93–159; and the Economic Stabilization Act of 1970 as amended, P.L. 92–210 to determine the compliance of retailers of motor gasoline with the mandatory prime regulations, 10 C.F.R. 212.91 et seq.,) be delegated to the State of New Jersey.

I have also noted the subsequent order (Department of Energy Delegation Order No. 0204–4–R1 to the Governor of the State of New Jersey) issued by David J. Bardin, Administrator, Economic Regulatory Administration, delegating all investigatory and administrative enforcement action available to the ERA relative to the enforcement of Federal price regulations at retail gasoline pumps in the State of New Jersey.

The State of Rhode Island is concerned about reports of extensive disregard of Federal regulations by a number of retail gasoline dealers.

We are prepared to assist the Department of Energy in the enforcement of these regulations as we feel that it is in the public interest to assure the uniform enforcement of the existing Federal price controls. As in the case of New Jersey, we have available existing enforcement personnel within the State Department of the Attorney General, the several state agencies which are represented in the Energy Coordinating

Council and the Rhode Island Consumers' Council to appropriately monitor and enforce the Federal price controls.

As Governor of the State of Rhode Island I therefore respectfully request a delegation of the above specified powers to the State of Rhode Island, the terms and conditions of delegation similar to or identical with those granted to the State of New Jersey would seem appropriate relative to the State of Rhode Island.

I am designating Attorney General Dennis J. Roberts II and Edward F. Burke, chairman of the Energy Coordinating Council, as the responsible state officials to supply any information which the Department of Energy officials may require in evaluating this request.

Respectfully,

J. Joseph Garahy,

Governor.

[FR Doc. 79-16512 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Shell Oil Co./Geismar Chemical Co.; Energy Supply and Environmental Coordination Act Rescission of Construction Order

On June 30, 1977, a Constructon Order was issued to Shell Oil Company/ Geismar Chemical Company Unit EPP-GEP-BLR-1 located at Geismar, Louisiana (Docket Number OCU-6650-4-1) pursuant to Section 2 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (15 U.S.C. 791 et seq.).

The Department of Energy hereby rescinds that Construction Order. This rescission action is initiated by DOE under authority granted it by Section 2(f) of ESECA and in accordance with the implementing regulation 10 CFR Part 303, Subpart J.

Had the Construction Order been made effective by the subsequent issuance of a Notice of Effectiveness (NOE) it would have required the above named major fuel burning installation (MFBI), to be designed and constructed so as to be capable of using coal as its primary energy source. A Notice of Effectiveness for the Construction Order has not been issued. Therefore, the Construction Order issued to the above named company on June 30, 1977, under ESECA is hereby rescinded.

DOE gave notice of its intention to rescind the Order by telegram sent on May 2, 1979, to those who were served notice of the issuance of the Construction Order. The notice invited comments on the proposed rescission of the Construction Order issued to the above named MFBI. DOE has, prior to issuing this Rescission Order, considered all comments submitted.

Pursuant to 10 CFR 303.137(d), DOE will publish notice of this Rescission Order in the *Federal Register*. Service of this Order is being made by registered mail to Mr. J. F. Bookout, President, Shell Oil Company, P.O. Box 2463, Houston, Texas 77001. A copy of this Order will be on display for any interested member of the public to inspect at the DOE Public Docket Room B-120, 2000 M Street, NW., Washington, D.C. 20461 from 1:00 to 5:00 P.M., Monday through Friday of each week.

Copies will also be available at the appropriate DOE regional office and in the Freedom of Information Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., 20641, between the hours of 8:15 a.m. and 4:15 p.m., Monday through Friday.

Any person aggrieved by this Rescission Order may file an appeal with the DOE Office of Hearings and Appeals (previously the Office of Exceptions and Appeals) in accordance with 10 CFR Part 303, Subpart H. The appeal shall be filed within 30 days after the service of the Rescission Order. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Any questions regarding this order should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7210, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254-6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

Issued in Washington, D.C., May 7, 1979.

Barton R. House,

Assistant Administrator for Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-16459 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Shell Oil Co.; Energy Supply and Environmental Coordination Act Rescission of Construction Order

On June 30, 1977, a Construction Order was issued to Shell Oil Company, Mobile Chemical Plant Unit EPP-MOP-BLR-1 (Docket Number OCU-6650-5-1) and Unit EPP-MOP-BLR-2 (Docket Number OCU-6650-5-2) both located at Mobile, Alabama, pursuant to Section 2 of the Energy Supply and Evironmental Coordination Act of 1974 (ESECA) (15 U.S.C. 791 et seq.).

The Department of Energy hereby rescinds that Construction Order. This rescission action is initiated by DOE under authority granted it by Section 2(f) of ESECA and in accordance with the implementing regulation 10 CFR Part 303, Subpart J.

Had the Construction Order been made effective by the subsequent issuance of a Notice of Effectiveness (NOE) it would have required the above named major fuel burning installation (MFBI), consisting of two boilers to be designed and constructed so as to be capable of using coal as its primary energy source. A Notice of Effectiveness for the Construction Order has not been issued. Therefore, the Construction Order issued to the above named company on June 30, 1977, under ESECA is hereby rescinded.

DOE gave notice of its intention to rescind the Order by telegram sent on May 2, 1979, to those who were served notice of the issuance of the Construction Order. The notice invited comments on the proposed rescission of the Construction Order issued to the above named MFBI. DOE has, prior to issuing this Rescission Order, considered all comments submitted.

Pursuant to 10 CFR 303.137(d), DOE will publish notice of this Rescission Order in the **Federal Register.** Service of this Order is being made by registered mail to Mr. J. F. Bookout, President, Shell Oil Company, P.O. Box 2463, Houston, Texas 77001. A copy of this Order will be on display for any interested member of the public to inspect at the DOE Public Docket Room, B-120, 2000 M Street NW., Washington, D.C. 20461 from 1:00 to 5:00 p.m., Monday through Friday of each week.

Copies will also be available at the appropriate DOE regional office and in the Freedon of Information Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20641, between the hours of 8:15 a.m. and 4:15 p.m., Monday through Friday.

Any person aggrieved by this Rescission Order may file an appeal with the DOE Office of Hearings and Appeals (previously the Office of Exceptions and Appeals) in accordance with 10 CFR Part 303, Subpart H. The appeal shall be filed within 30 days after the service of the Rescission Order. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Any questions regarding this order should be directed to DOE as follows:

Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7210, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

Issued in Washington, D.C., May 7, 1979.

Barton R. House,

Assistant Administrator for Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79–16458 Filed 5–24–79; 8:45 am]

BILLING CODE 6450–01–M

Vickers Energy Corp.; Action Taken on Proposed Consent Order

Correction

In FR Doc. 79–15846 appearing at page 29703 in the issue for Tuesday, May 22, 1979 in column three, after "Comments By," insert "June 21, 1979."

BILLING CODE 1505–01–M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; April 9 through April 13, 1979

Notice is hereby given that during the period April 9 Through April 13, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact of law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. e.d.t., except Federal holidays.

May 22, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Proposed Decisions and Orders

Arizona Fuels Corporation, Washington, D.C., DEX–0056, crude oil.

In accordance with Decisions and Orders issued to the Arizona Fuels Corporation which granted the firm exception relief from the provisions of 10 CFR 211.67 (the Entitlements Program), the firm submitted actual financial data for its 1976 and 1977 fiscal years. On April 11, 1979, after reviewing the level of exception relief granted to Arizona Fuels in light of the firm's actual financial results, the DOE issued a Proposed Decision and Order which determined that the firm should purchase entitlements equal in value to $611,222 to offset the excessive benefits it had received.

C. F. Lawrence & Assoc., Inc., Midland, Texas, DXE–2190, crude oil.

C. F. Lawrence & Assoc., Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 67.93 percent of the crude oil which it produces from the Childress M.I. Masterson Lease at upper tier ceiling prices. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to the applicant's Childress M.I. Masterson Lease.

City of Long Beach, California, Long Beach, California, DXE–2807, crude oil.

The City of Long Beach, California filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief and would permit the City of Long Beach to sell the crude oil produced for the benefit of the working interest owners at the Fault Block III Unit at upper tier ceiling prices. On April 13, 1979 the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Getty Oil Company, Los Angeles, California, DXE–2197, DXE–2198, DXE–2199, DXE–2200, crude oil.

Getty Oil Company filed five Applications for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception requests, if granted, would result in the extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Carranza, Davis, Luton and Quati Leases at upper tier ceiling prices and 100 percent of the crude oil which it produces from the Chamberlin Lease at market price levels. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to Getty's Carranza, Davis, Luton, Quati and Chamberlin Leases.

P & M Management, Denver, Colorado, DXE–2184, crude oil.

P & M Management filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 100 percent of the crude oil which it produces from the Track #1 Well at upper tier ceiling prices. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to P & M Management's Track #1 Well.

Petroleum, Inc., Wichita, Kansas, DXE–2131, crude oil.

Petroleum, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 100 percent of the crude oil which it produces from the Crowder Lease at upper tier ceiling prices. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to Petroleum, Inc.'s Crowder Lease.

R. H. Engelke, San Antonio, Texas, DXE–2178, crude oil.

R. H. Engelke filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit, the firm to sell 56.53 percent of the crude oil which it produces from the Bertha Copsey Lease at upper tier ceiling prices. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to R. H. Engelke's Bertha Copsey Lease.

Southland Royalty Company, Fort Worth, Texas, DXE–2213, crude oil.

The Southland Royalty Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief and would permit the firm to sell the crude oil produced for the benefit of the working interest owners from the Aztec Totah Unit at upper tier ceiling prices. On April 13, 1979 the DOE issued a Proposed Decision and Order which

determined that the exception request be granted.

Southland Royalty Company, Fort Worth, Texas, DXE-2274, DXE-2275, crude oil.

The Southland Royalty Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief and would permit the firm to sell the crude oil produced for the benefit of the working interest owners from the Joss and House Creek Leases at upper tier ceiling prices. On April 13, 1979 the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline—Week of April 9 Through April 13, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline for the months of March, April and May 1979. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case No., and Location

Edward H. Wolfe & Sons, DEE-2913, Slinger, Wisconsin
McMahon Oil Co., DEE-2346, Newton, Texas
Harold's Exxon, DEE-2384, Raleigh, North Carolina
Industrial Petroleum Supply of Evansville, Inc., DEE-2404, Evansville, Indiana

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline—Week of April 9 Through April 13, 1979

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Company Name, Case No., and Location

C. J. Enterprises, DEE-2729, Amherst, Massachusetts
E. Lee Young d.b.a. Big Quickstop, DEE-3390, Ruston, Louisiana
Emerald Hills Citgo, DEE-2940, Hollywood, Florida
Gonzales Truck Stop, DEE-3002, Prairieville, Louisiana
Harry's 66, DEE-2989, Fort Myers, Florida
Hassan & Hassan, DEE-2583, North Miami Beach, Florida
Luvern L. Maricle, DEE-2689, West Concord, Minnesota
Walkey's Exxon, DEE-3256, Nashua, New Hampshire
Browning's Exxon, DEE-3126, Hazelwood, North Carolina
Clary's Auto Service, DEE-2481, Vidor, Texas
Dundalk Exxon, DEE-3026, Baltimore, Maryland
Red Clay Creek, Exxon, DEE-2720, Wilmington, Delaware
Sissie Car Wash, DEE-3135, Phoenix, Arizona
Weekly's Exxon Service Center, DEE-3036, Montclair, California
Shoal's Creek Chevron, DEE-2476, Florence, Alabama
Sumter Oil & Gas Co., Inc., DEE-2725, Sumter, South Carolina
Brook Plaza Exxon Service Center, DEE-2938, Brooksville, Florida
Charles & 20th Exxon, DEE-3346, Baltimore, Maryland
P&W Oil Co., Inc., DEE-2890, Athens, Alabama
Bob's Vintage Texaco, DEE-2772, Napa, California
A. A. Grocery No. 2, DEE-3113, Delvalle, Texas
Boulder Valley Oil Co., DEE-2495, Lafayette, Colorado
Big John's Exxon, DEE-3183, Jacksonville, Florida
Edwards Auto Service, DEE-2994, Richmond, Virginia
Hannah's Service Station, DEE-3428, Florence, Alabama
Kenny's Food Markets, DEE-2892, Richfield, Minnesota
Brockbridge Exxon, DEE-3046, Laurel, Maryland
Burnsville Corporation, DEE-2775, Burnsville, Minnesota

[FR Doc. 79-16454 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER79-369]

APS Group-PJM Group Interconnection Agreement; Supplement to Interconnection Agreement

May 21, 1979.

The filing Company submits the following:

Take notice that on May 15, 1979 the Pennsylvania-New Jersey-Maryland Group (PJM) filed on behalf of themselves and the Allegheny Power System Group (APS Group) Modification No. 1 to Schedule 7.03 dated May 11, 1979 to the Interconnection Agreement between them dated April 26, 1965, which is filed with the Commission under the following Rate Schedule designations:

	Rate Schedule
West Penn Power Co.	FERC No. 18
The Potomac Edison Co.	No. 26
Monongahela Power Co.	No. 22
Public Service Electric and Gas Co.	No. 38
Philadelphia Electric Co.	No. 27
Pennsylvania Power and Light Co.	No. 41
Baltimore Gas and Electric Co.	No. 17
Potomac Electric Power Co.	No. 21
Jersey Central Power and Light Co.	No. 21
Metropolitan Edison Co.	No. 25
Pennsylvania Electric Co.	No. 45

The Schedule Modification increases the demand rates for Short Term Power services in order to reflect increased capacity costs. The demand rate for the supply of Short Term Power is increased from $500 to $700 per megawatt per week, the demand rate for transmitting Short Term Power purchased from another system is increased from $125 to $175 per megawatt, and the basis for charges is changed from a six-day week to a seven-day week.

No new facilities will be installed nor will existing facilities be modified in connection with the Schedule Modification. The filing party has requested a waiver of any otherwise applicable Rules and Regulations not already compiled with and has requested an effective date of May 11, 1979.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with 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 June 11, 1979. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16366 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-373]

Cliffs Electric Service Co.; Application

May 21, 1979.

The filing company submits the following:

Take notice that on May 16, 1979, Cliffs Electric Service Co. ("Service Company"), a wholly owned subsidiary of the Cleveland-Cliffs Iron Co., submitted for filing a power sale agreement with the City of Marquette Board of Light and Power. Under the agreement Service Company will make available to the City of Marquette capacity and energy through March 30, 1980 at rates set forth in the agreement. The City requires an additional source of power while it undertakes the installation of certain pollution control equipment on its existing units and for

the purpose of reducing its use of oil-fired units.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 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 June 11, 1979. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16367 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER 79-370]

Consolidated Edison Co. of New York, Inc.; Filing of Tariff Changes

May 21, 1979.

The filing Company submits the following:

Take Notice that on May 15, 1979, Consolidated Edison Co. of New York, Inc. ("Con Edison") tendered for filing an increase in its rate schedule for transmission service to the Power Authority of the State of New York ("PASNY"), Con Edison Electric Rate Schedule FPC No. 42. The proposed new Supplement No. 5 would have the cumulative effect of increasing revenues from jurisdictional service to PASNY by $1,678,016 annually.

The increase represents the transmission charges for PASNY's proportionate share of a rate increase granted to Con Edison by the New York Public Service Commission.

A copy of the filing has been served upon PASNY.

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, 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 June 11, 1979. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16368 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER78-414]

Delmarva Power & Light Co.; Compliance Filing

May 21, 1979.

Take notice that on May 9, 1979, Delmarva Power and Light Co. tendered for filing it's Report of Compliance, pursuant to the Commission's order dated April 4, 1979, approving the Company's settlement agreement with its three Cooperative resale customers.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission. 825 North Capitol St., 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 protests should be filed on or before June 12, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 70-16389 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-366]

Louisiana Power & Light Co.; Proposed Electric System Interconnection Agreement

May 21, 1979.

The filing Company submits the following:

Take notice that on May 15, 1979, Louisiana Power and Light Co. (LP&L) tendered for filing an Electric System Interconnection Agreement dated April 2, 1979 with the City of Minden, La. (City) which provides service schedules for Emergency Service Reserve Capacity, Supplemental Power, Surplus Power, Economy Power, and Transmission Service. LP and L further states that the proposed agreement and schedules A, B, C, D, E, F, and F-I, are the same as accepted for filing in FERC Docket No. ER76-162 with the City of Ruston (Rate Schedule FERC No. 54), in Docket ER76-868 with the Town of Rayville (Rate Schedule FERC No. 58), in Docket No. ER76-867 with the Town of Homer (Rate Schedule FERC No. 57), in Docket No. ER77-405 with the Town of Jonesboro (Rate Schedule FERC No. 59) and in Docket No. ER77-404 with the City of Monroe (Rate Schedule FERC No. 60).

LP&L requests waiver of the notice requirements so that the Agreement can become effective June 1, 1979, the date requested by the City of Minden.

LP&L stated that a copy of this filing was mailed to the City of Minden, La.

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, 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 June 8, 1979. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16370 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-368]

Louisiana Power & Light Co.; Proposed Agreement

May 21, 1979.

The filing company submits the following:

Take notice that on May 15, 1979, Louisiana Power and Light Co. (LP&L) tendered for filing a Letter Agreement dated February 16, 1979 between LP&L and Gulf States Utilities Company (GSU).

This Letter Agreement provides for the transmission of power and energy by LP&L to GSU.

LP&L proposed an effective date of January 1, 1979, and therefore requests waiver of the Commission's notice requirements.

LP&L states that copies of the filing were served on Gulf States Utilities Company and the Louisiana 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, 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 June 8, 1979. Protests will be considered 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16371 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER 78-228]

Public Service Co. of Indiana; Motion for Termination of Docket

May 21, 1979.

Take notice that the City of Crawfordsville, Indiana and the Public Service Co. of Indiana on May 7, 1979 tendered for filing a joint motion for the termination of the above-noted docket.

The City and the Company indicate that they have mutually agreed to the application and interpretation of certain provisions of the Interconnection Agreement at issue.

The City and the Company indicate that they believe that the Commission Staff has had its inquiries satisfied and that there are no longer any issues of fact to be determined in this docket.

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 and 1.10) on or before June 8, 1979. All such protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16372 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. RP77-59 and RP78-58 (not consolidated)]

South Texas Natural Gas Gathering Co.; Extension of Time

May 18, 1979.

On May 11, 1979, a joint motion was filed by Tenneco Oil Co., Continental Oil Co. and Shell Oil Co. for an extension of time to file comments on the proposed settlement agreement in these proceedings as requested by the notice issued May 3, 1979. The motion states that additional time is needed for adequate preparation of comments.

Upon consideration, notice is hereby given that an extension of time is granted to and including June 1, 1979 for the submission of comments.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16373 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Montana; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 16, 1979.

On May 8, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Montana Department of Natural Resources and Conservation, Board of Oil and Gas Conservation

FERC Control Number: JD79-4422
API Well Number: 25-105-21153
Section of NGPA: 102
Operator: Joseph J. C. Paine & Associates
Well Name: Strommen 1-0807
Field:
County: Valley
Purchaser: Kansas Nebraska Natural Gas Co.
Volume: .730 MMcf.

FERC Control Number: JD79-4423
API Well Number: 25-071-21564
Section of NGPA: 102
Operator: Joseph J. C. Paine & Associates
Well Name: R. Anderson No. 1
Field:
County: Phillips
Purchaser: Kansas Nebraska Natural Gas Co.
Volume: 7.00 MMcf.

FERC Control Number: JD79-4424
API Well Number: 25-105-21156
Section of NGPA: 102
Operator: Joseph J. C. Paine
Well Name: Strommen 1-1306
Field:
County: Valley
Purchaser: Midlands Gas Co./Kansas Nebraska
Volume: 263 MMcf.

FERC Control Number: JD79-4425
API Well Number: 25-105-21144
Section of NGPA: 102
Operator: Joseph J. C. Paine
Well Name: Porteen 1-3406
Field:
County: Valley
Purchaser: Midlands Gas Co./Kansas Nebraska
Volume: 912.5 MMcf.

FERC Control Number: JD79-4426
API Well Number: 25-105-21149
Section of NGPA: 102
Operator: Joseph J. C. Paine & Associates
Well Name: Montfort 1-3506
Field:
County: Valley
Purchaser: Kansas Nebraska Natural Gas Co.
Volume: 2.245 MMcf.

FERC Control Number: JD79-4427
API Well Number: 25-105-21155
Section of NGPA: 102
Operator: Joseph J. C. Paine & Associates
Well Name: Montfort 1-3007
Field:
County: Valley
Purchaser: Kansas Nebraska Natural Gas Co.
Volume: 7.3 MMcf.

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 Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16374 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

North Dakota; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 16, 1979.

On May 7, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

North Dakota State Industrial Commission, Oil and Gas Division

FERC Control Number: JD79–4440
API Well Number: 33–025–00075
Section of NGPA: 102
Operator: Gulf Oil Corporation
Well Name: Dolezal St. 1–7–3A
Field: Little Knife
County: Dunn
Purchaser: Montana Dakota Utilities
Volume: 49 MMcf.

FERC Control Number: JD79–4441
API Well Number: 33–025–00071
Section of NGPA: 102
Operator: Gulf Oil Corporation
Well Name: Klatt 1–19–2A
Field: Little Knife
County: Dunn
Purchaser: Montana Dakota Utilities
Volume: 88 MMcf.

FERC Control Number: JD79–4442
API Well Number: 33–025–00081
Section of NGPA: 102
Operator: Gulf Oil Corporation
Well Name: Klatt 2–19–3D
Field: Little Knife
County: Dunn
Purchaser: Montana Dakota Utilities
Volume: 110 MMcf.

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 Office of Public Information, Room 1000, 825 North Capital Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–16375 Filed 5–24–79; 8:45 am]

BILLING CODE 6450–01–M

New Mexico; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 16, 1979.

On May 8, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of New Mexico, Energy and Minerals Department, Oil Conservation Division

FERC Control Number: JD79–4421
API Well Number: 30–039–21789
Section: 103
Operator: Northwest Pipeline Corporation
Well Name: S. J. 29–5 Unit No. 89
Field: Basin Dakota
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: N/A

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–16376 Filed 5–24–79; 8:45 am]

BILLING CODE 6450–01–M

California; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 16, 1979.

On May 7, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of California—Resources Agency, Department of Conservation, Division of Oil and Gas

FERC Control Number: JD79–4431
API Well Number: 101–00175
Section of NGPA: 108
Operator: Atlantic Oil Company
Well Name: Epperson 3
Field: Sutter City
County: Sutter
Purchaser: Pacific Gas and Electric Company
Volume: 4.3 MMcf.

FERC Control Number: JD79–4432
API Well Number: 101–00033
Section of NGPA: 108
Operator: Atlantic Oil Company
Well Name: Frye Unit B 1
Field: Grimes
County: Sutter
Purchaser: Pacific Gas and Electric Company
Volume: 19.1 MMcf.

FERC Control Number: JD79–4433
API Well Number: 101–00217
Section of NGPA: 108
Operator: Atlantic Oil Company
Well Name: Lamb 1
Field: Tisdale
County: Sutter
Purchaser: Pacific Gas and Electric Company
Volume: 11.5 MMcf.

FERC Control Number: JD79–4434
API Well Number: 101–00179
Section of NGPA: 108
Operator: Atlantic Oil Company
Well Name: Sutter Unit A 1
Field: Sutter City
County: Sutter
Purchaser: Pacific Gas and Electric Company
Volume: 21.6 MMcf.

FERC Control Number: JD79–4435
API Well Number: 101–00181
Section of NGPA: 108
Operator: Atlantic Oil Company
Well Name: Sutter Unit K 1
Field: Sutter City
County: Sutter
Purchaser: Pacific Gas and Electric Company
Volume: 2.7 MMcf.

FERC Control Number: JD79–4436
API Well Number: 101–00183
Section of NGPA: 108
Operator: Atlantic Oil Company
Well Name: Sutter Unit K 3
Field: Sutter City
County: Sutter
Purchaser: Pacific Gas and Electric Company
Volume: 17.2 MMcf.

FERC Control Number: JD79–4437
API Well Number: 101–00184
Section of NGPA: 108
Operator: Atlantic Oil Company
Well Name: Sutter Unit K 4
Field: Sutter City
County: Sutter
Purchaser: Pacific Gas and Electric Company
Volume: 3.6 MMcf.

FERC Control Number: JD79–4438
API Well Number: 101–00188
Section of NGPA: 108
Operator: Atlantic Oil Company
Well Name: Sutter Unit N 3
Field: Sutter City
County: Sutter
Purchaser: Pacific Gas and Electric Company
Volume: 15.3 MMcf.

FERC Control Number: JD79–4439
API Well Number: 077–00113
Section of NGPA: 103
Operator: Great Basins Petroleum Co.
Well Name: McMullin 3X
Field: McMullin Ranch Gas
County: San Joaquin
Purchaser: Pacific Gas and Electric Company
Volume: 1.6 MMcf.

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 Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a

protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16377 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Louisiana; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 16, 1979.

On May 7, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-4443
API Well Number: 1705120450
Section: 102
Operator: Martin Exploration Company
Well Name: State Lease 2383 No. 2
Field: Little Lake
County: Jefferson Parish
Purchaser: Tennessee Gas Pipeline Company
Volume: 584 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb.

Secretary.

[FR Doc. 79-16378 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Louisiana; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 16, 1979.

On May 15, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-4742
API Well Number: 1701520495
Section: 108
Operator: Goldsberry Operating Co., Inc.
Well Name: DV RA SU 19; Muslow Day No. 1
Field: Elm Grove
County: Vossier
Purchaser: Southwestern Electric Power Co.
Volume: 13,176

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb.

Secretary.

[FR Doc. 79-16379 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Geological Survey; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 16, 1979.

On May 7, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Department of the Interior, Geological Survey

FERC Control Number: JD79-4428
API Well Number: 1770840153
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: O R C O Sand Reservoir C
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 2978 MMcf.

FERC Control Number: JD79-4429
API Well Number: 1770840289
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: I R D I_2 R D I_2 Sand Reservoir D
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 39 MMcf.

FERC Control Number: JD79-4430
API Well Number: 1770840285
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: I R D I Sand Reservoir D
Field: NA
Counfy: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 31 MMcf.

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 Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb.

Secretary.

[FR Doc. 79-16380 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreements for Cooperation Between the United States of America and Canada, Japan and Sweden.

The subsequent arrangement to be carried out under the above mentioned agreements involves the shipment of enriched uranium/aluminum alloy fuels from the locations below to the Savannah River DOE facility for reprocessing and storage of recovered uranium. Spent fuel will be returned from the following research reactors:

Reactor and location	Kgs. of spent fuel
*BR-2Belgium	*113.8
*R-2 Sweden	*62
*NPX, NRU, and McMaster University Research Reactor, Canada	50
EL3 France	24.3
FRG-1, FRG-2, West Germany	150
ASTRA, Austria	7
HMI, Germany	7

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the subsequent arrangement, will not be inimical to the common defense and security. This arrangement for returning U.S.-origin highly enriched uranium (HEU) to the U.S. is consistent with U.S. non-proliferation policy in that it serves to reduce the amount of HEU abroad.

This subsequent arrangement will take effect no sooner than June 11, 1979.

Dated: May 24, 1979.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs International Programs.

[FR Doc.79-1670 Filed 5-24-79; 11:21 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; March 26 Through March 30, 1979

Notice is hereby given that during the period March 26 through March 30, 1979, the Proposed Decisions and Orders which are summarized below were issued by the office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on Septmeber 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by any aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from an aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this Proposed Decision and Order are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except federal holidays.

Dated: May 22, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Roland Boudreaux, Rayne, Louisiana, DEE-2516, motor gasoline

Roland Boudreaux filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Boudreaux's base period allocation of motor gasoline for the months of March, April and May 1979. On March 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Briarvista Chevron, Atlanta, Georgia, DEE-2328, motor gasoline

Briarvista Chevron filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Briarvista's base period allocation of motor gasoline for the months of March, April and May 1979. On March 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Briland Oil Company, Vidalia, Georgia, DEE-2333, motor gasoline

Briland Oil Company filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Briland's base period allocation of motor gasoline for the months of March, April and May 1979. On March 27, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Bruckner Service Station, Bronx, New York, DEE-2485, motor gasoline

Bruckner Service Station filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception reguest, if granted, would result in an increase in Bruckner's base period allocation of motor gasoline for the months of March, April, and May 1979. On March 27, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Chevron Oil Service, Northport, Alabama, DEE-2555, motor gasoline

Chevron Oil Service filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Northport's base period allocation of motor gasoline for the months of March, April and May 1979. On March 29, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Cole & Myers, Inc., Bethany Missouri, DEE-2313, motor gasoline

Cole & Myers, Inc. (Cole) filed an Application for Exception from the provisions of the Standby Petroleum Product Allocation Regulations which the Economic Regulatory Administration activated on February 22, 1979. If the Application were granted, additional motor gasoline would be allocated to Cole for the months of March, April and May 1979. On March 29, 1979, the DOE issued a Proposed Decision and Order in which it determined that the exception request should be granted.

Commerce Crossroads Service, Inc., Yorktown Heights, New York, DEE-2320, motor gasoline

Commerce Crossroads Service, Inc. filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in the firm's base period allocation of motor gasoline for the months of March, April and May 1979. On March 27, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Ferguson Service, Ferguson, Missouri, DEE-2511 motor gasoline

Ferguson Service (Ferguson) filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Ferguson's base period allocation of motor gasoline for the months of March, April and May 1979. On March 27, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Fisca Oil Company, Inc., Kansas City, Kansas, DEE-2505, motor gasoline

Fisca Oil Company, Inc. filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would direct the DOE Region VIII to assign a supplier to Fisca to supply it with the base period allocation which the firm is unable to obtain from its base period supplier. On March 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exceptin request be granted.

Hardee World, Inc., Rocky Mount, North Carolina, DEE-2336, motor gasoline

Hardee World, Inc. (Hardee) filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Hardee's base period

allocation of motor gasoline for the months of March, April and May 1979. On March 27, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Hardell Corporation, Hagerstown, Maryland, DEE–2579, motor gasoline

Hardell Corporation filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Hardell's base period allocation of motor gasoline for the months of March, April and May 1979. On March 28, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Husky Oil Company, Denver, Colorado, DEE–1433, DEE–1440, crude oil

The Husky Oil Company filed two Applications for Exception from the provisions of 10 CFR 212.73. The exception requests, if granted, would permit the firm to sell the crude oil produced from the Acquistapace and Nicholson leases located in Santa Barbara County, California, at market prices. On March 27, 1979, the DOE issued a Proposed Decision and Order in which it determined that the exception request be denied for both the Acquistapace and Nicholson leases.

Hutton's Grove City 66 Station, Grove City, Florida, DEE–2343, motor gasoline

Hutton's Grove City 66 filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Hutton's base period allocation of motor gasoline for the months of March, April and May 1979. On March 28, 1979 the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

John E. Jones Oil Company, Stockton, Kansas, DEE–2766, motor gasoline

The John E. Jones Oil Company filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in the assignment of the Kerr-McGee Corporation as Jones' sole supplier of motor gasoline for the month of March 1979. On March 27, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Kimberly Gas Mart, Kimberly, Idaho, DEE–2291, motor gasoline

Kimberly Gas Mart filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Kimberly's base period allocation of motor gasoline for the months of March, April and May 1979. On March 26, 1979, the Doe issued a Proposed Decision and Order which determined that the exception request be granted.

Howard Moor, Wentzville, Missouri, DEE–2604, motor gasoline

Howard Moor filed an Application for Exception form the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Moor's base period allocation of motor gasoline for the months of April and May 1979. On March 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Mountain Oil, Inc., Boone, North Carolina, DEE–2628, motor gasoline

Mountain Oil, Inc. (Mountain) filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Mountain's base period allocation of motor gasoline for the months of March, April and May 1979. On March 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Mr. K Exxon, Newberry, South Carolina, DEE–2470, motor gasoline

Mr. K Exxon (Mr. K) filed an application for Exception from the provisions of the Standby Petroleum Product Allocation Regulations which the Economic Regulatory Administration activated on February 22, 1979. If the Application were granted, additional motor gasoline would be allocated to Mr. K for the months of March, April and May 1979. On March 27, 1979 the DOE issued a Proposed Decision and Order in which it determined that the exception request should be granted.

Pine Ridge Standard, Menill, Wisconsin, DEE–2498, Motor Gasoline

Pine Ridge Standard filed an Application for Exception from the standby allocation regulations. On March 29, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request must be granted and the petitioner's allocation level for the months of March–May 1979 be established as 74, 271 gallons.

Robert F. Saak, Jennings, Missouri, DEE–2655, Motor Gasoline

Robert F. Saak filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Saak's base period allocation of motor gasoline for the months of March, April and May 1979. On March 29, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Scott Boulevard Chevron, Decatur, Georgia, DEE–2814, Motor Gasoline

Scott Boulevard Chevron filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted would result in an increase in Scott's base period allocation of motor gasoline for the months of March, April, and May 1979. On March 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Larry E. Stadler, Reidsville, North Carolina, DEE–2746, Motor Gasoline

Mr. Larry E. Stadler filed and Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Stadler's base period allocation of motor gasoline for the months of March, April and May 1979. On March 29 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Steve's Exxon Servicenter, College Park, Maryland, DEE–2473, Motor gasoline

Steve's Exxon Servicenter filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in the applicant's base period allocation of motor gasoline for the months of March, April and May 1979. On March 28, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Summit Car Care Center, Lee's Summit, Missouri, DEE–2461, motor gasoline

Summit Car Care Center filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Summit's base period allocation of motor gasoline for the months of March, April and May 1979. On March 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Tenneco Oil Company, Houston, Texas, DXE–2218, crude oil

Tenneco Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which the firm requested that it be allowed to sell certain of the crude oil produced from the South Coast Unit at market prices. On March 28, 1979, the DOE issued a Proposed Decision and Order which determined that the Tenneco exception request be granted.

Texaco, Inc., Denver, Colorado, DEE–2183, crude oil

Texaco, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which the firm requested that it be permitted to sell certain of the crude oil produced from the T. F. Stroock Lease, located in Moffat County, Colorado at upper tier ceiling prices. On March 28, 1979, the DOE issued a Proposed Decision and Order which determined that the Texaco exception request be granted.

Vish's Chevron, Lexington, Kentucky, DEE–2813, motor gasoline

Vish's Chevron filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Vish's base period allocation of motor gasoline for the months of March, April and May 1979. On March 28, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Joshua Widman, Brooklyn, New York, DEE–2562, motor gasoline

Joshua Widman filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in Widman's base period allocation of motor gasoline for the months of

March, April and May 1979. On March 30, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

[FR Doc. 79-16455 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

Objection Filed With the Office of Hearings and Appeals; Week of April 16 Through April 20, 1979

Notice is hereby given that during the week of April 16 through April 20, 1979, the Notices of Objection to a Proposed Remedial Order listed in the Appendix to this notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Within 20 days after publication of this notice, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Order described in the Appendix to this notice must file a request to participate pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). Within 30 days of the publication of this notice, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Issued in Washington, D.C., May 21, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Belcher Oil Company; Miami, Florida, Florida Power & Light Company, Miami, Florida, DRO-0192, fuel oil.

On April 16, 1979, Belcher Oil Company, 2050 Coral Way, Miami, Florida 31101, and Florida Power & Light Company, 9250 West Flagler Street, Miami, Florida, filed Notices of Objection to a Proposed Remedial Order which the DOE Southeast Enforcement District issued to Belcher on March 19, 1979. In the Proposed Remedial Order, the Enforcement District found that during the period from August 19, 1973 through December 15, 1975, Belcher committed pricing violations in the State of Florida in connection with sales of fuel oil. According to the Proposed Remedial Order, Belcher's violations resulted in overcharges of $19,068,169.

Moran Oil Company, Inc., Portland, Oregon, DRO-0202, retailer.

On April 13, 1979, Moran Oil Company, Inc. filed a Notice of Objection to a Proposed Remedial Order that the ERA Office of Enforcement issued to the firm on March 23, 1979. In the Proposed Remedial Order the ERA found that Moran Oil Company, Inc. had overcharged its customers in the State of Oregon in the amount of $84,744.08 in the sales of residual fuel during the period November 1973 through December 1975. Accordingly, Moran Oil Company would be required to refund the overcharges plus interest to its customers.

Stanco Petroleum, Inc., Kimball, Nebraska, DRO-0201, crude oil.

On April 17, 1979 Stanco Petroleum, Inc. (Stanco), P.O. Box 202, Kimball, Nebraska 69145, filed a Notice of Objection in which it indicates it will contest a Proposed Remedial Order which the DOE Central Enforcement District issued to Stanco on April 4, 1979. In the Proposed Remedial Order, the Central Enforcement District found that during the time period from September 1973 through July 1976, Stanco committed pricing violations in Kimball County in the State of Nebraska in connection with the production and sale of crude oil. According to the Proposed Remedial Order, Stanco's violations resulted in overcharge to its customers of $1,109,198.30.

[FR Doc. 79-16457 Filed 5-24-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-1235-4]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of May 14 to May 18, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from May 25, 1979 and will end on July 9, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the origination agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review, A-104, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460 (202) 755-0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the Week of May 14 to May 18, 1979 the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period of a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: May 22, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

APPENDIX I.—EIS'S FILED WITH EPA DURING THE WEEK OF MAY 14 TO 18, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of

the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250 (202) 447-3965.

Final

Essential agricultural uses of natural gas, Regulatory, May 15: Proposed is the determination of essential agricultural uses of natural gas by the Secretary of Agriculture under section 401(C) of the Natural Gas Policy Act of 1978 (NGPA). This decision will determine exactly which users of natural gas will be allowed priority use under the NGPA after application for such authority. Five sectors which include: food processing, fertilizers, glass containers, irrigation, and crop drying, account for 95% of the interstate gas consumed in essential agricultural uses. Comments made by: EPA, FERC, DOE. (EIS Order No. 90498.)

Forest Service

Draft

Conejos Wild and Scenic River, Conejos River Conejos County, Colo., May 18: Proposed is the inclusion of a portion of the Conejos River in the National Wild and Scenic River System. The Conejos River is located in the Rio Grande National Forest, Conejos County, Colo. The recommended plan calls for the inclusion of 25.6 miles of the river as a wild river area and 13.2 miles as a recreational river area. If the river is included a management plan will be prepared for the river, 706 acres of private land, and 12,416 acres of national forest land to provide for the protection and perpetuation of wild and recreational river values. (DES -02097910.) (EIS Order No. 90510.)

Final

Big Bear Basin Unit, San Bernardino N.F. San Bernardino County, Calif., May 18: This statement consists of five proposed land use alternatives for the Big Bear Planning Unit within the San Bernardino National Forest, San Bernardino County, Calif. The alternatives apply to 30,665 acres of national forest lands, and range from providing for the lowest scale of recreation development and production of goods and services which meet minimum demands, to emphasizing maximum recreation development and production of goods and services which meet maximum demands. Comments made by: DOT, FPC, USDA, COE, AHP, DLAB, DOI, State and local agencies, groups, individuals and businesses. (EIS Order No. 90511.)

Warren Planning Unit, Payette National Forest Valley County, Idaho, May 14: The proposed land management plan has been developed to resolve management direction for the Warren Planning Unit, an area of approximately 365,700 acres of national forest land in Idaho and Valley Counties, Idaho. Approximately 91 percent of the planning unit is roadless and therefore available for a wide range of management strategies. The broad allocations considered for the planning unit represent three levels of resource development; wilderness study and proposed research natural areas, limited forest development, and general forest development. (USDA-FS-R4-FES (ADM) R4-78-6.) Comments made by: USDA, EPA, DOC, DOI, State and local agencies, groups, individuals and businesses. (EIS Order No. 90489.)

Canal Front Planning Unit Land Mgmt., Olympic N.F., Clallam, Jefferson, and Mason Counties, Wash., May 15: The proposed action involves the Canal Front Planning Unit, which includes both the Hoodsport and Quilcene Ranger District of the Olympic National forest. It is located along the eastern portion of the Olympic Peninsula in northwestern Washington. The unit comprises 238,782 acres of land with approximately 49 percent of its land area in Jefferson county, 28 percent in Clallam County, and the remaining 23 percent located in mason County. The plan addresses roadless areas, natural ecosystems, a mix of resource uses, commodity production, and special management of some areas, (USDA-FS-R6-FES(ADM)-78-9.) Comments made by: EPA, USDA, DOE, HUD, COE, DOI, State and local agencies, groups, individuals and businesses. (EIS Order No. 90495.)

Final

Geothermal Leasing & Develop., Gifford Pinchot NF, several counties in Washington, May 17: The proposed action is to determine which of 299,608 acres should be recommended for leasing on National forest lands for developmental geothermal resources authorized by the Geothermal Steam Act of 1970. The proposed leasing areas lie completely within the Gifford Pinchot National Forest, Skamania and Cowlitz counties, Washington. The lands have been designated by the geological survey as "areas valuable prospectively" for geothermal resources and would be leased to the non-competitive lease applicants held by the Bureau of Land Management. (USDA-FS-R6-FES-(ADM)-79-1) Comments made by: DOI, DOE, EPA, FERC, COE, HUD, State agencies, groups, individuals and businesses. (EIS Order No. 90504.)

Soil Conservation Service

Draft

Middle Creek Watershed Project, Multipurpose, several counties in Pennsylvania, May 16: Proposed is the installation of remaining works of the Middle Creek Watershed project located in Snyder, Mifflin, and Union Counties, Pennsylvania. The remaining works are: accelerated land treatment measures; a multipurpose dam containing floodwater retarding storage, a recreation pool, and basic recreation facilities; multipurpose dam containing floodwater retarding storage and municipal water supply; a floodway at Beaver Springs; a dike at Middleburg; and additional basic recreation facilities. The alternatives considered include: Floodwater retarding dams, channel modification, floodway, nonstructural measures, and no project, (USDA-SCS-EIS-WS-(ADM)-798-1-(D)-PA) (EIS Order No. 90499.)

Rural Electrification Administration

Please see Appendix VI of this report for a special note.

Department of Defense

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, OFFICE OF THE Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, SW., Washington, D.C. 20314 (202) 693-6795.

Army Corps

Draft

St. Johns Co. Beach Erosion Control, St. Johns County, Florida, May 17: Proposed is the placement of an estimated 1,000,000 cubic yards of initial fill along 2.5 miles of eroded beach in St. Johns County, Florida. The fill section would have a 60-foot beam at elevation 12 feet, M.L.W. with seaward slopes of 1 on 20 to mean low water thence 1 on 30 existing bottom. Periodic nourishment of this reach would be performed by pipeline dredge for the remaining years of project life at an estimated quantity of 100,000 cubic yards annually. (Jacksonville District.) (EIS Order No. 90507.)

Final

Toad Suck Ferry Lock and Dam, Arkansas River, Conway County, Arkansas, May 17: Proposed is the construction of a water supply impoundment to provide a water supply approximately equivalent to that existing prior to construction of the McClellan-Kerr Arkansas River navigation system for Conway County, Arkansas. The lake will be constructed on Cypress Creek along with an earthfill dam, a multiple-level outlet structure, a pipeline, and other appurtenant works. The surface area of the lake is to be approximately 1,165 acres with an average depth of 20.2 feet. (Little Rock District.) Comments made by: DOT, DOI, State and local agencies. (EIS Order No. 90505.)

Final

Hatcher Bayou and Durden Creek Flood Control, Warren County, Mississippi, May 18: The proposed project is for recommended channel improvements which consists of the enlargement of a total of 4.84 miles of channel in Hennesseys Bayou, Hatcher Bayou, and Durden creek in Warren County, Mississippi. The proposal provides for the placement of excavated material from the channel on adjacent streambanks. Several alternatives, including dams and lakes, levees and pumping plants, channel excavation, floodproofing, excavation, combination of two or more of the preceding, and no-action, have been considered. (Vicksburg District.) Comments made by: AHP, DOC, HEW, HUD, DOI, DOT, EPA, State agencies. (EIS Order No. 90509.)

Final Supplement

Cape Cod Canal, Bourne and Sagamore Hwy. Bridges, Barnstable County, Massachusetts, May 17: This statement supplements final EIS (No. 70803) filed 6-28-77 concerning the O/M of the Cape Code Canal located in Bourne and Sandwich in Barnstable County, Massachusetts. This statement discusses the major rehabilitation of the Bourne and Sagamore Highway Bridges. The major item of work will be

replacement of the concrete decks which form roadways for the bridges. Other work will consist of repairs to structural steel and repainting of both of the superstructures. Also, 8-foot high suicide-deterring barriers will be erected atop the railings. (New England Division.) Comments made by: DOT, DOC, HEW, State and local agencies, groups, individuals and businesses. (EIS Order No. 90503.)

Snake River Interstate Bridge, several counties in Idaho, May 16: This statement supplements a final EIS (No. 51068) filed 7–23–75 concerning the Lower Granite Lock and Dam project. This statement proposes the construction of a four-lane highway bridge and approaches crossing the Snake River, connecting the towns of Lewistown in Nez Pierce County, Idaho and Clarkston in Asotin County, Washington. The present lift span bridge is felt to be unreliable which could cause serious delays of the inter-city emergency services. (Walla Walla District.) Comments made by: USDA, FERC, DOI, DOT, EPA, State agencies. (EIS Order No. 90500.)

Army

Contact: Col. Charles E. Sell, Chief of the Environmental Office, Headquarters DAEN–ZCE, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310 (202) 694–4269.

Final

Mission Change, Fort Polk Military Reservation, Veron County, Louisiana, May 16: This proposal involves the mission at Fort Polk, Veron Parish, Louisiana. The mission has been changed from a military reservation to a divisional combat force installation. This action will consist of stationing the 5th Infantry Division (mechanized) at Fort Polk as now structured with two active army brigades. The Third Brigade is the 256th Infantry Brigade of the Louisiana National Guard. This brigade and its units will be retained at their present and various locations at Louisiana. The division stationing action does not include a need to acquire additional land at this time, although land requirements may be reassessed in the near future. Comments made by: EPA, DOI, USDA, DOC, HEW, DOT, DOE, State agencies. (EIS Order No. 90501.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Daniel Sullivan, Chief, EIS Preparation Branch, Region II, Environmental Protection Agency, 26 Federal Plaza, Room 1009, New York, NY 10007, (212) 264–1892.

Draft

Manasquan River Basin WWT Facilities, Grant, Monmouth County, N.J., May 14: Proposed for consideration is the awarding of a grant for the design and construction of wastewater treatment (WWT) facilities for the Manasquan River Basin located in Monmouth County, New Jersey. The plan calls for the construction of a regional WWT plant (WTP) in Wall Township and related interceptors, pump stations, and force mains to convey wastewater to the regional WTP. All existing WTPs in the Mansquan River Basin would be abandoned and their flows conveyed to the regional WTP. An outfall would be constructed to discharge treated wastewater to the Manasquan River, six alternatives are considered. (EIS Order No. 90493.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, (202) 755–6306.

Final

Rio Grande Estates, Mortgage Insurance, Puerto Rico, May 17: Proposed is the development of 496.57 cuerdas of land (one cuerda equals 0.97 acres) in the Zarzal Ward of the Rio Grande Municipality, Puerto Rico, into residential housing. First stage implementation calls for the construction of 2,343 dwellings (797 in single family units, and 1,546 units in multifamily structures) in a tract covering 197.83 acres. This statement discusses the issuance of HUD Home Mortgage Insurance. Comments made by: DOT, HUD, HEW, VA, DOC, DOI, USDA, EPA, GSA, State agencies. (EIS Order No. 90506.)

Westbourne Subdivision, Mortgage Insurance, Harris County, Tex., May 14: The proposed action concerns the issuance of HUD Home Mortgage Insurance for the Westbourne Subdivision located in Harris County, Texas. The subdivision is located on 1,500 acres of land and when completed, in approximately 12 years, will contain approximately 7,200 dwelling units. Also included as part of the subdivision are shipping and recreation facilities. (HUD–R06—EIS–79–17–F). Comments made by: EPA, COE, DOT, DOI, State agencies. (EIS Order No. 90490.)

Final

Westglen Subdivision, Mortgage Insurance, Harris County, Tex., May 14: The proposed is the issuance of HUD Home Mortgage Insurance to the Jackrabbit Development Company, Incorporated concerning development of the Westglen Subdivision located in Harris County, Texas. The proposed subdivision will encompass approximately 632 acres, and is expected to consist of approximately 2,500 dwelling lots. Westglen will be low density housing development with approximately four, single family dwellings per acre. (HUD–R06—EIS–79–16–F). Comments made by: EPA, COE, AHP, DOI, USDA, DOT, State agencies, groups. (EIS Order No. 90491.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. John B. Martin, Director, Division of Waste Management 687–SS, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427–4423.

Final

White Mesa Uranium Project, License, San Juan County, Utah, May 18: Proposed is the issuance of a source material license to Energy Fuels Nuclear, Incorporated for the construction and operation of the White Mesa uranium Project located in San Juan County, Utah. The project will consist of the construction and operation of a mill with a nominal processing capacity of 1,800 metric tons per day with provision for recovery of vanadium as well as uranium. Waste materials from the mill will be produced at about 1,800 MT of solids per day and stored onsite (NUREG–0556). Comments made by: DOI, EPA, AHP, HEW, COE, USDA, FERC, DOT, State and local agencies, groups, individuals and businesses. (EIS Order No. 90508.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426–4357.

Federal Highway Administration

Draft

US 44, Route 58 to MA–3, improvement, Plymouth County, Mass., May 17: Proposed is the improvement of US 44 between Route 58 in Carver to MA–3 in Plymouth, all within the county of Plymouth, Massachusetts. The distance of the project is approximately 8 miles. Seven alternatives are considered which include: (1) Undertake no improvements; (2) upgrade existing right of way; (3) construction of new sections at the east and west ends of Route 44 and to connect them by utilizing a widened segment of the existing right of way; and (4) four alternatives which relocate the highway entirely (FHWA–MA–EIS–78–03–D). (EIS Order No. 90502.)

Final

6th Street S.W. and 4th Avenue S.W., Great Falls, Cascade County, Mont., May 14: Proposed are two projects located in Great Falls, Cascade County, Montana. The first project concerns the reconstruction of 6th Street SW, beginning near the Burlington Northern Railroad underpass and extending north for 0.50 miles to Central Avenue West. The facility will be four lanes with an 89-foot width and two parking lanes. The second project begins at 6th Street SW and 4th Avenue SW following 4th Avenue SW to Railroad Street, then north along Railroad Street and 3rd Street SW, ending at Central Avenue West. The length of this portion is 0.46 miles and will be two lanes with 48 and 50 foot widths and two parking lanes. (FHWA–MT–EIS–72–12–F). Comments made by: HUD, EPA, DOI, State and local agencies. (EIS Order No. 90492.)

Urban Mass Transportation Administration

Draft

Branch/Rosecroft Metrorail Route, D.C. to Maryland, District of Columbia, Prince Georges County, May 16: Proposed is the issuance of a grant for the construction of a continuation of the Branch (F) Route of the regional Metro System from 3rd and M Street in the District of Columbia to a terminus point in Prince George's County, Maryland. Two alignment alternatives are under consideration from beyond the Alabama Avenue Station to the route terminus in Prince George's County. All transit stations will be serviced by an enhanced feeder bus system. A structural parking facility for 500 cars is being considered for a portion of the parking programmed for the Anacostia Station. (EIS Order No. 90498.)

EIS's Filed During the Week of May 14 to 18, 1979

[Statement Title Index—By State and County]

State	County	Status	Statement title	Accession No.	Date filed	Orig. agency No.
Arkansas	Conway	Final	Toad Suck Ferry Lock and Dam, Arkansas River	90505	05-17-79	COE
California	San Bernardino	Final	Big Bear Basin Unit, San Bernardino N.F.	90511	05-18-79	USDA
Colorado	Conejos	Draft	Conejos Wild and Scenic River, Conejos River	90510	05-18-79	USDA
District of Columbia		Draft	Branch/Rosecroft Metrorail Route, DC to Maryland.	90498	05-16-79	DOT
Florida	St. Johns	Draft	St. Johns Co. Beach Erosion Control	90507	05-17-79	COE
Idaho	Idaho	Final	Warren Planning Unit, Payette National Forest	90489	05-14-79	USDA
	Valley	Final	Warren Planning Unit, Payette National Forest	90489	05-14-79	USDA
	Nez Perce	Supple	Snake River Interstate Bridge	90500	05-16-79	COE
Louisiana	Veron	Final	Mission Change, Fort Polk Military Reservation	90501	05-16-79	USA
Maryland	Prince Georges	Draft	Branch/Rosecroft Metrorail Route, DC to Maryland.	90498	05-16-79	DOT
Massachusetts	Plymouth	Draft	US 44, Route 58 to MA-3, Improvement	90502	05-17-79	DOT
	Barnstable	Supple	Cape Cod Canal, Bourne and Sagamore Hwy. Bridges.	90503	05-17-79	COE
Mississippi	Warren	Final	Hatcher Bayou and Durden Creek Flood Control	90509	05-18-79	COE
Montana	Cascade	Final	6th Street SW and 4th Avenue SW, Great Falls	90492	05-14-79	DOT
New Jersey	Monmouth	Draft	Manasquan River Basin WWT Facilities, Grant	90493	05-14-79	EPA
Pennsylvania	Mifflin	Draft	Middle Creek Watershed Project, Multipurpose	90499	05-16-79	USDA
	Snyder	Draft	Middle Creek Watershed Project, Multipurpose	90499	05-16-79	USDA
	Union	Draft	Middle Creek Watershed Project, Multipurpose	90499	05-16-79	USDA
Puerto Rico		Final	Rio Grande Estates, Mortgage Insurance	90506	05-17-79	HUD
Regulatory		Final	Essential Agricultural Uses of Natural Gas	90496	05-15-79	USDA
Texas	Harris	Final	Westbourne Subdivision, Mortgage Insurance	90490	05-14-79	HUD
		Final	Westglen Subdivision, Mortgage Insurance	90491	05-14-79	HUD
Utah	San Juan	Final	White Mesa Uranium Project, License	90508	05-18-79	NRC
Washington	Clallam	Final	Canal Front Planning Unit Land Mgmt., Olympic NF	90495	05-15-79	USDA
	Cowlitz	Final	Geothermal Leasing & Develop., Gifford Pinchot NF.	90504	05-17-79	USDA
	Jefferson	Final	Canal Front Planning Unit Land Mgmt., Olympic NF	90495	05-15-79	USDA
	Mason	Final	Canal Front Planning Unit Land Mgmt., Olympic NF	90495	05-15-79	USDA
	Skamania	Final	Geothermal Leasing & Develop., Gifford Pinchot NF.	90504	05-17-79	USDA
	Asotin	Supple	Snake River Interstate Bridge	90500	05-16-79	COE

Appendix II.—*Extension/waiver of review periods on EIS's filed with EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
US DEPARTMENT OF AGRICULTURE					
Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, US Department of Agriculture, Room 412A, Washington, D.C. 20250 (202) 447-3965.	Essential Agricultural Uses of Natural Gas.	Final 90496	05/25/79	Waiver	The 30-day review period has been waived. See Appendix I.
	Conejos Wild and Scenic River Study, Conejos County, Colorado.	Draft 90510	05/25/79	Extension	08/13/79. See Appendix I.

Appendix III.—*EIS's filed with EPA which have been officially withdrawn by the originating agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT				
Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6306.	Fairwood Subdivision, Harris County, Texas.	Draft 80239	03/24/78	05/11/79
	Atascocita Trails Subdivison, Harris County, Texas.	Draft 80240	03/24/78	05/11/79
	Brays Village East Subdivision, Harris County, Texas.	Draft 90063	01/29/79	05/11/79
US DEPARTMENT OF AGRICULTURE				
Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, US Department of Agriculture, Room 412A, Washington, D.C. 20250 (202) 447-3965.	Pond Creek Watershed, Bell, Falls and Milam Counties, Texas.	Final 10041	Filed with CEQ 08/11/70.	05/04/79

Appendix IV.—*Notice of official retraction*

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of reports/additional information relating to EIS's previously filed with EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
DEPARTMENT OF TRANSPORTATION			
Mr. Martin Convisser, Director, Office of Environmental Affairs, US Department of Transportation, 400 7th Street, SW, Washington, DC 20590 (202) 426-4357.	Puget Sound Vessel Traffic Service Radar Surveillance Expansion, Amendment 1, Seattle, Washington.	05/16/79	90497

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
US ARMY CORPS OF ENGINEERS				
Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, US Army Corps of Engineers, 1000 Independence Avenue, SW, Washington, DC 20314 (202) 693-6795.	Louisa Generating Station, Louisa and Muscatine Counties, Iowa.	Draft 90481	05/18/79	REA of the Dept. of Agriculture has requested the special note below be published with our FEDERAL REGISTER REPORT.

"The Rural Electrification Administration (REA), is participating in preparation of the EIS entitled, "Louisa Generating Station, Louisa and Muscatine Counties, Iowa" (prepared by COE Rock Island District #90481) to fulfill the NEPA requirements for potentially guaranteeing REA loan funds for the Eastern Iowa Light and Power Cooperative's potential portion of the project and REA intends to use this EIS for its compliance with NEPA in the role of a Cooperating Agency". (#No. USDA-REA-EIS (Adm.) 79-11-F).

[FR Doc. 79-16494 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-50427; FRL 1235-7]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 38087-EUP-1. Nortell Laboratories, Inc., Corvallis, Oregon 97330. This experimental use permit allows the use of 55 pounds of the fungicide *Agrobacterium radiobacter* on almond, apricot, cherry, peach, and plum seeds and seedlings to evaluate control of crown gall disease. A total of 55 acres is involved; the program is authorized only in the States of Arkansas, California, Florida, Georgia, Illinois, Michigan, Minnesota, Missouri, Montana, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin. This program was authorized in a previous experimental use program which was effective from March 30, 1978 to March 30, 1979. It is now authorized until May 31, 1979. (PM-21, Room: E-305, Telephone: 202/755-2562)

No. 35980-EUP-3. Atlantic & Pacific Research, Inc., North Palm Beach, Florida 33408. This experimental use permit allows the use of .24 grams of the plant growth regulator cytokinin on peaches. A total of 6 acres is involved; the program is authorized only in the State of California. The experimental use permit is effective from April 20, 1979 to April 20, 1980. This permit is being issued with the limitation that all treated crops will be destroyed or used for research purposes only. (PM-25, Room: E-301, Telephone: 202/755-2196)

No. 524-EUP-47. Monsanto Co., St. Louis, Missouri 63166. This experimental use permit allows the use of 1,785 pounds of the herbicide glyphosate on stone fruits to evaluate non-selective weed control. A total of 2,080 acres is involved; the program is authorized only in the States of Alabama, Arizona, California, Georgia, Idaho, Illinois, Indiana, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, Washinton, West Virginia, and Wisconsin, and in Delaware for redistribution purposes only. The experimental use permit is effective from April 16, 1979 to April 16, 1981. A temporary tolerance for residues of the active ingredient in or on stone fruits has been established. (PM-25, Room: E-301, Telephone: 202/755-2196)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Authority: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: May 10, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-16505 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1234-3]

Region I; Approval of PSD Permit to the City of Lynn, Mass.

Notice is hereby given that on May 4, 1979 the Environmental Protection Agency issued a Prevention of Significant Deterioration (PSD) permit to the City of Lynn, Massachusetts for approval to construct the Sewage Sludge Incinerators at the Lynn Regional Water Pollution Control Plant. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations (40 CFR Part 52.21), subject to certain conditions, including:

1. The maximum design capacity of the incinerators purchased shall not exceed a combined maximum dry solids input of 68,000 lbs./day.

2. Manufacturer's design specifications for the sewage sludge incinerators and venturi scrubber shall be submitted to EPA.

The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the First Circuit Court of Appeals. A petition for review must be filed on or before July 24, 1979.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203.

Department of Environmental Quality Engineering, Air and Hazardous Materials Division, 600 Washington Street, Boston, Massachusetts 02111.

Dated: May 15, 1979.

Rebecca W. Hanmer,

Acting Regional Administrator, Region I.

[FR Doc. 79-16323 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1234-4]

Region I; Approval of PSD Permit to Great Northern Paper Co.

Notice is hereby given that on May 1, 1979 the Environmental Protection Agency issued a Prevention of Significant Deterioration (PSD) permit to Great Northern Paper Company for approval to construct a bark and waste wood-fired steam generating boiler in East Millinocket, Maine. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations (40 CFR Part 52.21), subject to certain conditions, including:

1. Oil firing capacity for the Modification shall not exceed 1550 gallons per hour (approximately 240 million Btu's per hour heat input).

2. Maximum fuel input rate shall not exceed 1,307,000 barrels per year.

3. All cone burners owned or operated by the Company in the State of Maine will cease operation as of the Modification start-up date. The bark boiler located at the Pinkham Lumber Company must either have demonstrated compliance, or be on an approved Compliance Schedule by the Modification start-up data.

4. Operation of the Modification shall not commence unless the Millinocket area is designated as an attainment area for SO_2, or the Company receives a permit issued pursuant to a program approved by EPA as satisfying the requirements of Part D of the Clean Air Act.

5. Final design specification for the selected particulate control systems must be submitted to EPA for approval.

6. The particulate matter emission rate from the Modification shall not exceed 0.15 pounds per million Btu's.

7. The Company shall continuously monitor fuel oil consumption and record fuel oil consumption, together with maintenance of records and submission of reports.

The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the First Circuit Court of Appeals. A petition for renew must be filed on or before July 24, 1979.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203.

Maine Department of Environmental Protection, State House, Augusta, Maine 04330.

Date: May 15, 1979.

Rebecca W. Hanmer,

Acting Regional Administrator, Region I.

[FR Doc. 79-16324 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-00094; FRL 1235-8]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Working Committee on Registration and Classification; Open Meeting

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notice of Open Meeting.

SUMMARY: There will be a two-day meeting of the Working Committee on Registration and Classification of the State FIFRA Issues Research and Evaluation Group (SFIREG) on Wednesday and Thursday, June 6-7, 1979, beginning at 8:30 a.m. each day. The meeting will be held at the Ramada Inn, 25 Hotel Circle, N.E., Albuquerque, New Mexico, Telephone: 505/296-5472, and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Mr. Barry Patterson, New Mexico Department of Agriculture, Las Cruces, New Mexico, Telephone: 505/646-2133; or

Mr. P. H. Gray, Jr., Office of Pesticide Programs (TS-770-M), EPA, 401 M Street, S.W., Washington, D.C. 20460, Telephone: 202/472-9400.

SUPPLEMENTARY INFORMATION: This is the second meeting of the Working Committee on Registration and Classification. The meeting will be concerned with the following topics:

1. Review of proposed section 24(c) special local need regulations;

2. Consideration of generic standards;

3. Status of 5(f) State experimental use regulations;

4. Status of classification of granular formulations;

5. Status of RPAR (rebuttable presumption against registration) reviews;

6. Status of Conditional Registration;

7. Minor Uses Report; and

8. Additional topics as appropriated.

Dated: May 20, 1979.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-16499 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

[OTS 050002D; FRL 1235-6]

Toxic Substances Control; Interim Policy on Premanufacture Notification Requirements and Review Procedures: Review by Executive Office of the President

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Review by the Executive Office of the President.

On May 15, 1979, EPA published in the Federal Register Premanufacture Notification Requirements and Review Procedures: Statement of Interim Policy" (44 FR 28564). The Agency published this document to coincide with the announcement of the availability of the TSCA Initial Inventory (44 FR 28558).

As stated in the interim policy, the TSCA section 5(a)(1)(A) requirement to submit premanufacture notices applies to all persons who intend to manufacture or import (in bulk) a new chemical substance on or after July 1, 1979. This date is 30 days following the official publication of the Inventory (June 1). The interim policy will apply to all premanufacture notices submitted prior to the effective date of the final premanufacture rules and notice forms which EPA proposed on January 10, 1979 (44 FR 2242).

At this time, the interim policy is being reviewed by the Executive Office of the President. That review is intended to ensure that the policy is consistent with the provisions of the Federal Reports Act (44 U.S.C. 3501) and with Executive Order 12044, "Improving Government Regulations" (43 FR 12661, March 23, 1978). The review will conclude no later than June 15, 1979. If

as a result of that review any changes are made in the interim policy, EPA will publish an amendment to the policy in the **Federal Register**. If there are no changes, EPA will not publish a statement in the **Federal Register**.

Dated: May 18, 1979.

Steven D. Jellinek,

Assistant Administrator for Toxic Substances.

[FR Doc. 79-16500 Filed 5-24-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 79-118, 79-119; File Nos. BP-20,454 and BP-20,863]

Yeary Broadcasting, Inc., et al.; Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: May 3, 1979.

Released: May 17, 1979.

In re applications of Yeary Broadcasting, Inc., St. Paul, Virginia, BC Docket No. 79-118, File No. BP-20,454, Req: 1140 kHz, 1 kW, D; Harry J. Morgan, tr/as Morgan Broadcasting Company, Blountville, Tennessee, BC Docket No. 79-119, File No. BP-20,863, Req: 1140 kHz, 250 W, D, for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Yeary Broadcasting, Inc. (hereinafter "Yeary") and Harry J. Morgan tr/as Morgan Broadcasting Company (hereinafter "Morgan").

2. Morgan has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971) (hereinafter "*Primer*"). Evaluation of the applicant's list of community leaders in light of the demographic information submitted shows that not all significant groups have been consulted. *Voice of Dixie, Inc.*, 45 FCC 2d 1027, 29 RR 2d 1127 (1974), *recon. den.*, 47 FCC 2d 526, 30 RR 2d 851 (1974). For example, the survey indicates that there were no properly identified leaders of Blountville's civic organizations interviewed. In addition, Morgan failed to interview Blountville student leaders. Consultations with student leaders from Kingsport, Tennessee do not fulfill the requirement that representatives of all significant groups (including students) within the proposed community of license be contacted. Moreover, the applicant's interviews with instructors or administrators from Central High School are not a substitute for contacts with student leaders. *Rose Broadcasting Company*, FCC 78-496, 43 RR 2d 1317 (1978). Morgan has failed to state the communities he undertakes to serve as required by Section IV-A, Question 1(A)(2) of Form 301. As a result, we cannot determine whether the applicant has adequately ascertained the community problems for areas outside of Blountville, as required by Questions and Answers 6 and 7 of the *Primer*.[1] Therefore, a limited ascertainment issue will be specified.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary aural service from the proposals and the availability of other primary service (1 mV/m or greater in the case of FM) to such areas and population.

2. To determine with respect to the efforts of Morgan Broadcasting Company to ascertain the needs of its proposed service area:

a. Whether the applicant interviewed leaders of civic organizations and students in Blountville; and

b. Whether the applicant adequately ascertained community problems outside of its proposed community of license.

3. To determine, in the light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 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 the hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly), within the time and in the manner prescribed in that rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Federal Communications Commission.

Martin I. Levy,

Acting Chief, Broadcast Bureau.

[FR Doc. 79-16411 Filed 5-24-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Questions 6 and 7 of the *Primer* require an applicant to ascertain the problems of the other communities that it undertakes to serve.

FEDERAL DEPOSIT INSURANCE CORPORATION

Advisory Committee on State and Federal Regulation of Banks; Meeting

The Federal Deposit Insurance Corporation Advisory Committee on State and Federal Regulation of Banks will meet on Tuesday, June 19, and Wednesday, 20, 1979 at 10:00 A.M., in the 6th floor Board Room of the Federal Deposit Insurance Corporation Building, 550 17th Street NW., Washington, D.C.

This Committee was established to advise the director in charge of a major study of state and federal bank regulation on the content and direction of the study, and to review sections of the study as they are completed. The Committee consists of ten members broadly representative of groups which are impacted by banking and the regulation of banks. Notice of the establishment of this committee was published in the *Federal Register* on December 15, 1977 (Vol. 42, No. 241, page 63219).

The agenda for this meeting:

(1) Progress report;

(2) Presentation of research papers and discussions, comments, and suggestions.

This meeting will be open to the public, with approximately thirty seats available for the public on an unreserved basis. Questions, comments, or statements to the committee may be submitted in writing prior to the opening of the meeting.

Copies of the minutes of the meeting will be available upon written request thirty days after the meeting.

Inquiries may be directed to Dr. Leonard Lapidus, Special Assistant to the Chairman, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429; telephone: (202) 389–4213.

Dated: May 18, 1979.

Edwin C. Houldsworth,
Advisory Committee Management Officer.

[FR Doc. 79-16452 Filed 5-24-79; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC–55]

Camino Real Federal Savings & Loan Association, San Fernando, Calif.; Approval of Conversion Application; Notice of Final Action

Dated: May 22, 1979.

Notice is hereby given that on May 17, 1979, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), by Resolution No. 79–289 approved the application of Camino Real Federal Savings and Loan Association, San Fernando, California, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 79-16398 Filed 5-24-79; 8:45 am]
BILLING CODE 6720-01-M

[No. AC–56]

First Federal Savings & Loan Association of Raleigh, Raleigh, N.C.; Approval of Conversion Application; Notice of Final Action

Dated: May 22, 1979.

Notice is hereby given that on May 17, 1979, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), by Resolution No. 79–298 approved the application of First Federal Savings and Loan Association of Raleigh, Raleigh, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Coastal States Building, 250 Peachtree Center, N.W., Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 79-16399 Filed 5-24-79; 8:45 am]
BILLING CODE 6720-01-M

[No. AC–57]

North Carolina Federal Savings & Loan Association, Albemarle, N.C.; Approval of Conversion Application (Notice of Final Action)

Dated: May 22, 1979.

Notice is hereby given that on May 17, 1979, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), by Resolution No. 79–299 approved the application of North Carolina Federal Savings and Loan Association, Albemarle, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Coastal States Building, 250 Peachtree Center, N.W., Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 79-16400 Filed 5-24-79; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 79–54]

Foss Alaska Line, Inc., Proposed General Rate Increase Between Seattle, Wash., and Points in Western Alaska; Investigation

Foss Alaska Line, Inc. (FAL) has filed with this Commission on March 15, 1979 revisions of its Tariffs FMC–F No. 17 and 18.[1] These revisions, effective May 18, 1979, will result in a seven percent general rate increase on cargo moving between Seattle, Washington and various points in Western Alaska.

[1] See Attachment A.

With the exception of the rates applicable to the movement of groceries (Item 810), the proposed seven percent general rate increase will impact all rates and charges listed in FAL Tariff FMC–F No. 17. The proposed rate increase will also apply to all rates and charges, except those governing the carriage of gillnet boats (Items 551) and groceries (Item 810), listed in FAL Tariff FMC–F No. 18. Rates applicable to the movement of gillnet boats were increased on January 4, 1979, while those governing the carriage of groceries were increased on March 19, 1979.

No protests, either formal or informal, regarding FAL's proposed general rate increase have been received by this Commission.

In accordance with Rule 67 of the Commission's Rules of Practice and Procedure [46 CFR 502.67], FAL has filed its entire direct case concurrently with its proposed general rate increase. The data submitted by FAL indicates that a rate of return of 24.05 percent is projected for the twelve month period ending May 31, 1980. The elimination of the increased revenue to be generated by the seven percent rate increase results in a reduction of the proposed rate of return to 20.72 percent.

The projected 24.05 percent rate of return was determined by allocating the investment and expenses related to the tugs and barges leased by FAL from its parent company, Foss Launch and Tug, on the basis of an annual 365 day utilization factor. FAL disputes the merits of this vessel utilization assumption and has proposed two alternative methods of allocation. These methods, actual operating days and a hypothetical figure of 300 annual utilization days, produce significantly lower rates of return. FAL, utilizing the latter alternative, projects a rate of return of 17.58 percent.

The proposed general rate increase will significantly improve FAL's already favorable operating ratio of 89.93 percent. FAL's projected operating ratio for the twelve month period ending May 31, 1979 is 81.16 percent. Absent the seven percent increase, FAL's operating ratio will still improve to 82.95 percent.

In view of FAL's projected rate of return and operating ratio, the Commission is of the opinion that the proposed seven percent general rate increase should be made the subject of a public investigation and hearing. A proceeding is necessary in order to resolve the issues specified in the second ordering paragraph below and to determine whether the rate increase is unjust, unreasonable or otherwise unlawful under section 18(a) of the

Shipping Act, 1916 and sections 3 and 4 of the Intercoastal Shipping Act, 1933.

Now, therefore, it is ordered, That pursuant to the authority of sections 18(a) and 22 of the Shipping Act, 1916 and sections 3 and 4 of the Intercoastal Shipping Act, 1933 (46 U.S.C. §§ 821, 845, 845a), an expedited investigation is hereby instituted into the lawfulness of the tariff matters listed in Appendix A for the purpose of making such findings as the facts and circumstances warrant;

It is further ordered, That this proceeding be limited to an investigation of the following areas:

1. The proper method of allocating investment and expenses applicable to the tugs and barges leased by FAL from its parent corporation, Foss Launch and Tug, and utilized by FAL in the Alaska Trade.

2. Whether the proposed rates are unjust, unreasonable or otherwise unlawful in that they will provide FAL with an excessive rate of return as measured by accepted analytical methods. It is further ordered That Foss Alaska Line, Inc. be named Respondent in this proceeding;

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), Hearing Counsel shall be a party to this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge;

It is further ordered, That parties opposing Respondent's rate changes will serve testimony and exhibits constituting their direct case, together with underlying workpapers, on all parties and lodge copies of testimony and exhibits with the Administrative Law Judge no later then seven (7) days after the effective date shown on the tariff matter under investigation;

It is further ordered, That subsequent to the exchange of testimony, exhibits, underlying data and prehearing statements by all parties, the Administrative Law Judge shall, at his discretion, direct all parties to attend a prehearing conference to consider:

1. Simplication of issues;
2. Identification of issues which can be resolved readily on the basis of documents, admissions of fact, or stipulations;
3. Identification of any issues which require evidentiary hearing;
4. Limitation of witnesses and areas of cross-examination should an evidentiary hearing be necessary;
5. Requests for subpoenas; and
6. Other matters which may aid in the disposition of the hearing.

It is further ordered, That after considering the procedural recommendations of the parties, the Administrative Law Judge shall limit the issues to the extent possible and establish a procedure for their resolution;

It is further ordered, That any hearing in this proceeding shall be completed within sixty (60) days of the effective date shown on the tariff matter under investigation;

It is further ordered, That the initial decision of the Presiding Administrative Law Judge shall be submitted in writing to the Commission within one hundred and twenty (120) days of the effective date shown on the tariff matter under investigation;

It is further ordered, That during the pendency of this investigation, Respondent will serve the Administrative Law Judge and all parties of record with notice of any tariff changes affecting the material under investigation at the same time such changes are filed with the Commission;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served upon all parties of record;

It is further ordered, That any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rule of Practice and Procedure (46 CFR 502.72);

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further ordered, That except as provided in Rules 159 and 201(a) of the Commission's Rules of Practice and Procedure (46 CFR 502.159, 46 CFR 502.201(a)), all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

Attachment A.[1]*—Subject Publications*

Tariff FMC–F No.	Supplement No.	Scope
17	2	Local Class and Commodity Rates Between Seattle, Washington and Points in the State of Alaska—Bethel, Kotzebue, Nome, St. Michael and Intermediate Ports. Also St. Mary's, via Direct and Transhipment at Nome and Kotzebue, Alaska.
18	2	Local Class and Commodity Rates Between Seattle, Washington and Points in the State of Alaska via Direct Service viz: Group A Points: Alitak, Cordova, Kodiak, Larsen Bay, Old Harbor, Ouzinkie, Port Bailey, Port Graham, Port Lions, Port Williams, Seldovia, Snug Harbor, Uganik, Uyak, Zacher Bay. Group B: Dillingham.

[FR Doc. 79-16462 Filed 5-24-79; 8:45 am]

BILLING CODE 6730-01-M

Notice of 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 June 4, 1979. 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–3810.

Filing Party: Ivy S. Bernhardson, General Mills, Inc., Executive Offices,

9200 Wayzata Boulevard, Minneapolis, Minnesota 55440.

Summary: Agreement No. T-3810, between the Seaway Port Authority of Duluth (Port) and General Mills, Inc. (GMI), provides for the Port's 24-year lease to GMI of an additional grain storage and handling facility adjacent to the existing GMI grain elevator at the Port of Duluth, Minnesota. The facility is to be constructed from the proceeds of revenue bonds to be issued by the Port in the amount of $1,400,000. The Port shall retain title to the facility and GMI shall have the option, at the expiration of the lease term, to purchase the facility for $1.00. As compensation, GMI shall pay Port a basic rental sufficient to pay all principal, interest and premium on the revenue bonds as they become due as well as additional charges relating to the construction and operation of the facility as described in the agreement.

By Order of the Federal Maritime Commission.

Dated: May 21, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-16336 Filed 5-24-79; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 79-53]

John C. Grandon D/B/A Consulspeed Services Independent Ocean Freight Forwarder License No. 2011; Order To Show Cause

John C. Grandon d/b/a Consulspeed Services is an independent ocean freight forwarder operating under FMC license No. 2011, issued on November 23, 1977, pursuant to section 44(b) of the Shipping Act, 1916, and FMC General Order 4, 46 CFR Part 510.

An investigation of the licensee conducted by the Commission's Pacific District Office in August 1978 disclosed that John C. Grandon d/b/a Consulspeed Services entered into an arrangement which allowed a nonlicensed forwarder, Air Wings International, Inc. (Air Wings), to use Consulspeed Services' name and FMC license number in the performance of ocean freight forwarding services. As a result of this arrangement, Consulspeed received $9,607.69 in compensation from 12 ocean carriers involving at least 229 shipments between March 18, 1978 and August 24, 1978, as specifically noticed in the Appendix attached hereto and made a part hereof, for which Consulspeed Services did not provide forwarding services. Both John C. Grandon and the President of Air Wings, Mr. Paul Hever, acknowledged the arrangement and confirmed that Air Wings performed the ocean freight forwarding services.

Based on the information stated above, Consulspeed Services permitted a nonlicensed forwarder to use the licensee's name and FMC license number in violation of section 510.23(a) [1] and accepted ocean carrier compensation on shipments for which it did not provide freight forwarding services in violation of section 44(e), Shipping Act, 1916, and section 510.24(e) of General Order 4.[2]

Section 510.9 of the Commission's General Order 4 provides that a license may be revoked, suspended or modified after notice and hearing for reasons which include:

Failure to comply with any lawful rules, regulations or orders of the Commission.

Such conduct as the Commission shall find renders the licensee unfit or unable to carry on the business of forwarding.

Therefore, it is Ordered, Pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 821 and 841(b)) and sections 510.9, 510.23(a) and 510.24(e) of the Commission's General Order 4 (46 CFR 510.9, 510.23(a) and 510.24(e)) that John C. Grandon d/b/a Consulspeed Services, FMC License No. 2011, is hereby made a respondent in this proceeding and is directed to show cause why the Commission should not find that it has violated section 44(e) of the Shipping Act, 1916, and sections 510.23(a) and 510.24(e) of FMC General Order 4 and why, therefore, its license as an independent freight forwarder should not be revoked or suspended.

It is Further Ordered, That the proceeding be limited at the outset to the submission of memoranda of law and affidavits of fact.

It is Further Ordered, That any persons other than Respondent and Hearing Counsel who desire to become parties to this proceeding and to participate therein shall file a Petition to Intervene pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is Further Ordered, That the following schedule be adhered to:

June 15, 1979—Opening memoranda of law and affidavits of fact from Respondent;

July 6, 1979—Petitions to Intervene; Memoranda of law and affidavits of fact from Hearing Counsel and any intervenors;

July 16, 1979—Reply memoranda of law and affidavits of fact from Respondent;

July 23, 1979—Requests for discovery, hearing and/or oral argument;

It is Further Ordered, That any requests for discovery or evidentiary hearing must be accompanied by a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such data could not be submitted through affidavit;

It is Further Ordered, That a notice of this Order be published in the Federal Register and that a copy thereof be served upon Respondent and Hearing Counsel;

It is Further Ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[1] Section 510.23(a) of General Order 4 provides that: "No licensee shall permit his license or name to be used by any person not employed by him for the performance of any freight forwarding service."

[2] Section 44(e) of the Shipping Act, 1916, and section 510.24(e) of General Order 4 provide that before a licensee may receive compensation from the ocean common carrier, the licensee shall certify in writing to the ocean common carrier that he is licensed by the Federal Maritime Commission and that he had solicited and secured the cargo for the ship or booked or otherwise arranged for space for such cargo and performed two of five enumerated services.

Appendix.—*Summary of Consulspeed Services Compensation Payments*

Carrier	B/L No.	Vessel name	Amount of compensation collected	Date paid	Voyage No.
Sea-Land	961825199	Venture	$50.75	May 18, 1978	096E
	961825200	do	48.31	do	096E
	961825201	do	53.24	do	096E
	961825229	do	41.14	do	096E
	961825304	do	47.73	do	096E
	961825305	Producer	48.26	do	045E
	961825306	Venture	41.07	do	096E
	961825477	do	56.73	do	096E
	961825478	do	54.79	do	096E
	961825610	Producer	48.43	do	045E

APPENDIX.—*Summary of Consulspeed Services Compensation Payments*—Continued

Carrier	B/L No.	Vessel name	Amount of compensation collected	Date paid	Voyage No.
	961825611	do	37.81	do	045E
	961825612	do	48.30	do	045E
	961825613	do	52.24	do	045E
	961825614	do	41.07	do	045E
	961826135	do	48.29	do	045E
	961826136	do	49.15	do	045E
	961826137	do	38.74	do	045E
	961826229	do	51.82	do	045E
	961826230	do	38.70	do	045E
	961826278	do	38.74	do	045E
	961826280	do	38.74	do	045E
	961830715	Venture	49.31	do	096E
	961830716	do	48.96	do	096E
	961830717	do	41.07	do	096E
	961830718	do	41.07	do	096E
	961830878	do	48.15	do	096E
	961830879	do	48.08	do	096E
	961830880	do	59.02	do	096E
	995749348	McLean	1.29	do	099W
	995749663	Trade	5.10	do	062W
	961826231	Economy	48.46	July 15, 1978	099E
	961826279	do	38.74	do	099E
	961826417	do	48.45	do	099E
	961826418	do	51.82	do	099E
	961826419	do	38.80	do	099E
	961826420	do	38.74	do	099E
	961827007	do	47.19	do	099E
	961827003	do	51.82	do	099E
	961827121	do	38.74	do	099E
	961827122	do	48.14	do	099E
	961827123	do	49.43	do	099E
	961827179	do	38.74	do	099E
	961827180	do	51.82	do	099E
	961827181	do	50.63	do	099E
	961827293	Consumer	48.44	do	047E
	961827294	do	49.23	do	047E
	961827295	do	51.82	do	047E
	961827296	do	38.74	do	047E
	961827405	do	38.45	do	047E
	961827762	do	48.62	do	047E
	961827763	do	49.26	do	047E
	961827764	do	37.37	do	047E
	961827875	do	49.34	do	047E
	961827876	do	48.94	do	047E
	961827877	do	38.74	do	047E
	961834067	do	38.74	do	047E
	961834068	do	43.77	do	047E
	961834426	Venture	48.26	do	097E
	961834427	do	51.82	do	097E
	961834664	do	48.11	do	097E
	961834706	Consumer	41.45	do	047E
	961834707	do	41.21	do	047E
	961834861	Venture	48.32	do	097E
	961834862	do	36.74	do	097E
	961834863	do	39.32	do	097E
	961835101	do	48.66	do	097E
	961835102	do	47.91	do	097E
	961835241	do	38.74	do	097E
	961835242	do	51.82	do	097E
	961835441	do	48.82	do	097E
	961835442	do	38.74	do	097E
	961835443	do	48.33	do	097E
	961835444	do	38.74	do	097E
	961835451	Producer	49.40	do	046E
	961835453	Venture	38.74	do	097E
	961835511	Producer	50.49	do	046E
	961835512	do	51.82	do	046E
	961835513	Venture	37.53	do	097E
	961835992	Producer	48.63	do	046E
	961835993	do	51.82	do	046E
	961835994	do	38.74	do	046E
	961836101	do	49.28	do	046E
	961836102	do	38.74	do	046E
	961836360	do	38.74	do	046E
	961836781	do	38.56	do	046E
	961836783	do	38.74	do	046E
	961840001	do	48.63	do	046E
	961840002	do	51.82	do	046E
	995751672	Commerce	1.32	do	063W
	995752137	McLean	29.44	do	100W
	961836359	Producer	47.77	do	046E
	961836782	Consumer	48.64	do	048E
	961840161	do	51.82	do	048E
	961840162	do	48.79	do	048E
	961840163	do	48.22	do	048E
	961840164	do	38.15	do	048E
	961840165	do	38.74	do	048E
	961840750	do	49.68	do	048E

APPENDIX.—*Summary of Consulspeed Services Compensation Payments*—Continued

Carrier	B/L No.	Vessel name	Amount of compensation collected	Date paid	Voyage No.
	961840759	....do....	51.82	....do....	048E
	961840760	....do....	38.74	....do....	048E
	961840881	Venture	38.74	....do....	098E
	961840852	Consumer	48.25	....do....	048E
	961840914	....do....	48.41	....do....	048E
	961840915	....do....	48.56	....do....	048E
	961840916	....do....	48.59	....do....	048E
	961840917	....do....	49.45	....do....	048E
	961840918	....do....	51.82	....do....	048E
	961841240	Venture	38.74	....do....	096E
	961841430	....do....	38.74	....do....	096E
	961841431	....do....	38.51	....do....	096E
	961841601	Consumer	51.82	....do....	048E
	961841602	....do....	48.12	....do....	048E
	961841603	Venture	38.74	....do....	098E
	961841821	Consumer	48.77	....do....	048E
	961841822	....do....	51.82	....do....	048E
	961841823	....do....	48.11	....do....	048E
	961842136	Venture	48.31	....do....	098E
	961842137	....do....	48.20	....do....	098E
	961842292	Economy....	36.74	....do....	100E
	961842293	Venture	48.30	....do....	098E
	961842321	Economy....	38.74	....do....	100E
	961842322	Venture	48.74	....do....	098E
	961842464	....do....	51.82	....do....	098E
	961842465	Economy....	38.74	....do....	100E
	961842621	Producer	48.50	....do....	047E
	961842622	Economy....	48.52	....do....	100E
	961842623	Venture	51.82	....do....	098E
	961842921	Economy....	51.82	....do....	100E
	961842922	....do....	38.68	....do....	100E
	961843166	Producer	38.74	....do....	047E
	961843167	Economy....	38.74	....do....	100E
	961843702	Producer	48.47	....do....	047E
	961843703	....do....	51.82	....do....	047E
	961843704	....do....	38.74	....do....	047E
	961843705	....do....	48.62	....do....	047E
	961843921	....do....	38.74	....do....	047E
	961843922	....do....	38.68	....do....	047E
	961843923	....do....	51.82	....do....	047E
	961844305	Pioneer....	47.95	....do....	002E
	961844306	....do....	38.74	....do....	002E
	961844328	....do....	38.74	....do....	002E
	961844336	....do....	48.48	....do....	002E
	961844337	....do....	47.71	....do....	002E
	961844371	Producer	48.91	....do....	047E
	961844372	....do....	48.32	....do....	047E
	961844373	....do....	38.68	....do....	047E
	961844569	Pioneer....	51.82	....do....	002E
	961844821	....do....	38.74	....do....	002E
	961845332	....do....	51.82	....do....	002E
	961845333	....do....	38.74	....do....	002E
	961845407	....do....	48.47	....do....	002E
	961842138	Economy....	38.74	Aug. 24, 1978	100E
	961842294	....do....	38.74	....do....	100E
	961843168	....do....	51.82	....do....	101E
	961844568	Producer	48.39	....do....	048E
	961844822	....do....	38.74	....do....	048E
	961844823	Consumer	47.76	....do....	049E
	961845360	....do....	38.74	....do....	049E
	961845494	....do....	48.59	....do....	049E
	961845496	....do....	51.82	....do....	049E
	961845534	....do....	48.95	....do....	049E
	961845723	....do....	38.74	....do....	049E
	961845724	....do....	51.82	....do....	049E
	961845725	....do....	48.58	....do....	049E
	961845768	....do....	36.18	....do....	049E
	961845769	Economy....	38.74	....do....	101E
	961845770	Consumer	38.74	....do....	049E
	961845850	Econmomy....	48.29	....do....	101E
	961845851	....do....	38.41	....do....	101E
	961845852	....do....	38.74	....do....	101E
	961845891	Consumer	220.00	....do....	049E
	961846411	....do....	48.93	....do....	101E
	961846412	....do....	48.18	....do....	101E
	961846601	....do....	38.74	....do....	101E
	961846677	....do....	38.74	....do....	101E
	961846678	Producer	48.31	....do....	048E
	961847402	....do....	38.74	....do....	048E
	961847642	....do....	46.56	....do....	048E
	961847643	....do....	38.74	....do....	048E
	961847644	....do....	48.43	....do....	048E
	961847645	....do....	38.74	....do....	048E
Hoegh Line	.....	.....	611.64	July 14, 1978.	
Maersk Line	LGBF460	Alva	2.06	Mar. 18, 1978	7803

APPENDIX.—*Summary of Consulspeed Services Compensation Payments*—Continued

Carrier	B/L No.	Vessel name	Amount of compensation collected	Date paid	Voyage No.
	LGBF461	....do	52.51	....do	7803
	LGBF462	....do	3.76	....do	7803
	LGBF463	....do	1.44	....do	7803
	LGBF858	Axel	7.05	....do	7803
	LGBF859	....do	1.96	....do	7803
	LGBB003	Arnold	160.54	Apr. 8, 1978	7803
	LGBF254	Arthur	26.47	....do	7803
	LGBF449	Arild	16.62	....do	7803
	LGBY410	....do	24.70	....do	7803
	LGBF028	Adrian	1.36	May 2, 1978	7805
	LGBF641	Anders	14.16	....do	7805
	LGBF652	....do	1.25	....do	7805
	LGBF656	....do	9.86	....do	7805
	LGBF412	Anna	2.13	May 23, 1978	7805
	LGBF476	....do	5.10	....do	7805
	LGBF495	....do	42.92	....do	7805
	LGBF863	Adrian	2.16	....do	7807
	LGBF864	....do	1.36	....do	7807
	LGBF867	....do	1.36	....do	7807
	LGBF659	Arnold	10.06	....do	7807
	LGBF229	Anders	2.16	....do	7807
	LGBY010	....do	29.05	....do	7807
Westfal Larsen/Johnson Scan Star	734701	Meonia	100.51	July 13, 1978	
	436403	Fauskanger	.69	....do	
APL	011485	Pres. Polk	1.97	Apr. 18, 1978	66
	02011	....do	5.51	....do	66
	90045	....do	6.67	....do	66
			33.49	June 9, 1978	
			2.24	July 20, 1978	
			40.81	July 14, 1978	
			4.92	....do	
APL			1.36	July 25, 1978	
			.81	July 31, 1978	
States Steamship Co	004318		3.54		50
	004318		47.87		50
Prudential Lines	4	Santa Mariana	6.02		73
	3	Santa Magdalena	40.22		71
Columbus Line, Inc	L009		1.29	June 6, 1978	16-SB
	L015		3.04	June 7, 1978	11-SB
	L015		1.35	July 11, 1978	11-SB
			4.17		
			21.29		
K-Line			12.08		
Blue Star Line/East Asiatic Co			2.83	Apr. 12, 1978	
			2.14	May 31, 1978	
			4.17		
Total compensation received (total shipments 229)			9,607.69		

[FR Doc. 79-16247 Filed 5-24-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Carter Hawley Hale Stores, Inc.; Profit-Sharing-Retirement Income Plan; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: The Profit-Sharing-Retirement Income Plan of Carter Hawley Hale Stores, Inc. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of voting securities of Carter Hawley Hale Stores, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: May 16, 1979.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. Section 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the Federal Register.

By Direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-16349 Filed 5-24-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79N-0138; DESI 11836]

Amitriptyline Hydrochloride Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice states the conditions for marketing amitriptyline hydrochloride products for the indication for which they continue to be regarded as effective and offers an opportunity for a hearing concerning those indications reclassified as lacking substantial evidence of effectiveness. The drug is used for relief of symptoms of depression.

DATES: Hearing requests due on or before June 25, 1979; bioavailability supplements to approved new drug applications due on or before December 28, 1978; other supplements and data in support of hearing requests due on or before July 24, 1979.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 11836, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug products (HFD-120), Rm. 10B-34, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Request for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC-20), Rm. 4-65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFA-305), Rm. 4-62.

Requests for guidelines and prospective test specifications for conducting biovailability tests: Division of Biopharmaceutics (HFD-520), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 11836; Docket No. FDC-D219 (now Docket No. 77N-0260)) published in the **Federal Register** of August 26, 1970 (35 FR 13608), and amended on September 20, 1972 (37 FR 19390), the Food and Drug Administration announced the following conclusions about the drug products described below: (1) They are effective for the relief of symptoms of depression; endogenous depression is more likely to be alleviated than are other depressive states. (2) They are possibly effective for anxiety that often accompanies depression, for schizo-affective depressions, and, when administered intramuscularly, for achieving rapid, marked reaction, with reduction of anxiety and agitation prior to the elevation of mood. (3) They lack substantial evidence of effectiveness for relief of headache. The notice also offered an opportunity for a hearing concerning the indication concluded at that time to lack substantial evidence of effectiveness.

NDA 12-703; Elavil Tablets; and

NDA 12-704; Elavil Injection; both containing amitriptyline hydrochloride; Merck Sharp & Dohme, Division of Merck & Co., Inc., West Point, PA 19486.

Subsequent to the August 26, 1970 notice, Merck Sharp & Dohme revised the wording of the possibly effective indication "For anxiety that often accompanies depression" to read "For depression accompanied by anxiety," and submitted data intended to support effectiveness of the drug for this revised indication. The changed wording to some degree emphasizes depression, the primary indication for amitriptyline, more than the previous wording, but the suggestion that the drug is specifically useful for anxiety remains. Studies in support of this indication obviously must utilize a depressed and clearly anxious patient population and must demonstrate an improvement in anxiety.

Of the studies provided, many do not include an appropriate population, as required by 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). Thus, 5 studies examined the use of amitriptyline as a pre-anesthetic medication in patients who were not depressed at all (Levasque, Urbach, Tornetta, Dripps, Silser) while a sixth report was only a discussion of the use of amitriptyline as a pre-operative medication (Allen). Halliday examined the effect of amitriptyline on performance by fatigued people who were neither anxious nor depressed, while Hartmen conducted a sleep study in patients who do not appear to have been depressed.

Several reports were not scientific studies at all but simply discussions of various aspects of amitriptyline (Carlsson, Lapin, Irwin). These self-evidently do not constitute well-controlled studies. 21 CFR 314.111(a)(5)(ii)(*a*)(*1-5*).

Some studies of reasonably sound design did not have as their objective any measurement of anxiety and obviously could not demonstrate reduction in anxiety. Thus the Hordern-Burt study did not collect any data on anxiety in depressed patients who were given either amitriptyline or imipramine. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*). Similarly, the Hoenig study of patients with endogenous depression did not examine effects on specific target symptoms (such as anxiety), but instead utilized a global judgment. Interestingly, more patients on amitriptyline than imipramine complained of agitation or tension. The collaborative study (Di Mascio, Paykel, and Klerman), for the most part, did not study anxiety, but a preliminary treatment phase found "psychic anxiety" to be a symptom relatively resistant to change and anxious depressives, as a group, improved less than psychotic depressives, hostile depressives, or young depressives with personality disorders.

In several studies that did compare the effects of amitriptyline and placebo on anxiety, there was no statistically significant advantage for amitriptyline (Diamond, Covi, Hewson, Claghorn, Burt).

Rickels, Lumbroso, and Kerr conducted studies in a limited population which is not representative of a typical group of patients with anxiety and depression. Rickels compared amitriptyline and placebo in a population of symptomatic anxious and depressed volunteers who responded to an advertisement. He found improvement in both depression and anxiety. While this could indicate some activity for the drug in anxiety, the population studied is not a typical group of patients with symptoms of anxiety and depression and the findings cannot be extended to such patients. 21 CFR 314.111(a)(5)(ii)(*2*)(*i*). The Lumbroso and Kerr studies were conducted with only

menopausal females. These studies were double-blind comparisons of amitriptyline and placebo consisting of fifty patients in each study with symptoms of menopause. Although significant improvement in both depression and anxiety was demonstrated with amitriptyline, the limited population consisting only of menopausal females is not representative of a typically degressed population. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*).

The Ucer study was a double-blind randomized investigation with seventeen symptom measurements. Although four symptom measurements demonstrated some improvement, there is a lack of consistency in the results of the study. There was some improvement in sensitive feelings and insomnia after one week of treatment, but not thereafter, and in anxiety and anorexia after six weeks of treatment. With regard to anxiety most symptoms such as agitation, overactivity, headache, etc., did not improve and those that did were not even reproducible within the study, as there were differences between the first and sixth weeks. When multiple symptoms are assessed, it would not be uncommon for some to show apparent improvement as a matter of chance. The test for whether these results show real improvement is internal consistency and inter-study reproducibility, which are not found in this study. The study is also inconsistent in not demonstrating improvement for most symptoms of depression, which is the effective indication of the drug product.

None of the data submitted demonstrated substantial evidence of effectiveness for either the initial or the revised possibly effective indication and these indications are now reclassified to lacking substantial evidence of effectiveness.

The notice that follows does not pertain to the indication stated in the August 26, 1970 notice to lack substantial evidence of effectiveness. No person requested a hearing concerning it, and it is no longer allowable in labeling. Any such product labeled for that indication is subject to regulatory action.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the product(s) specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures of distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug products are effective for the indication in the labeling conditions below. The drug products now lack substantial evidence of effectiveness of the indications evaluated as possibly effective in the August 26, 1970 notice and for Merck's revised version of the anxiety indication.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug product is in tablet or sterile solution form suitable for oral or parenteral administration respectively.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The product is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indication is as follows:

> For relief of symtoms of depression. Endogenous depression is more likely to be alleviated than are other depressive states.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before July 24, 1979, the holder of the appliction, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, (ii) a supplement to provide full updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 FR 314.1(c)).

In addition, for the tablet form, on or before December 28, 1979, the holders of such applications are required to submit (1) in vivo data to show that the drug is biologically available in the formulation marketed and (2) in vitro dissolution data. These data should be developed in accord with guidelines and prospective test specifications that are available from the Division of Biopharmaceutics (HFD–520), Bureau of Drugs.

b. Approval of an abbreviated new drug application (21 CFR 314.1(f) containing full information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H must be obtained prior to marketing such product. For the tablet form such application shall also contain (1) in vivo data to show that the drug is biologically available in the formulation to be marketed and (2) in vitro dissolution data. These data should be developed in accord with the guidelines and prospective test specifications that are available from the Division of Biopharmaceutics (HFD–520), Bureau of Drugs.

Marketing prior to approval of an abbreviated new drug applications will such products and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the new drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectivess referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of

approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground(s) for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it [including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, pursuant to section 107(c) of the Drug Amendments of 1962 or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related or similar drug products.

An applicant or any other person subject to this notice pursuant to 21 CFR 310.6 who decides to seek a hearing, shall file (1) on or before June 25, 1979, a written notice of appearance and request for hearing, and (2) on or before July 24, 1979, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other persons subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substanital issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factural analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate. Such submissions except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday.

This notice issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under the authority delegated to Director of the Bureau of Drugs (21 CFR 5.82).

Dated: May 14, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-16034 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 76G-0086]

The Clarid Co.; Withdrawal of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition [GRASP 6G0066] proposing affirmation that naturally occurring silica glass for use as a filter aid for cooking oil is generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348)), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), the Clarid Co., 9251 Burdine St., Houston, TX 77035, has withdrawn its petition (GRASP 6G0066), notice of which was published in the Federal Register of April 12, 1976 (41 FR 15357), proposing that naturally occurring silica glass for use as a filtering aid for cooking oil is GRAS.

Dated: May 14, 1979.

Robert M. Schaffner,

Acting Associate Director for the Bureau of Foods.

[FR Doc. 79-16214 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

[FDA-225-79-4001]

Clinical Investigations; Memorandum of Understanding With the New York Department of Health

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the New York State Department of Health. The purpose of the understanding is to set forth cooperative working arrangements for monitoring the activities of institutional review boards (IRB's) that review clinical investigations involving human subjects.

DATES: The agreement became effective January 16, 1979.

FOR FURTHER INFORMATION CONTACT: Gary Dykstra, Regulatory Operations Section (HFC–22), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3470.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the **Federal Register** of October 3, 1974 (39 FR 35697) stating that future memorandums of understanding and agreements between FDA and others would be published in the **Federal Register**, the agency is issuing the following memorandum of understanding:

Memorandum of Understanding Between the State of New Yourk, Department of Health, and the Region II, U.S. Food and Drug Administration

I. Purpose

It is the purpose of this agreement to establish a cooperative program between the State of New York Department of Health (NYDH) and the Food and Drug Administration (FDA) relative to monitoring the activities of institutional review boards (IRB) that review clinical investigations involving human subjects.

II. Background

Since 1971, FDA regulations have required that before studies with investigational drugs may be performed on human subjects in institutions, they must be approved and then subject to a continuing review by an IRB. The regulations also call for the inspection of such boards by FDA. In April 1977, in response to previous inspectional findings and a Congressional mandate, FDA began a more intensive program of inspecting IRB's responsible for approving and reviewing clinical research studies of all products regulated by the Agency. Although the mandate includes the charges of assuring the quality and integrity of data generated by the studies and that there be no significant loss of protection for the human subjects, the number of IRB's to be inspected and the depth to which they will be audited remains a function of available Agency resources.

As FDA is authorized to notify other entities when the Commissioner believes that such disclosures would further the public interest and/or promote compliance with applicable Agency standards, and as the NYDH has similar legislative responsibilities and authorizations, and has expressed a desire to enter into a cooperative effort to facilitate and improve the monitoring of IRB's, this agreement will improve the posture of each agency in meeting its mandate and responsibility to protect and improve the public health.

III. Substance of Agreement

A. The Food and Drug Administration will:

1. Pursuant to 21 U.S.C. 702(a) and the guidance of Field Management Directive 117, commission designated employees of NYDH to receive and review Agency records relating to IRB's in New York State.

2. Provide NYDH with copies of Letters of Adverse Findings that are sent to IRB's in New York State.

3. Provide NYDH with the results of regulatory actions taken against IRB's, institutions, investigators and sponsors involved in human clinical research in New York State.

4. Provide opportunities for NYDH commissioned personnel to participate in joint inspections of IRB when mutually agreeable to each Agency.

5. Upon the request of NYDH, and in accordance with the current Agency policy, conduct inspections of IRB's and furnish evidentiary support to State regulatory actions.

6. Provide NYDH with a list, and periodically an updated list, of the IRB's known to the Agency to be operating in New York State.

B. The State of New York Department of Health will:

1. In general, cooperate with FDA in the discharge of its IRB monitoring responsibilities.

2. Provide to FDA on request, records pertaining to IRB's to the extent permissible under confidentiality limitations.

3. Provide FDA with the results of regulatory actions taken against IRB's, institutions, investigators, sponsors, and clinical laboratories involved in human clinical research.

4. Upon the request of FDA, and subject to resource and confidentiality limitations, conduct inspections (which may include joint inspections) and furnish evidentiary support to FDA regulatory actions.

5. Provide FDA with a list, and periodically an updated list, of the IRB's known to NYDH to be operating in New York State.

IV. Name and Address of Participating Activities

A. State of New York Department of Health, Tower Building—Empire State Plaza, Albany, NY 12237.

B. Food and Drug Administration, 830 Third Ave., Brooklyn, NY 11232.

V. Liaison Officers

A. Mr. Donald MacHarg, Special Assistant to the Commissioner for Legal Affairs, State of New York Department of Health, Tower Building—Empire State Plaza, Albany, NY 12237, 518–474–8912.

B. Mr. Kenneth A. Silver, Director, State Programs Branch, Office of the Regional Food and Drug Director, Food and Drug Administration, 830 Third Ave., Brooklyn, NY 11232, 212–0965–5070.

VI. Period of Agreement

A. This agreement is effective upon acceptance by both parties and will expire on the last day of the 12th month following date of signing by both parties unless renewed and signed by both parties to continue it in effect for another 12 months.

B. This agreement in its entirety, or in part, may be revised by mutual consent; or it may be terminated upon 30 days written notice by either party.

Dated: January 16, 1979.

Approved and Accepted for the State of New York Department of Health.

Roger C. Herdman,

Director, Public Health, New York State Health Department.

Dated: January 12, 1979.

Approved and Accepted for the Food and Drug Administration.

Clifford G. Shane,

Regional Director, FDA Region II.

Effective date. This Memorandum of Understanding became effective January 16, 1979.

Dated: May 16, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-16037 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

[FDA-225-79-4000]

Drug and Chemical Residues in Food-Producing Animals; Memorandum of Understanding With the Montana Department of Agriculture

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the Montana Department of Agriculture. The purpose of the understanding is to set forth cooperative working arrangements to prevent the presence of drug and chemical residues in animal flesh and products marketed for human consumption.

DATES: The agreement became effective December 19, 1978 and will expire December 31, 1979 unless renewed and signed by heads of both cooperating agencies to continue it in effect for another year.

FOR FURTHER INFORMATION CONTACT: Gary Dykstra, Compliance Coordination and Policy Staff (HFC–13), Food and

Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3470.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the Federal Register of October 3, 1974 (39 FR 35697) stating that future memorandums of understanding and agreements between FDA and others would be published in the Federal Register, FDA is issuing the following memorandum of understanding:

Memorandum of Understanding Between the Montana Department of Agriculture and the Denver District Food and Drug Administration

I. Purpose

It will be the purpose of this understanding to provide more effective consumer protection through more efficient investigational coverage of Montana medicated feed mills and animal producers in an attempt to prevent the presence of drug and chemical residues in animal flesh and products marketed for human consumption.

II. Goals and Responsibilities

The Montana Department of Agriculture (MDA) and FDA Denver District will share the responsibility for the inspection of all Montana medicated feed mills to determine the level of industry compliance with current good manufacturing practices regulations. Close coordination and communication will be maintained and joint planning will be performed to assure that manpower is efficiently utilized and regulatory efforts are properly meshed to achieve a high level of industry compliance.

III. General Provisions

A. Inspection Inventory. An inventory of mills and mixer users to be inspected in accordance with this understanding, hereafter referred to as the cooperative establishment inventory (CEI), will be established and reviewed jointly and updated as necessary by FDA's Denver District Office.

B. Information Exchange. There will be a complete interchange of information between the agencies with respect to the CEI and to areas of mutual obligation.

1. *Inspection reports.* All inspection reports, assay reports, and correspondence pertaining to firms in the CEI will be exchanged in a timely fashion.

(a) *MDA inspection reports.* All inspections will be reported on Form FD–2481 to be supplied by FDA.

2. *Data retrieval.* To provide for inclusion of inspectional data into FDA's data system for use by both agencies, information will be submitted on Form FD–481CG attached to the inspection report also supplied by FDA.

C. Work Planning. 1. *Inspection scheduling.* Mills included in the CEI will be scheduled for surveillance at least every two years.

D. Compliance Follow-Up. 1. *Responsibility.* Compliance problems will be handled on a case by case basis. It will be the responsibility of the agency which discovers a violation to determine the action required to achieve compliance and to follow through to accomplish corrections.

2. *Impact actions.* The responsible agency may elect to use one of several types of action available to it under its respective law. If it determines that an action for achieving compliance can be best brought about under its partner agency's legal authority, referral to its partner would be the action of choice.

E. Program Review. Joint planning sessions will be held semi-annually to review this understanding [and] discuss the cooperative work. Each session will be arranged for under the direction of FDA's Region VIII, Program Analyst (Intergovernmental Officer).

F. Training. Training is considered essential for the maintenance of effective inspectional units. It will be discussed and scheduled at each planning session.

1. *Formal.* Formal training courses sponsored by either agency will be made available whenever possible for the other's personnel.

2. *On the job.* Joint inspections will be used for training inspectors of both agencies. It will be the responsibility of the inspection unit head to recognize inspectional weaknesses and request joint inspections, when indicated.

IV. Term of Understanding

This understanding will expire on December 31, 1979 unless renewed and signed by the heads of both cooperating agencies to continue it in effect for another year.

This understanding in its entirety, or in part, may be revised in writing by mutual consent or terminated upon thirty (30) days written notice by either agency.

W. Gordon McOmber,
Director, State of Montana, Department of Agriculture.

Dated: December 19, 1978.

Fred L. Lofsvold,
Regional Director, Food and Drug Administration, Denver District.

Dated: December 12, 1978.

Effective date: This Memorandum of Understanding became effective December 19, 1978

Dated: May 16, 1979.

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

[FR Doc. 79–16030 Filed 5–24–79; 8:45 am]
BILLING CODE 4110–03–M

[Docket No. 79N–0002; DESI 6403, 6902, 7832]

Drugs for Human Use: Peripheral Vasodilators; Drug Efficacy Study Implementation; Revocation of Exemption

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice revokes the temporary exemption for continued marketing of peripheral vasodilators. Under the exemption, the drugs have been allowed to remain on the market for continued study beyond the time limit scheduled for implementation of the drug efficacy study.

EFFECTIVE DATE: May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Nathan J. Treinish, Bureau of Drugs (HFD–32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice appearing elsewhere in this issue of the Federal Register, the Food and Drug Administration is reclassifying the possibly effective indications for the peripheral vasodilators described below to lacking substantial evidence of effectiveness. These products have been allowed to remain on the market beyond the time limit established for the implementation of the drug efficacy study (DESI) on the condition that manufacturers undertake additional clinical studies to determine the products' effectiveness. The temporary exemption to permit continued marketing was announced in a notice published in the Federal Register of December 14, 1972 (37 FR 26623), as

amended on July 11, 1973 (38 FR 18477). Notification that the peripheral vasodilators were considered less than effective was provided more than 6 years ago; there has been ample time for sponsors to have conducted clinical studies on their products. Although for a time there was some question about precisely how to study drugs in peripheral vascular disease, since 1974 a draft guideline protocol on intermittent claudication has been available and provided to industry representatives. Moreover, the medical literature contains a great deal of discussion of the evaluation of drugs for peripheral vascular disease.

Data submitted thus far to the various new drug applications for peripheral vasodilators have been reviewed. For a number of drugs, reasonably well-designed studies have been reported. These have been double-blinded and have used a placebo control group to minimize bias and take account of spontaneous variability, and they have used treadmill testing to provide objective evaluation of changes in claudication distance. No person, however, has yet provided data that support upgrading of any of these drug products to effective. In addition to the studies that have been submitted, there have been numerous protocols submitted, in some cases years ago, for which results have not yet been provided. Some of these protocols also have basically satisfactory design. Despite the importance of peripheral vascular disease and the absence of effective medical therapy for this condition, the Commissioner of Food and Drugs believes that the time allowed for investigation of the effectiveness of the peripheral vasodilators should not be extended indefinitely. The more than 6 years provided has been adequate to allow for the design and conduct of acceptable studies by sponsors interested in carrying them out. Therefore, the temporary exemption granted by the December 14, 1972 and July 11, 1973 notices, as it pertains to the following products in the drug efficacy study and all identical, similar, and related products, is hereby revoked.

DESI 6403

1. NDA 6–403; Priscoline Hydrochloride Tablets and Injection containing tolazoline hydrochloride; Ciba Pharmaceutical Co., Division Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901.

2. NDA 8–708; Dibenzyline Capsules containing phenoxybenzamine hydrochloride; Smith Kline & French Laboratories, 1500 Spring Garden St., Philadelphia, PA 19101.

3. NDA 9–225; Ilidar Tablets containing azapetine phosphate; Roche Laboratories, Division Hoffmann-LaRoche, Inc., 340 Kingsland RD., Nutley, NJ 07110.

4. NDA 9–813; Arlidin Solution for Injection containing nylidrin hydrochloride; USV Pharmaceutical Corp., 1 Scarsdale Rd., Tuckahoe, NY 10707.

5. NDA 11–832; Vasodilan Injection and Tablets containing isoxsuprine hydrochloride; Mead Johnson Laboratories, Division of Mead Johnson & Co., 2404 Pennsylvania St., Evansville, IN 47721.

DESI 6902

1. NDA 6–902; Roniacol Tablets containing 50 milligrams nicotinyl alcohol as the tartrate and Roniacol Elixir containing 50 milligrams nicotinyl alcohol per teaspoonful; Roche Laboratories.

DESI 7832

1. NDA 7–832; Paveril Phosphate Powder and Tablets containing dioxyline phosphate; Eli Lilly & Co., P.O. Box 618, Indianapolis, IN 49206.

2. NDA 9–367; Arlidin Tablets containing nylidrin hydrochloride; USV Pharmaceutical Corp.

3. NDA 11–554; Cyclospasmol Capsulets and Tablets containing cyclandelate; Ives Laboratories, Inc., 685 Third Ave., New York, NY 10017.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: May 16, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-16032 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 76N-0507]

FD&C Red No. 40 Working Group; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that the Interagency Working Group on FD&C Red No. 40 will meet with the Ad Hoc Statistical Working Group to resolve additional statistical methodolgy issues that have arisen since the January 1979 meeting, and then in closed session to finalize its evaluation of the feeding studies on FD&C Red No. 40. The portion of the meeting with the Ad Hoc Statistical Working Group will be open to the public and an opportunity for presentation by interested persons of data, information, and views related to the safety of FD&C Red No. 40 will be given before the closed session.

DATES: The meeting will be held June 11, 12, and 13, 1979, beginning at 9:30 a.m.

ADDRESS: The meeting will be held in Rm. 1409 of the Food and Drug Administration Bldg., 200 C St., SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: The Interagency Working Group on FD&C Red No. 40 met with the Ad Hoc Statistical Working Group on January 17 and 18, 1979. The purpose of that meeting was to determine appropriate statistical methodology to probe for treatment-induced tumor acceleration without increased tumor incidence in a chronic feeding study. The full transcript of this meeting and the recommendations of the Interagency Working Group and the consultant statisticians are available from the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857 and are available for inspection between 9 a.m. to 4 p.m., Monday through Friday.

Although no particular statistical method sensitive to tumor acceleration without increased incidence was available, further research with several promising methods was recommended by the Interagency Working Group.

The consultants in their independent report called for further analysis of the data from the second mouse experiment regarding row, position, and litter effects.

In a subsequent report of April 18, 1979, entitled "Mixed Population Analysis of Mouse Experiments on FD&C Red No. 40," Professors Mosteller and Lagakos, two members of the Ad Hoc Statistical Working Group, separated Reticuloendothelial (RE) deaths (related to lymphomas) from non-RE deaths and analyzed the data by their proposed method without correcting for "data-dredging." They concluded: "Nevertheless, the suggestion of a decreased latency period without a corresponding increase in RE

incidence for the exposed group appears in both experiments." In addition, Professors Mosteller and Lagakos find that sex, row, and position are significantly correlated with the incidence of RE death in the second study.

The Interagency Working Group on FD&C Red No. 40 will meet at 9:30 a.m. on June 11, 12, and 13, 1979 in Rm. 1409, Food and Drug Administration Bldg., 200 C St. SW., Washington, DC 20204.

Although the Working Group is an internal government body, and not an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. Appendix 1), the agency believes that it would be beneficial to provide for public contributions to the Working Group's review. Accordingly, certain portions of this meeting will be open to the public.

During the initial portion of the meeting, the Interagency Working Group will meet with the Ad Hoc Statistical Working Group to allow for peer review of the methodology and findings of Professors Mosteller and Lagakos and to provide any further considerations appropriate to the statistical analysis of the data. A copy of the Mosteller-Lagakos report is available at the office of the Hearing Clerk. This portion of the meeting, beginning at 9:30 a.m. on June 11, 1979, will be open to the public.

Following this review, interested persons will be given the opportunity to present data, information, and views about either the statistical methodology or the safety of FD&C Red No. 40. The Interagency Working Group will then meet in closed session to discuss the evidence concerning the safety of FD&C Red No. 40 and prepare its report.

Persons who desire to make presentations should notify Dr. Albert C. Kolbye, Jr., Bureau of Foods, 202–245–1301, by the close of business June 8, 1979, and indicate the amount of time needed for their presentations. Persons who are unable to appear in person on June 11, 12, and 13, 1979, may submit data, information, and views in writing to Dr. Albert C. Kolbye, Jr., Bureau of Foods (HFF–100), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, by the close of business June 8, 1979.

Dated: May 16, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–16085 Filed 5–24–79; 8:45 am]

BILLING CODE 4110–03–M

Federal Responses to Radioactive Contamination From Specified Foreign Nuclear Detonations; Multiagency Memorandum of Understanding; Cross Reference

For a multiagency memorandum of understanding regarding Federal responses to radioactive contamination from specified foreign nuclear detonations, issued jointly by the Department of the Air Force, the Department of Energy, the Environmental Protection Agency, the Federal Aviation Administration, the Food and Drug Administration, the National Oceanic and Atmospheric Administration, and the Nuclear Regulatory Commission, see FR Doc. 79–16192 appearing in Part VII of the **Federal Register** of Thursday, May 24, 1979.

BILLING CODE 4110–03–M

[Docket No. 77G–0075]

Lever Brothers Co., Inc.; Withdrawal of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (GRASP 7G0085) proposing affirmation that the use of *L*-lysine monohydrochloride and *DL*-methionine as flavor components for filled cheese products is generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Lever Brothers Co., Inc., 45 River Rd., Edgewater, NJ 07020, has withdrawn its petition (GRASP 7G0085), notice of which was published in the **Federal Register** of April 19, 1977 (42 FR 20347), proposing that the use of *L*-lysine monohydrochloride and *DL*-methionine as flavor components in cheese flavor cocktails to be used for filled cheese products is GRAS.

Dated: May 15, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79–16211 Filed 5–24–79; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 79G–0127]

Med-Chem Laboratories, Inc., Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Med-Chem Laboratories, Inc. has filed a petition proposing affirmation that glyceryl monolaurate used as an antimicrobial agent in food is generally recognized as safe (GRAS).

DATE: Comments by July 24, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 9G0228) has been filed by Med-Chem Laboratories, Inc., 2088 Riverwood, Okemos, MI 44864 and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that glyceryl monolaurate used as an antimicrobial agent in food is GRAS.

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before July 24, 1979, review the petition and/or file comments (four copies, identified with the Hearing Clerk docket number found in brackets in the heading of this document) with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. Comments should include any available information that would be helpful in

determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 14, 1979.

Robert M. Schaffner,

Acting Director, Bureau of Foods.

[FR Doc. 79-18212 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 76N-0325; DESI 3265]

Mepenzolate Bromide: Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is reclassifying the less-than-effective indications for anticholinergic drug products containing mepenzolate bromide, offering an opportunity for a hearing on certain indications considered to lack substantial evidence of effectiveness, and announcing the conditions under which the drug may be marketed for the indication for which it continues to be regarded as effective. The product is used as an adjunct in the treatment of peptic ulcer.

DATES: Hearing requests due on or before June 25, 1979. Supplements to approved full NDA's due on or before July 24, 1979.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 3265 and the docket number 76N-0325, directed to the attention of the appropriate office below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFD-110), Rm. 16B-30, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for Hearing: Hearing Clerk, Food and Drug Administration (HFA-305), Rm. 4-65.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Robert J. Temple, Bureau of Drugs (HFD-110), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

SUPPLEMENTARY INFORMATION: In a notice (DESI 3265) published in the Federal Register of June 18, 1971 (36 FR 11754), the Food and Drug Administration (FDA) announced its conclusion that mepenzolate bromide is effective for use as adjunctive therapy in the treatment of peptic ulcer. The notice further classified the drug as follows: Probably effective for use as adjunctive theraphy in the irritable bowel syndrome and as adjunctive therapy in neurogenic bowel disturbances; possible effective as an adjunct in the treatment of diarrheas and for some other labeled indications; and lacking substantial evidence of effectiveness for various other indications. An opportunity for hearing was offered with respect to the indications for which the drug was classified at that time as lacking substantial evidence of effectiveness. No request for a hearing on those indications was made, and hence they are no longer allowable in labeling.

In a followup notice published in the Federal Register of March 22, 1977 (42 FR 15468), the Director of the Bureau of Drugs stated that no data had been submitted in support of the drug's probably and possibly effective indications, which were thereby reclassified to lacking substantial evidence of effectiveness. An opportunity for hearing was offered for any person wishing to contest the reclassification.

In a partial rescission published on July 12, 1977 (42 FR 35895), the Bureau of Drugs stated that it had erred in reclassifying two of mepenzolate bromide's indications. Because data had been submitted in support of a probably effective indication (irritable bowel syndrome) and a possibly effective indication (diarrheas), the reclassification and opportunity for hearing offered, with respect to those particular indications only, was rescinded pending evaluation of the data. The reclassification and opportunity for hearing for all other indications named in the March 22, 1977 notice remained in effect; as no person has requested a hearing on those indications for mepenzolate bromide, they are no longer allowable in labeling.

The data previously submitted by the sponsor, plus other data submitted in the interim, have now been reviewed and found inadequate to support effectiveness for the indications to which they pertain: irritable bowel syndrome and diarrhea. Therefore, the following drug is reclassified to lacking substantial evidence of effectiveness for those indications:

NDA 10-679; pertaining to Cantil Tablets and Liquid, each containing mepenzolate bromide; Merrell-National Laboratories, Division Richardson-Merrell, Inc., 110 E. Amity Rd., Cincinnati, OH 45215.

The submissions from Merrell-National are discussed below.

Reports of Clinical Studies

1. Several of the submissions of Merrell-National were studies which, while reporting on the pharmacology and clinical effects of Cantil, did not bear on the effectiveness of Cantil for the treatment of any specific disease. This applies to the Dreiling and Janowitz study on the effect of several anticholinergic drugs on basal and secretin-stimulated pancreatic secretion. Similarly lacking were the Laurens and Hightower study on the effects of a number of drugs on colonic pressures and motility, and the Texter and Hightower report on the effects of anticholinergic drugs on motility and propulsion in the colon.

2. Cummins, as described in a paper presented only as an abstract, studied the effect of Cantil on spontaneous motility of the human colon, finding a decrease in colonic activity. He also treated 33 patients with functional disorders of the colon and found that Cantil appeared to be of benefit. This clinical study is described in one paragraph, without any details of the study. The study is facially inadequate in the level of detail provided, (21 CFR 314.111(a)(5)(ii)(*c*)), and does not involve any comparison of the effects of the drug with a control (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)).

3. Kleckner reported on the results of a triple crossover, double-blind trial of Cantil against placebo and atropine. Patients were said to have been randomized to one of the three treatments (indistinguishable in appearance) and then followed for 4 weeks and moved to the second treatment, and finally to the third. All patients were given a bland, low-residue diet and the patients who had established chronic ulcerative colitis were prescribed "alternative bi-weekly doses of salicylazosulfapyridine (Azulfidine)." Patients were then rated

according to the relief of three symptoms: abdominal pain, abnormal bowel action, and gaseous distress. Complete relief of symptoms was graded 3; moderate relief was graded 2 (two symptoms relieved); minimal relief was graded as 1 (only one symptom relieved). The reported results were that the placebo and atropine had virtually no effect in chronic ulcerative colitis, while Cantil had a substantial effect. Similar results were reported for the irritable bowel syndrome.

However, the study is severely lacking in the details of how it was carried out. In addition, there is no assessment of the comparability of the groups of patients studied with respect to pertinent variables. The 51 patients studied included a range of diseases: irritable bowel syndrome (27), chronic ulcerative colitis (8), non-specific infectious enterocolitis (7), and a mixture of others (9). The larger groups, irritable bowel syndrome and ulcerative colitis, were treated as separate groups, but there is little analysis provided. In this triple crossover, a number of drug sequences are possible (e.g., Cantil, atropine, placebo; atropine, Cantil, placebo, etc.) and the sequence could be important. It is essential to know whether the groups receiving each drug in each position (e.g., Cantil last) were of comparable size. Other pertinent variables, such as age, sex, duration and severity of illness, and extent of initial symptoms should also be comparable in each sequence. Unfortunately, the sequence groups are not characterized at all, so their comparability with respect to pertinent variables cannot be known (21 CFR 314.111 (a)(5)(ii)(*a*)(*2*)(*iii*)). In addition, the randomization and blinding procedures are not described in any detail (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*) and (a)(5)(ii)(*a*)(*3*)).

The results are presented in a confusing fashion. Although the scale described previously (relief rated at 3, 2, or 1) was to be used, results are presented as a bar graph showing "percent effectiveness," from 0 to 100. On the bar graph are differently shaded bars, each representing various degrees of relief, from none to complete. The values of the bars range from 0 to 100 percent. There are no details provided as to how the bar graph was made. For example, it is not clear whether in order to be rated as having a certain degree of relief, a patient had to have the designated degree of relief at every one of the biweekly visits or at some fraction of them. Moreover, it is not clear what rating a patient is given if he has no relief of one symptom and partial relief of another. There is thus a facially inadequate discussion of how data were collected and analyzed (21 CFR 314.111(a)(5)(ii)(*a*) (*3*) and (*5*)). In addition, reported results are implausible. One hundred percent of the placebo group is reported as having no relief in the chronic ulcerative colitis patients. As all of these patients were placed on Azulfidine at the beginning of the study, a regimen known to be effective in the treatment of ulcerative colitis, it would be virtually impossible for no patient to show any improvement. Even had there been no effective treatment with Azulfidine, the spontaneous course of ulcerative colitis is one of waxing and waning; again, the utter lack of any benefit to the placebo group does not seem plausible. The results in the irritable bowel syndrome were similarly highly favorable to Cantil, which was reported as giving about 60 percent complete relief compared to less than 10 percent complete relief and almost 90 percent no relief in the placebo group. Again, considering the well-known fluctuating natural history of the irritable bowel syndrome, it is hard to imagine that almost none of the placebo patients had relief of any symptom during the study. A second controlled study reported in the same paper involving fewer patients (only 12) was described as statistically inconclusive.

The study is not an adequate and well-controlled study and does not provide evidence of effectiveness of Cantil in either the irritable bowel syndrome or ulcerative colitis.

4. Another Kleckner report submitted by Merrell-National appears to be an abstract of the material concluded in the third report, immediately preceding this, to be inadequate as proof of Cantil's effectiveness in either the irritable bowel syndrome or ulcerative colitis.

5. Hock carried out a double-blind trial comparing Cantil to Cantate, a combination of Cantil and 200 milligrams of meprobamate, in patients with a diagnosis of irritable colon. This was, thus, a study utilizing an active treatment control. However, because the comparison drug, Cantate, has not itself been proven to be effective therapy for irritable colon, the study fails to meet the requirements for an active control study (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)(*iii*)). Although there was no difference between the two treatments, and although the authors noted improvement from the baseline with both drug products, this in no way demonstrates an effect of either agent. Because the irritable bowel syndrome is well known to be a disease whose severity fluctuates, a study of this kind cannot distinguish between the possibility that patients improved spontaneously and the possibility that the drug had an effect.

6. Riese reported on his experience with 79 patients seen at the Jersey City Medical Center Gastrointestinal Clinic. Cantil was given to all of these patients and the results of therapy were observed. Some individual case reports were provided. Although Dr. Riese had the impression that patients improved in many instances, this study is entirely uncontrolled, as there is no untreated or placebo-treated group in whom the natural history of the disease without drug treatment could be observed. The study is thus completely uncontrolled and does not meet the requirements of 21 CFR 314.111(a)(5)(ii)(*a*)(*4*).

7. Allen conducted an open pilot study of Cantil Liquid in patients with nonspecific diarrhea. The study involved 13 patients, all of whom were treated with Cantil Liquid. The mean duration of treatment before return of normal bowel movements was 3.4 days. These is no way to determine from a study like this whether Cantil was helpful, as 3.4 days is well within the range of time that nonspecific diarrhea may heal itself. This is plainly an uncontrolled study. (21 CFR 314.111(a)(5)(ii)(*a*)(*4*).)

8. Sabesin and Vernon carried out a double-blind, placebo-controlled, parallel study in 42 patients randomly assigned to either Cantil or placebo. The authors reported that Cantil caused more rapid relief of symptoms, including diarrhea, than did placebo. The study is defective with respect to the requirements of 21 CFR 314.111 as follows:

a. The patients were not suitable for demonstrating that Cantil is effective in either functional bowel disease or nonspecific diarrhea because the objective of the study was to compare the drug in patients with "acute gastrointestinal disorders" and the entrance criteria did not require that there be acute diarrhea. In fact, of 39 patients who completed the study, 24 had a primary diagnosis of acute gastroenteritis, suggesting that nausea and vomiting may have been the major complaint. The patients are therefore not suitable for the purposes of the study (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)).

b. The patients were not shown to be comparable with respect to significant variables. Although the number of bowel movements at baseline was evaluated carefully, the duration of symptoms prior to treatment was not. It is well known that the response of

diarrhea is quite variable, depending on whether it is truly acute or not, and that acute diarrhea runs a relatively rapid course. Even small differences between the time of onset might be sufficient to distort the results (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)).

c. Despite randomization, the groups were not comparable with respect to what is perhaps the most pertinent variable, namely, the number of bowel movements on the first day of therapy. Because many more of the Cantil patients had five to seven bowel movements per day on that first day, the comparability of the test and control groups is clearly deficient (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)).

9. Allen carried out a single-blind, parallel group comparison of Cantil with Lomotil in the treatment of acute nonspecific diarrhea. Twenty patients were randomized to each group and were evaluated after 1 to 5 days of treatment. This study is defective for the following reasons:

a. Entry into the study was based on complaints of frequent and watery bowel movements associated with gastrointestinal pain and cramping. This is too general a definition and could include people who had had their condition only briefly and those who had had it for a long time. The course of these two kinds of patients can be quite variable and the definition does not describe a population with acute nonspecific diarrhea. The study is therefore defective in that patients were not appropriate for the purpose of the study (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)).

b. The use of the active treatment control makes it very difficult, if not impossible, to assess the effectiveness of Cantil. For both drug groups there was substantial improvement over the first days of the study, which would be expected in most cases of diarrhea and would not, *per se* indicate effectiveness for either agent. In fact, review of the data on average number of bowel movements shows that the Lomotil group had a substantially smaller number of bowel movements per hour than did the Cantil group, although the difference was not significant in a study of this small size. There is no assessment of the ability of this study to detect a difference of a certain size between the two drugs (i.e., the power of the study), and of course there is no parallel placebo group so there is no direct comparison with an untreated population. Accordingly, one cannot conclude from this study that Cantil has any effect on diarrhea. It also should be emphasized that in a self-limited condition, such as diarrhea, there was no reason not to use a placebo control. Patients would not be exposed to any significant risk, and the study is a short-term one.

10 Lossos' study, unlike previously reported studies, was of patients with truly acute diarrhea, in that diarrhea had been present for not more than 24 hours. The study appears to satisfy the criteria for an adequate and well-controlled study. Analysis follows:

Lossos carried out a double-blind, parallel study comparing Cantil and placebo in the treatment of acute non-specific diarrhea of not more than 24 hours' duration. Dosage was two 25-milligram tablets four times a day (30 minutes before meals and at bedtime). Patients were seen at entry and instructed to avoid additional medication, and then seen at followup within 72 to 80 hours. During the 3-day treatment period, patients kept an hourly record of the dosage of drug taken, the number of stools and the presence or absence of cramps. A variety of target signs and symptoms, including abdominal tenderness, abdominal pain and cramps, abdominal rumbling, abdominal bloating, nausea, vomiting, malaise, and cramping, were evaluated on a scale of 1 to 4 after both the initial baseline examination and at the end of the study. Adverse reactions were also recorded.

Sixty-two patients entered the study, 42 receiving Cantil and 20 placebo (a deliberately chosen 2 to 1 ratio). Nine subjects were excluded for various reasons and therefore 38 Cantil patients and 15 placebo patients were analyzed. The treatment groups were comparable with respect to age, weight, and the time from the onset of their illness to therapy. There was, however, a significant difference in sex ratio with the Cantil patients being 26 percent (10 of 38) male vs. 60 percent (9 of 15) male in the placebo group. Perhaps more important, although the patients were comparable at baseline with respect to the frequency of stools prior to therapy and to the number during the 4-hour period prior to therapy, there were significant differences between the two groups in the pretreatment severity of abdominal tenderness, abdominal pain, abdominal cramps, abdominal rumbling, abdominal bloating, and malaise. In every case the placebo group had the more severe symptoms. Because of these differences the sponsor, in addition to doing a simple comparison of the effects of Cantil and placebo on stool frequency, also carried out an analysis using abdominal cramps as a covariate. Males and females were compared separately.

Evaluation of stool frequency for each 24 hours on the 3 days of the study showed that for all patients, as well as for males and females separately, the Cantil group had a statistically significantly lower stool frequency for all three days of the study. Examination of stool frequency for each 4-hour period gave similar results. The Cantil and placebo groups differed significantly by the 4- to 8-hour period and remained statistically significantly different throughout the remainder of the study. The Cantil group also had a significantly shorter median time to the beginning of the first 4-hour period with 0 to 1 bowel movement than did the placebo group. A similar result arose when males or females were examined separately, except that significance was not reached for females until the 8- to 12-hour period.

The similarity in results of separate analyses of males and females indicates that Cantil does not affect males differently from females and so the difference in sexual composition of the treatment groups is not a significant defect. Analysis of symptoms favored Cantil for abdominal tenderness, abdominal pain, abdominal cramps, abdominal bloating, and malaise. It is hard to assess these findings because when the small placebo group is broken down to males and females, there are very few patients left for comparison in each group.

Side effects were comparable between the two groups except for constipation, which was reported by almost half of the Cantil patients and none of the placebo patients.

In sum, Lossos' study is a well-designed trial that shows effectiveness of Cantil in the treatment of acute diarrhea. The one disturbing note is the greater symptomatic severity of the placebo group at baseline (see below for further discussion).

11. Kamperman carried out a study virtually identical to Lossos' with, however, entirely different results. In this study 43 patients (21 Cantil, 22 placebo) were studied and the patient groups were comparable with respect to age, sex, the time of onset from diarrhea to therapy, and initial severity of signs and symptoms. The Cantil group was about 20 pounds heavier on the average. The time from the first medication until the beginning of a 4-hour interval in which no or one bowel movement occurred was recorded for each patient; the mean response time was 35 hours for the Cantil patients and 35 hours for the placebo patients. No advantage favoring Cantil was seen for any of the symptoms recorded (abdominal tenderness, abdominal pain and cramps, etc.).

It is not obvious why these two nearly identical studies should have given such dramatically different results. As noted above, the sharp difference in sex distribution in Lossos' study did not *appear* to have made any difference, but this must be reserved as possibly related to the difference in results. In addition, the greater severity of symptoms in the palcebo group might perhaps have indicated that they were a somewhat different patient population with a potentially different natural history.

In any event, although there is one well-controlled study (Lossos') that showed an effect of Cantil in reduction of stool frequency and other symptoms in patients with acute diarrhea, this finding was not confirmed in an essentially identical study. The single positive study does not constitute substantial evidence of effectiveness for this indication.

12. Two small studies, one by Sabesin and one by Waterhouse, have been submitted comparing Cantil to placebo in patients with the irritable bowel syndrome. Sabesin studied 25 patients randomly assigned to Cantil and placebo. The study was double blind and lasted 2 weeks, with examinations at baseline, first week, and second week for frequency and degree of abdominal pain, rumbling, bloating and diarrhea. Side effects were examined at each visit. Diarrhea, constipation, or alternating periods of constipation and diarrhea were also noted in the physician's comments. Patients were given four tablets a day and this could be increased to as much as eight. Patient groups were comparable with respect to sex, age, height, and weight, as well as the distribution of symptoms of diarrhea and constipation.

Some of the other symptoms (bloating, cramping, etc.) were somewhat greater in the placebo group. In the course of the study, symptoms improved markedly over the first week and this improvement was maintained during the second week. There was no difference seen between Cantil and placebo for any symptom.

Waterhouse carried out a similar study in 20 patients with essentially similar results.

Both of these studies were quite small and were unlikely to have detected anything short of a major advantage for Cantil. The absence of favorable trends, however, is quite discouraging with respect to showing effectiveness of Cantil for treatment of the irritable bowel syndrome.

Summary

Only the study by Lossos appears to be an adequate and well-controlled study offering support of the effectiveness of Cantil for the indication acute diarrhea. However, the Lossos study is flawed by the greater symptomatic severity of the placebo group at baseline, and is contradicted by a virtually identical study (Kampermans) yielding entirely different results. At any rate, a single positive study is not sufficient to constitute substantial evidence of effectivenes of the drug for this indication. None of the studies constitute substantial evidence for the indication irritable bowel syndrome.

FDA Findings

The drug is regarded as a new drug (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update approved applications providing for such a drug. An approved new drug application is a requirement for marketing any such drug product.

In addition to the product(s) specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that this drug is effective for the indication in the labeling conditions below. The drug now lacks substantial evidence of effectiveness for the indications evaluated as probably effective and possibly effective in the June 18, 1971 notice.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in tablet or liquid form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication may be stated as shown either in (i) or (ii) below. As a result of previous recommendations made by the Bureau of Drugs, some NDA holders have begun to use the language in item (ii). The Bureau anticipates that that language will be in the indications section of the full labeling text that is to be published as a labeling guideline for anticholinergic drug products in the future. At the present time, however, labeling will be considered acceptable if either item (i) or (ii) is used for the indication.

(i) For use as adjunctive therapy for the treatment of peptic ulcer.

(ii) For use as adjunctive therapy for the treatment of peptic ulcer. (Name of drug) has not been shown to be effective in contributing to the healing of peptic ulcer, decreasing the rate of recurrence, or preventing complications.

3. *Marketing status.* a. Marketing of such a drug product that is now the subject of an approved or effective new drug application may be continued provided that, on or before (*insert date 60 days after date of publication in the Federal Register*), the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such a product. Marketing prior to approval of a new drug application will subject such a product, and those persons who caused the product to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is aware of only one adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience,

meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drug for the indication "adjunctive treatment of diarrheas." Because the results of this study are contradicted by another virtually identical study, a third study of the same type should have been submitted to determine if the evidence of efficacy could be sustained.

With respect to the indication "adjunctive treatment in the irritable bowel syndrome," the Director is unaware of any adequate and well-controlled clinical investigations meeting the statutory requirements cited in the previous paragraph for demonstrating efficacy.

Notice is given to the holder of the new drug application, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application and all amendments and supplements thereto providing for the indication for irritable bowel syndrome and/or for the indication for diarrhea, on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the application, shows there is a lack of substantial evidence that the drug products will have all the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application supplemented, in accord with this notice, to delete the claims lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) are hereby given an opportunity for a hearing to show why approval of the new drug application providing for the claims involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related or similar drug products.

An applicant or any person subject to this notice pursuant to 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before June 25, 1979, a written notice of appearance and request for hearing, and (2) on or before July 24, 1979, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to make use of the opportunity for a hearing concerning the action proposed with respect to such drug products and a waiver of any contentions concerning the legal status of such drug products. Any such drug product labeled for the indications lacking substantial evidence of effectiveness referred to in paragraph A of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: May 14, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-16033 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0001; DESI 6403, 6902, and 7832]

Peripheral Vasodilators; Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice reclassifies peripheral vasodilators to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications, and offers an opportunity for a hearing on the proposal.

DATES: Any request for hearing must be submitted on or before June 25, 1979. All data and information relied upon in support of any such request and any other comments must be submitted on or before July 24, 1979. Full reports of studies previously unsubmitted but completed as of the date of this notice and interim reports on studies completed but not analyzed and studies ongoing must be submitted on or before July 24, 1979. Full reports of studies ongoing but not completed as of the date of this notice must be submitted as soon as completed or on or before May 26, 1980, whichever date is earlier.

ADDRESSES: Communications in response to this notice should be identified with the Docket No. 79N-0001

and the reference number DESI 6403, 6902, or 7832, as appropriate, and directed to the attention of the appropriate office named below.

Requests for hearing, supporting data and information, reports of studies, and other comments: Hearing Clerk (HFA–305), Rm. 4–65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nathan J. Treinish, Bureau of Drugs (HFD–32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In notices published in the Federal Register of September 18, 1970 (35 FR 14628) (DESI 6902), July 20, 1971 (36 FR 13347) (DESI 7832) and July 11, 1972 (37 FR 13565) (DESI 6403), the Food and Drug Administration classified peripheral vasodilators as possibly effective for symptoms associated with peripheral vascular disease. The indications lacking substantial evidence of effectiveness were specifically named in the notices. All other indications were classified as possibly effective, but not specifically named in the notices. The possibly effective indications were as follows:

A. *DESI 6403.* Tolazoline hydrochloride (NDA 6–403 and 11–770, Priscoline): Spastic peripheral vascular disorders; acrocyanosis, acroparesthesia, Raynaud's disease, ulcers of extremities, frostbite sequelae, arteriosclerosis obliterans, Buerger's disease, diabetic arteriosclerosis, gangrene, endarteritis, postthrombic conditions (thrombophlebitis), causalgia, cerebrovascular accidents and scleroderma.

Phenoxybenzamine hydrochloride (NDA 8–708, Dibenzyline): Peripheral vascular disorders such as Raynaud's syndrome, acrocyanosis, causalgia, chronic ulceration of extremities, frostbite sequelae and diabetic gangrene.

Azapetine phosphate (NDA 9–225, Ilidar): Conditions in which vasospasm is predominant; Raynaud's syndrome, ulceration of the extremities due to chronic peripheral vasospasm and cold, aching extremities, diabetic or generalized arteriosclerosis, thrombophlebitis and postphlebitic syndrome.

Nylidrin hydrochloride (NDA 9–813, Arlidin Solution): Circulatory disturbances of the inner ear, arteriosclerosis obliterans, thromboangiitis obliterans, diabetic vascular disease, night leg cramps, and thrombophlebitis.

Isoxsuprine hydrochloride (NDA 11–832, Vasodilan): Arteriosclerosis obliterans, endarteritis obliterans, thromboangiitis obliterans, Raynaud's disease, relief of symptoms associated with cerebral vascular insufficiency and threatened abortion.

B. *DESI 6902.* Nicotinyl alcohol (NDA 6–902, 11–813, Roniacol): Peripheral vascular disease, vascular spasm, varicose ulcers, decubitis ulcers, chilblains, conditions associated with Meniere's syndrome, and treatment of vertigo.

C. *DESI 7832.* Nylidrin hydrochloride (NDA 9–367, Arlidin Tablets and Parenteral): Treatment of circulatory disturbances of the inner ear, primary cochlear cell ischemia, cochlear stria vascular ischemia, macular or ampullar ischemia, other disturbances due to labyrinthine artery spasm or obstruction, arteriosclerosis obliterans, thromboangiitis obliterans, diabetic vascular disease, night leg cramps, Raynaud's phenomenon and disease, ischemic ulcer, frostbite, acrocyanosis, acroparesthesia, and cold feet, legs, and hands, and thromphlebitis.

Dioxyline phosphate (NDA 7–832, Paveril Phosphate): Relaxation of vasospasm in Raynaud's syndrome, relaxation of reflex vasospasm, especially of coronaries in angina pectoris and vessels of arms, legs, or lungs.

Cyclandelate (NDA 11–554, Cyclospasmol): Intermittent claudication, arteriosclerosis obliterans, thrombophlebitis, nocturnal leg cramps, local frostbite, Raynaud's disease and phenomenon, diabetic and trophic ulcers of the legs, improvement, as measured by diminution of the incidence and severity of transient ischematic attacks, was most notable in patients with either carotid or vertebral artery insufficency.

Subsequently, in a notice published in the Federal Register of December 14, 1972 (37 FR 26623), as amended July 11, 1973 (38 FR 18477), peripheral vasodilators were temporarily exempted from the time limits established for completing certain phases of the Drug Efficacy Study Implementation (DESI) program. The exemption was granted because there are no drugs classified as effective for symptons due to peripheral vascular disease, a serious chronic disease. The drugs classed as peripheral vasodilators are intended for use both in vascular disease of the extremities and of the brain. The class thus includes so-called "cerebral vasodilators." Many of the listed drugs include both peripheral and cerebral indications.

Notification that the peripheral vasodilators were considered less than effective was provided more than 6 years ago; there has been ample time for sponsors to have conducted clinical studies on their products. Although for a time there was some question about precisely how to study drugs in peripheral vascular disease, since 1974 a draft guideline protocol on intermittent claudication has been available and provided to industry representatives. Moreover, the medical literature contains a great deal of discussion of the evaluation of drugs for peripheral (including cerebral) vascular disease.

Data submitted thus far to the various new drug applications for peripheral vasodilators have been reviewed. For a number of drugs, reasonably well-designed studies have been reported. These have been double-blinded and have used a placebo control group to minimize bias and take account of spontaneous variability. Where disease of the extremities was involved they have used treadmill testing to provide objective evaluation of changes in claudication distance. No person, however, has yet provided data that support upgrading of any of these drug products to effective. In addition to the studies that have been submitted, there have been numerous protocols submitted, in some cases years ago, for which results have not yet been provided. Some of these protocols also have basicially satisfactory design. Despite the importance of peripheral vascular disease and the absence of effective medical therapy for this condition, the Director of the Bureau of Drugs believes that the time allowed for investigation of the effectiveness of the peripheral vasodilators should not be extended indefinitely. The more than 6 years provided has been adequate to allow for the design and conduct of acceptable studies by sponsors interested in carrying them out. Accordingly, the temporary exemption granted by the December 14, 1972 and July 11, 1973 notices, as they pertain to these drugs, is revoked in a notice appearing elsewhere in this issue of the Federal Register.

On the basis of all of the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigations,

conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) that provide substantial evidence of effectiveness of any of these products in peripheral vascular disease or other indications.

The Director believes some manufacturers may have completed studies that have not yet been submitted and may also have studies ongoing but not completed. In order to assure consideration of all potentially adequate and well-controlled studies, provisions for submission of such studies are made in the notice of opportunity for hearing below. Studies to be submitted must comply with 21 CFR 314.111(a)(5)(ii). Many studies intended to study these agents as cerebral vasodilators fail to demonstrate that patients in fact have cerebral vascular disease as required by 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). In addition, the following three essential features of an adequate and well-controlled study of these drugs should be noted:

1. The symptoms of peripheral vascular disease, such as intermittent claudication, are highly subject to influences other than drug therapy, such as spontaneous variation, placebo effects, training effects, weather, etc. Similarly, cerebral vascular disease symptoms, such as transient ischemic attacks vary greatly in frequency. It is thus essential that any adequate and well-controlled study utilize an appropriate concurrent control. The study could be of parallel or crossover design. Historical controls, including studies in which patients on therapy are compared with an initial baseline period, would not be acceptable.

2. Because measurement of improvement is subjective to some degree and may be influenced by observer or patient bias, any such study must be double-blinded and utilize a placebo control.

3. Only treadmill measurements are sufficiently objective to give a reliable assessment of intermittent claudication. At-home diary studies are not regarded as meaningful and will not be accepted as sole evidence of effectiveness.

All controlled studies with the above features (i.e., double-blind, placbo-controlled, treadmill measurements), whether they are positive or negative and fully or partially completed, should be identified and submitted, as requried by 21 CFR 314.200, in accord with the schedule set forth below.

DESI 6403

1. NDA 6–403; Priscoline Hydrochloride Tablets and Injection containing tolazoline hydrochloride; Ciba Pharmaceutical Co., Division Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901.

2. NDA 8–708; Dibenzyline Capsules containing phenoxybenzamine hydrochloride; Smith Kline & French Laboratories, 1500 Spring Garden St., Philadelphia, PA 19101.

3. NDA 9–225; Ilidar Tablets containing azapetine phosphate; Roche Laboratories, Division Hoffmann-LaRoche, Inc., 340 Kingsland Rd., Nutley, NJ 07110.

4. NDA 9–813; Arlidin Solution for Injection containing nylidrin hydrochloride; USV Pharmaceutical Corp., 1 Scarsdale Rd., Tuckahoe, NY 10707.

5. NDA 11–770; Priscoline Hydrochloride Lontabs, sustained release tablets containing tolazoline hydrochloride; Ciba Pharmaceutical Co.

6. NDA 11–832; Vasodilan Injection and Tablets containing isoxsuprine hydrochloride; Mead Johnson Laboratories, Division of Mead Johnson & Co., 2404 Pennsylvania St., Evansville, IN 47721.

DESI 6902

1. NDA 6–902; Roniacol Tablets containing nicotinyl tartrate and Roniacol Elixir containing nicotinyl alcohol; Roche Laboratories.

2. NDA 11–813; Roniacol Timespan Tablets containing nicotinyl tartrate; Roche Laboratories.

DESI 7832

1. NDA 7–832; Paveril Phosphate Powder and Tablets containing dioxyline phosphate; Eli Lilly & Co., P.O. Box 618, Indianapolis, IN 49206.

2. NDA 9–367; Arlidin Tablets containing nylidrin hydrochloride; USV Pharmaceutical Corp.

3. NDA 11–554; Cyclospasmol Capsulets and Tablets containing cyclandelate; Ives Laboratories, Inc., 685 Third Ave., New York, NY 10017.

Notice of Opportunity for Hearing

Therefore, notice is given to the holders of the new drug applications and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the applications, shows there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under any of the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holders of the new drug applications specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling compliance (address given above).

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicants and all other persons subject to this notice pursuant to 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related, or similar drug products.

Any applicant or any other person subject to this notice pursuant to 21 CFR 310.6 who decides to seek a hearing, shall file (1) on or before June 25, 1979, a written notice of appearance and request for hearing, and (2) on or before July 24, 1979, the data, information and

analyses relied on to justify a hearing, as specified in 21 CFR 314.200. However, as provided in 21 CFR 314.200(c), the Food and Drug Administration will consider the results of any adequate and well-controlled studies (21 CFR 314.111(a)(5)(ii)) that have not yet been completed but which are underway on the date of this notice and can be completed in a timely fashion. Specifically, any such study that is submitted as soon as completed or by May 26, 1980, whichever date is earlier, will be considered. Any studies completed but not previously submitted by the date of this notice must be submitted by July 24, 1979. Interim reports on studies completed but not fully analyzed must also be submitted on or before July 24, 1979. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate. Such submissions except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: May 8, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-16031 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0160]

Safety of Certain Food Ingredients; Opportunity for Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) announces an opportunity for public hearing on the safety of niacin and niacinamide to determine if they are generally recognized as safe (GRAS) or subject to a prior sanction. This action accords with procedures of a comprehensive safety review that the agency is conducting. Interested persons are invited to give their views on the safety of these substances.

DATE: Requests to make oral presentations at the public hearing must be postmarked on or before June 25, 1979.

ADDRESS: Written requests to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, and to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1973 (38 FR 20053), FDA issued a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (the Select Committee), about the Safety of ingredients used in food to determine if they are GRAS or subject to a prior sanction.

The agency now announces that the Select Committee is prepared to conduct a public hearing on the following category of food ingredients: niacin and niacinamide for direct food use. The public hearing will provide an opportunity, before the Select Committee reaches its final conclusions, for any interested person(s) to present scientific data, information, and views on the safety of these substances, in addition to those previously submitted in writing under notices published in the **Federal Register** of July 26, 1973 (38 FR 20051, 20053), April 17, 1974 (39 FR 13798), and March 28, 1978 (43 FR 12941).

The Select Committee has reviewed all the available data and information on the category of food ingredients listed above and has reached one of the following five tentative conclusions on the status of each:

1. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard. (This finding does not apply to the substances covered by this notice.)

3. Although no evidence in the available information demonstrates a hazard to the public when it is used at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted. (This finding does not apply to the substances covered by this notice.)

4. The evidence is insufficient to determine that the adverse effects reported as not deleterious to the public health when it is used at levels that are now current and in the manner now practiced. (This finding does not apply to the substances covered by the notice.)

5. The information available is not sufficient to make a tentative conclusion. (This finding does not apply

to the substances covered by this notice.)

The flowing table lists each ingredient, the Select Committee's tentative conclusion (keyed to the five types of conclusion listed above), and the available information on which the Select Committee reached its conclusions:

Substance	Select Committee tentative conclusion	Scientific literature review (order No.; price code; price)	Animal study report (order No.; price code; price)	Other information (order No.; price code; price)
Niacin	1	PB-241-952/AS; A18; $13.25.	Mutagenic evaluation (tier 1) of niacin (nicotinic acid) (FDA 75-88) by Litton Bionetics, under FDA contract; PB-278-472/AS; A03; $4.50.	Human intake data taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service; PB-221-920 (set); E99, $173.00.
Niacin and niacinamide.	1	PB-275-752/AS; A02; $4.00 (update).	Mutagenic evaluation (tier 1) of niacinamide (nicotinamide) (FDA 75-86) Litton Bionetics, Inc., under FDA contract; PB-278-473/AS; A03; $4.50..	Select Committee on GRAS Substances, 1978, "Evaluation of the Health Aspects of Aluminum Compounds as Food Ingredients;" PB-262-655/AS; A03; $4.50.

Reports in the table with "PB" prefixes may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

In addition to the information contained in the documents listed in the table above, the Select Committee supplemented, where appropriate, its reviews with specific information from specialized sources as announced in a previous hearing opportunity notice published in the **Federal Register** of September 23, 1974 (39 FR 34218).

The Select Committee's tentative report on niacin and niacimamide for direct food use is available for review at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, and also at the Public Information Office, Food and Drug Administration, Rm. 3807, 200 C St., SW., Washington, DC 20204. In addition, all reports and documents used by the Select Committee to review the ingredients are available for review at the office of the Hearing Clerk.

To schedule the public hearing, the Select Committee must be informed of the number of persons who wish to attend and the amount of time requested to give their views. Accordingly, any interested person who wishes to appear at the public hearing to make an oral presentation shall so inform the Select Committee in writing addressed to the Select Committee on GRAS Substances, Life Sciences Research Offices, Federation of American Societies for Experimental Biology, 9650 Rockville pike, Bethesda, MD 20014. A copy of each such request shall be sent to the Hearing Clerk, address noted above, and all requests shall be placed on public display in that office. Any such request must be postmarked on or before June 25, 1979, shall state the substance(s) on which an opportunity to present oral views is requested, and shall state how much time is requested for the presentation. Requests should specify the docket number found in brackets in the heading of this notice. As soon as possible after the requested deadline, a notice announcing the date, time, place, and scheduled presentations for any public hearing that may be requested will be published in the **Federal Register.**

The purpose of the public hearing is to receive data, information, and views not previously available to the Select Committee about the substances listed above. Information already contained in the scientific literature reviews and in the tentative Select Committee report shall not be duplicated, although views on the interpretation of this material may be presented.

Depending on the number of requests for an opportunity to make oral presentations, the Select Committee may reduce the time requested for any presentation. Because of time limitations, individuals and organizations with common interests are urged to consolidate their presentations. Any interested person may, in lieu of an oral presentation, submit written views, which shall be considered by the Select Committee. Three copies of such written views, identified with the docket number found in brackets in the heading of this notice, shall be addressed to the Select Committee at the address noted above, and must be postmarked not later than 10 days before the scheduled date of the hearing. A copy of any written views shall be sent to the Hearing Clerk, Food and Drug Administration, and shall be placed on public display in that office.

A public hearing will be presided over by a member of the Select Committee. Hearings will be transcribed by a reporting service, and a transcript of each hearing may be purchased directly from the reporting service and will be placed on public display in the office of the Hearing Clerk, Food and Drug Administration.

Dated: May 17, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-16036 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79P-0093]

Tomato Juice Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) announces that a temporary permit has been issued to the H. J. Heinz Co. to market test tamato juice from concentrate. The purpose of the temporary permit is to permit the applicant to measure consumer acceptance of the food.

DATES: This permit is effective on the date the new food is introduced into or caused to be introducted into interstate commerce, but no later than August 23, 1979; the permit is effective for 15 months, but will terminate on the effective date of an affirmative order ruling on the FDA proposal of May 9, 1978, to amend the standard of identity for tomato juice or 30 days after a negative ruling on the proposal, if such a ruling is made before the permit expires.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In accordance with § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods varying from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to the H. J. Heinz Co., Pittsburgh, PA 15230. This permit covers interstate marketing tests of tomato juice that deviates from the standard of identity prescribed in § 156.145 (21 CFR 156.145). The permit provides for the temporary marketing of 300,000 cases of six 46-ounce cans and 300,000 cases of forty-eight 5–½–ounce cans of the product to be distributed in all States except Alaska and Hawaii.

The test product will be packed at the H. J. Heinz plants located in Tracy, CA, and Pittsburgh, PA. The product is prepared from tomato paste that complies with the requirements of § 155.191(a)(1) (21 CFR 155.191(a)(1)). The finished product will be equivalent to a single-strength tomato juice normally found in the marketplace. The finished product will contain not less than 5.5 percent tomato soluble solids.

The principal display panel of the label will state the product name as "tomato juice from concentrate." Each of the ingredients used will be stated on the label as required by the applicable sections of Part 101 (21 Part 101), except that the tomato ingredient complying with the requirements of § 155.191(a)(1) will be declared as "tomato concentrate." This permit is effective for 15 months, beginning on the date the new food is introducted or caused to be introduced into interstate commerce, but no later than August 23, 1979. However, the permit may terminate sooner, depending on the final action on FDA's proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978 (43 FR 19864). If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after the negative ruling on the proposal.

Dated: May 17, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–16213 Filed 5–24–79; 8:45 am]

BILLING CODE 4110–03–M

National Institutes of Health

Report on Bioassay of Methyl Parathion for Possible Carcinogenicity; Availability

Methyl parathion (CAS 298–00–0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of methyl parathion for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use as an insecticide.

It is concluded that under the conditions of this bioassay, methyl parathion was not carcinogenic for F344 rats or B6C3F1 mice of either sex.

Single copies of the report, Bioassay of Methyl Parathion for Possible Carcinogenicity (T.R. 157), are available from the Office of Gancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: May 18, 1979.

Donald S. Fredrickson, M.D.,

Director, National Institutes of Health.

[FR Doc. 79–16146 Filed 5–24–79; 8:45 am]

BILLING CODE 4110–08–M

Report on Bioassay of Nithiazide for Possible Carcinogenicity; Availability

Nithiazide (CAS 139–94–6) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of nithiazide for possible carcinogenicity was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as a veterinary antiprotozoal drug. Nithiazide was administered in the diet, at either of two concentrations, to groups of 40 male and 50 female animals of each species.

Under the conditions of the bioassay, nithiazide was carcinogenic in male and probably female B6CF1 mice, causing a combination of hepatocellular carcinomas and hepatocellular adenomas. Nithiazide was also carcinogenic in female Fischer 344 rats, causing an increase in the incidence of mammary neoplasms. The compound was not carcinogenic in male fischer 344 rats.

Single copies of the report, Bioassay of Nithiazide for Possible Carcinogenicity (T.R. 146), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: May 18, 1979.

Donald S. Fredrickson, M.D.,

Director, National Institutes of Health.

[FR Doc. 79–16147 Filed 5–24–79; 8:45 am]

BILLING CODE 4110–08–M

Report on Bioassay of P-Chloroaniline for Possible Carcinogenicity; Availability

p-Chloroaniline (CAS 106–47–8) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of p-chloroaniline was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an intermediate in the manufacture of dyes and other chemicals. p-chloroaniline was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

A finding of small numbers of fibromas and sarcomas in the spleens of male rats was considered strongly suggestive of carcinogenicity because of the rarity of these tumors in the spleens of control rats. Hemangiomatous tumors in dosed mice may also have been associated with administration of p-chloroaniline. However, it is concluded that, under the conditions of this

bioassay, sufficient evidence was not found to establish the carcinogenicity of p-chloroaniline for Fischer 344 rats or B6C3F1 mice.

Single copies of the report, Bioassay of p-chloroaniline for Possible Carcinogenicity (T.R. 189), are available from the Office of Cancer Communications, National Institutes of Health, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: May 18, 1979.

Donald S. Frederickson, M.D.,

Director, National Institutes of Health.

[FR Doc. 79-16149 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-08-M

Report on Bioassay of P-Cresidine for Possible Carcinogenicity; Availability

p-Cresidine (CAS 120-71-8) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of p-cresidine for possible carcinogenicity was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use in the preparation of azo dyes. p-Cresidine was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, p-cresidine was carcinogenic to Fischer 344 rats, causing increased incidences of carcinomas and of papillomas of the urinary bladder in both sexes, increased incidences of olfactory neuroblastomas in both sexes, and of liver tumors in males. p-Cresidine was also carcinogenic in B6C3F1 mice, causing carcinomas of the urinary bladders in both sexes and hepatocellular carcinomas in females.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: May 18, 1979.

Donald S. Fredrickson, M.D.,

Director, National Institutes of Health.

[FR Doc. 79-16148 Filed 5-24-79; 8:45 am]

BILLING CODE 4110-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Announcement of Decision, Special Project Inventory, Las Vegas BLM District, Nevada

May 18, 1979.

The Bureau of Land Management in Nevada has issued a final decision to release 81,000 acres of public land in the Mormon Mesa area at the Las Vegas District from further consideration in the wilderness review program. that decision will be implemented June 17.

The Bureau has decided that the area be released from further consideration due to lack of wilderness characteristics specified by Congress. A special project inventory conducted in March 1979 revealed that the area lacks both naturalness and opportunities for solitude and primitive recreation.

A 30-day public comment period ended April 30. A public meeting was held at Las Vegas. There were 12 responses. Ten of those supported the Bureau's recommendation, one was concerned about the area's watershed values, and one supported wilderness designation regardless of the area's lack of naturalness.

The special project inventory was conducted due to emphasis being placed on early completion of wilderness studies in the "overthrust belt," an area of high oil and gas potential, which in Nevada covers the southeast portion of the state in Lincoln and Clark counties.

Dated: May 18, 1979.

E. I. Rowland,

State Director, Nevada.

[FR Doc. 79-16345 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

Availability of BLM Maps for Public Lands and Minerals; Minnesota, Michigan, and Wisconsin

Notice is hereby given that the first four in a series of twenty-one maps showing the location of public lands and Federal mineral rights in northern Minnesota are available for sale to the public beginning May 25 from the Bureau of Land Management. In addition, four other Minnesota maps will become available in July. The maps are produced as a result of a Bureau-wide program to map areas of mineral interests.

The initial four maps cover the areas around Baudette, Ely, Grygla, and Two Harbors, while the maps scheduled for release in July cover the Crane Lake, Hibbing, Vermilion Lake, and Upper Red Lake areas. The remaining Minnesota maps will be printed and made available for sale within the next year. Ultimately, maps will also be printed covering northern Wisconsin and western Upper Michigan.

For further information, contact the Bureau of Land Management, Lake States Office, 125 Federal Building, Duluth, Minnesota 55802, (218) 727-6692; or Eastern States Office, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427-7440.

Lane J. Bouman,

Director, Eastern States.

[FR Doc. 79-16106 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

Nevada Bureau of Land Management Announces Statewide Wilderness Meetings

Nevada State Office, Room 3008, Federal Building, 300 Booth Street, Reno, Nevada 89509.

The Bureau of Land Management in Nevada has scheduled four statewide summary meetings in June and July on its initial wilderness inventory findings on 49 million acres of public lands in the state.

These statewide meetings follow a dozen local open houses held in Nevada during May to acquaint the local publics with the initial inventory findings. The four statewide meetings are designed to give interested publics a statewide look at BLM's findings. Public comments, particularly written comments, will be solicited on an individual, one-on-one basis with BLM staff present at the meetings. These comments and others gathered during the 90-day public comment period which ends July 31, will be analyzed and considered in the final decisions regarding the initial wilderness inventory in Nevada. Information including detailed maps and narratives will be available at the meetings on all 1,600 inventory units within the state.

The four statewide meetings, located to provide convenient access from all points in the state, are listed below:

June 19—Reno, Pioneer Inn, 221 S. Virginia St., beginning at 2 p.m. and 9 p.m.

June 20—Las Vegas (for location, contact the Las Vegas District Office) 2 p.m. to 5 p.m. and 7 p.m. to 9 p.m.

June 21—Battle Mountain, Owl Club meeting room, 6:30 p.m. to 9:30 p.m.

July 2—Ely, Bristlecone Convention Center, 5 p.m. to 8 p.m.

Dated: May 18, 1979.

E. I. Rowland,

State Director, Nevada.

[FR Doc. 79-16346 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36758 and 36760]

New Mexico; Applications

May 17, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for rights-of-way for two 4½-inch natural gas pipelines and a cathodic protection station with appurtenances across the following described lands:

New Mexico Principal Meridian, New Mexico

T. 22 S., R. 22 E.,
Sec. 4, SE¼NE¼ and NE¼SE¼.
T. 26 S., R. 34 E.,
Sec. 9, NW¼NE¼.

The pipelines and cathodic protection station will be used to convey natural gas across 0.427 of a mile of public lands in Eddy and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-16348 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36730]

New Mexico; Application

May 16, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for one 4-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 23 S., R. 34 E.,
Sec. 22, S½SE¼.

This pipeline will convey natural gas across 0.454 of a mile of public land in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-16347 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

[U-910]

Utah; Identification of Wilderness Study Areas Associated With the Intermountain Power Project

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice is published under the direction and concurrence of BLM State Directors of Utah, Arizona, Nevada and California.

Pursuant to authority delegated by the Director, Bureau of Land Management, it has been determined that the public lands administered by BLM within confines of the Intermountain Power Project Proposal have been inventoried according to provisions of Section 201(a) and 603 of the Federal Land Policy and Management Act of 1976 and Section 2(c) of the Wilderness Act of 1964. Pursuant to instructions contained in Washington Office memorandum dated August 15, 1978, all or any portions of the areas listed herein as meeting the wilderness criteria of Section 2(c) of Pub. L. 88-577 are hereby identified as Wilderness Study Areas.

The appropriate inventory and associated public comment period have been conducted by each of the states involved.

In Utah, portions of three districts are involved with the inventory. They are the Richfield, Cedar City, and Moab Districts. As a direct result of public comment, Moab District has been instructed to review the entire roadless area even though original instructions contained the option to inventory less than an entire roadless area. That option was utilized in Moab District and was found, through public review, to be unacceptable. Therefore, Moab District will, under separate notice, review the entire roadless area, conduct an appropriate public comment period and make a decision at a later date under separate notice after all appropriate procedures have been followed.

Throughout the Richfield and Cedar City Districts, seven wilderness study areas are being identified. Five areas were identified and recommended as wilderness study areas. Two areas have been added because of public comment. One wilderness study area being identified is an interstate unit between Utah and Arizona. This unit was reviewed jointly by the Strip District of Arizona and the Cedar City District of Utah. These seven areas and acreages involved are: UT-050-035—22,863 acres; UT-040-046—11,330 acres; UT-050-070—94,022 acres; UT-050-077—26,582 acres; UT-050-078—56,323 acres; UT-050-186—9,791 acres; and the joint interstate unit, UT-040-057 (which corresponds to Arizona AZ-010-004)—29,692 acres.

In Nevada, several wilderness study areas were identified. However, because of public interest during the public comment period, boundaries were adjusted and an additional 30-day public comment period allowed for comment on the adjusted boundaries. As a result of these findings, and the public comment, nine wilderness study areas are identified within the Ely and Las Vegas Districts. At the time the second public comment period was opened on these nine areas, 69 other areas initially recommended as not having wilderness values were removed from the wilderness inventory process. Public comment confirmed this finding. Refer to **Federal Register**, Vol. 44, No. 67, dated April 5, 1979, page 20508 for that announcement.

The 69 roadless areas lacking wilderness characteristics in Nevada have already been released from interim management limitations as stated in the April 5, 1979, **Federal Register** notice. The nine remaining areas have been subject to a second public review period, the comments analyzed, and the boundaries established for these wilderness study areas. They are: NV-040-168—84,700 acres; NV-040-169—68,000 acres; NV-040-172—52,500 acres; NV-040-177—39,700 acres; NV-040-206—81,900 acres; NV-050-177—126,712 acres; NV-050-215—32,853 acres; NV-050-229—96,170 acres; NV-050-435—59,307 acres.

The IPP proposed routes do go into California. However, at the time the IPP proposal came into existence, California was already conducting a special inventory for wilderness connected with the requirement of the California Desert

Conservation Area Plan. The California Desert inventory has been concluded with an appropriate public review period. The IPP proposal in California is subject to findings in the California Desert Conservation Area Wilderness Inventory. Reference should be made to those documents and announcements concerning the wilderness inventory in California related to the IPP proposal and their findings are separate and not a part of this notice.

A map and narrative describing findings of these inventories and announcing the decision on wilderness study areas are available from the various state offices concerning their respective portions of that inventory: Utah State Office, 136 East South Temple, Salt Lake city, Utah; Nevada State Office, 300 Booth Street, Room 3008, Reno, Nevada; California State Office, 2800 Cottage Way, Room E-2921, Sacramento, California; or the Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona.

Wilderness Study Areas identified herein will remain under BLM interim management as required in Section 603 of Pub. L. 94-579 during the period of review and until the Congress has determined otherwise.

Remaining areas inventoried within the IPP Proposal but not identified herein as Wilderness Study Areas and portions of the areas listed but not identified as Wilderness Study Areas, and as shown on the reference map, will no longer be subject to management restrictions imposed by Section 603 of Pub. L. 94-579.

As a resource value, wilderness was inventoried and its presence identified within the IPP proposal in order that it may be integated and compared with other resources and the impacts treated in an environmental statement being prepared for the IPP Project.

Final identifications listed herein as Wilderness Study Areas shall become effective June 25, 1979. For purposes of this identification, each area is considered separate from every other area. Should any amendment to these identifications be made by the BLM State Director in the State where the area is, as a result of new information received following this publication, that amendment will be formally published in the **Federal Register** and will not become effective until 30 days following such publication. This 30-day extension will apply only to the amendment and not to the original identification.

Persons wishing to protest any of the Wilderness Study Area identifications or non-identifications made herein shall have until June 25, 1979, to file written protest. The protest must specify the area to which it is directed, including a clear and concise statement of reasons for the protest. It must also furnish supporting data to the BLM State Director, in the state which has jurisdiction over that particular area. The individual State Director will render a written decision on any valid protest received which follows the above directions.

Any person adversely affected by the decision on their written protest may appeal the decision by following normal administrative procedures applicable to formal appeals to the Interior Board of Land Appeals which are published in 43 CFR Part 4.

Dated: May 15, 1979.

William G. Leavell,

Acting State Director.

[FR Doc. 79-16291 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

Office of the Secretary

Central and Field Organization Functions

This notice is published in accordance with the provisions of 5 U.S.C. 552(a)(1)(A), and supersedes the notice published in the **Federal Register** on April 14, 1978 (43 FR 15791).

Provided herein is a description of the central and field organization of the Department of the Interior which includes the functions of the bureaus and offices, places at which the public may obtain information, and references to applicable public regulations.

Dated: May 16, 1979.

William L. Kendig,

Acting Deputy Assistant Secretary of the Interior.

Office of the Secretary

Secretary

The Secretary of the Interior, as the head of an executive department, reports directly to the President and is responsible for the direction and supervision of all operations and activities of the Department. The Secretary also has certain powers or supervisory responsibilites relating to Territorial governments.

Under Secretary

The Under Secretary assists the Secretary in the discharge of Secretarial duties and serves as Acting Secretary in the absence of the Secretary. With the exception of certain matters reserved by the Secretary, the Under Secretary has the full authority of the Secretary.

Fish and Wildlife and Parks

The Assistant Secretary for Fish and Wildlife and Parks discharges the duties of the Secretary with the authority and direct responsibility for programs associated with the development, conservation, and utilization of fish, wildlife, recreation, historical, and national park system resources of the Nation. The Assistant Secretary represents the Department in the coordination of marine environmental quality and biological resources programs with other Federal agencies. The Assistant Secretary for Fish and Wildlife and Parks exercises Secretarial direction and supervision over the United States Fish and Wildlife Service, the National Park Service, and the Heritage Conservation and Recreation Service.

Energy and Minerals

The Assistant Secretary—Energy and Minerals discharges the duties of the Secretary with the authority and direct responsibility for programs associated with mineral policy, data, and analysis; surface mining reclamation and enforcement functions; regulation of operations for all leasable minerals on the Outer Continental Shelf and onshore; topographic, geologic, and mineral resource matters; metallurgical and mining research and development; development and coordination of ocean mineral resource affairs; earth seismic research; remote sensing activities; water resource evaluation and analysis; coordination of the Department's operations with the Board on Geolographic Names; and emergency preparedness and natural disaster minerals functions. The Assistant Secretary—Energy and Minerals exercises Secretarial direction and supervision over the Geological Survey, Bureau of Mines, National Mine Health and Safety Academy, Office of Surface Mining Reclamation and Enforcement, Ocean Mining Administration, and the Office of Minerals Policy and Research Analysis.

Land and Water Resources

The Assistant Secretary—Land and Water Resources discharges the duties of the Secretary with the authority and direct responsibility for programs associated with land use and water planning; public land management including mineral leasing; development and management of water resource projects and facilities; water resources research including saline water conversion; emergency preparedness and natural disaster water resources

functions; serves as advisor to the Secretary in the Secretary's role as Chairman of the Water Resources Council; and is responsible for implementing the President's water policy. The Assistant Secretary—Land and Water Resources exercises Secretarial direction and supervision over the Bureau of Land Management, Office of Coal Leasing Planning and Coordination, Bureau of Reclamation, and the Office of Water Research and Technology.

Indian Affairs

The Assistant Secretary—Indian Affairs discharges the authority and responsibility of the Secretary for activities pertaining to Indians and Indian affairs. The Assistant Secretary is responsible for providing the Secretary with detailed and objective advice on matters involving Indians and Indian affairs; for identifying and acting on issues which affect Indian policy and programs for Indians; for establishing policy on Indian affairs; for liaison and coordination between the Department of the Interior and other Federal agencies which provide services or funding to Indians; for representing the Department in transactions with the Congress; for monitoring and evaluating on-going activities related to Indian affairs; for undertaking or providing leadership for special assignments and projects for the Secretary; and, for exercising Secretarial direction and supervision over the Bureau of Indian Affairs.

Policy, Budget, and Administration

The Assistant Secretary—Policy, Budget, and Administration discharges the duties of the Secretary with the authority and direct responsibility for Department-wide programs related to interagency and interdisciplinary subjects concerning natural resources management and environmental quality; OCS program coordination; budget management; comprehensive planning; policy anaylsis; and economic analyses of Departmental programs and natural and environmental resources issues. The Assistant Secretary also has the authority and direct responsibility for policy guidance and technical leadership in personnel, property, paperwork, safety, space, and directives and reports management; ADP services, organization, telecommunications, management systems and procedures, and financial and technical information systems; procurement and grants, energy conservation, and law enforcement programs; library and information services, aircraft services, printing and publications, and central coordination of emergency preparedness and disaster assistance programs; and administrative support to the Office of the Secretary including personnel, financial, procurement, and ADP and related administrative services. Secretarial offices appropriately identified with the functions previously described are under the Assistant Secretary's supervision.

Solicitor

The Solicitor is the principal legal adviser to the Secretary and the chief law officer of the Department. The Solicitor is responsible for and has supervision over all of the legal work of the Department, with the exception of that performed by the Office of Hearings and Appeals and the Office of Congressional and Legislative Affairs.

Inspector General

The Inspector General is the Department's focal point for supervising and providing policy guidance for audit and investigative work within the Department and for conducting significant reviews of program management with the purpose of promoting program economy, efficiency, and effectiveness, and of preventing and detecting fraud and abuse. In this role, the Inspector General reviews and comments on existing and proposed legislation and regulations and investigates employee complaints about any violation of law, mismanagement, gross waste, abuse, and substantial dangers to public health and safety. The Inspector General is responsible for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of Department programs and operations, and of the necessity for corrective action.

Field Committees

The Department Field Committees promote the development and execution of coordinated regional natural resource programs for the Department and facilitate the coordination of field activities which involve two or more bureaus or which have special significance to the Department's overall objectives. Field Committees are composed of regional directors or other ranking officials approved by the heads of bureaus and offices. The regional Special Assistants to the Secretary serve as Chairman of the field committees in their respective regions.

The regional Special Assistants to the Secretary maintain continuous surveillance over the entire range of the Department's program activities, provide leadership and assistance in the coordination of Departmental programs and policies where more than one bureau or program interest is involved, and when directed by the Secretary, coordinate Department participation in major interagency and intergovernmental efforts.

The regional Special Assistants to the Secretary serve as Departmental representatives on various interagency river basin committees and on Federal-State river basin commissions authorized by the Water Resources Planning Act of 1965.

Other Departmental Offices

Office of the Solicitor

The Office of the Solicitor performs all of the legal work of the Department with the exception of that performed by the Office of Hearings and Appeals and the Office of Congressional and Legislative Affairs.

The headquarters office of the Office of the Solicitor in Washington, D.C. consists of six Divisions. The Division of Conservation and Wildlife is responsible for legal matters involving the programs of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, U.S. Fish and Wildlife Service and the Heritage Conservation and Recreation Service. The Division of Energy and Resources is responsible for legal matters involving the programs of the Assistant Secretary—Energy and Minerals, the Assistant Secretary—Land and Water Resources, the Bureau of Land Management, the Bureau of Mines, the Geological Survey, the Bureau of Reclamation and the Office of Water Research and Technology. The Division of Indian Affairs is responsible for legal matters involving the programs of the Assistant Secretary—Indian Affairs and the Bureau of Indian Affairs. The Division of Surface Mining provides legal advice to the Assistant Secretary—Energy and Minerals on surface mining matters and to the Office of Surface Mining Reclamation and Enforcement. The Division of General Law is responsible for general administrative law matters and legal matters involving programs under the jurisdiction of the Assistant Secretary—Policy, Budget, and Administration. The Division of Administration is responsible for administrative and support services for the Office of the Solicitor.

The field organization of the office is divided into eight regions, each of which is headed by a Regional Solicitor.

For further information contact the Administrative Officer, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–6115.

Regional Offices—Office of the Solicitor

Region	Address
ANCHORAGE—Alaska	Anchorage Legal Center, Anchorage, Alaska 99501.
ATLANTA—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee, Virgin Islands.	148 International Blvd., NW, Atlanta, GA 30303.
DENVER—Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming.	Denver Federal Center, Denver, Colo. 8025.
BOSTON—Connecticut, Delaware, Illinois, Indiana, Maine, Massachusetts, Michigan, Maryland, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin.	1 Gateway Center, Newton Corner, MA 02158.
PORTLAND—Idaho, Oregon, Washington	500 N.E. Multnomah, Portland, Oreg. 97232.
SACRAMENTO—Arizona, California, Hawaii, Nevada	Federal Bldg., Sacramento, Calif. 95825.
SALT LAKE CITY—Utah	Federal Bldg., Salt Lake City, Utah 84138.
TULSA—Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	Page Belcher Federal Bldg.; Mail: P.O. Box 3156, Tulsa, Okla. 74101.

Office of Water Research and Technology

The Office of Water Research and Technology (OWRT) performs water resources research, development, demonstration, and technology transfer activities (through contracts and grants) and related functions vested in the Secretary of the Interior under the Water Research and Development Act of 1978 (92 Stat. 1305; 42 U.S.C. 7801) and the Water Research and Conversion Act of 1977 (91 Stat. 400; 42 U.S.C. 1959), as amended. The fundamental purposes of OWRT are to develop new or improved technology and methods for solving or mitigating existing and projected State, regional, and nationwide water resource problems; to train water scientists and engineers through their on-the-job participation in research coordination and research results information dissemination activities. To do this OWRT carries out the following general functions:

Administration of a cooperative cost-sharing program with university Water Resources Research Institutes, designated by the States, for research, investigations, and experiments, the training of scientists through such research, and technology transfer directed toward solving urgent local, State, and regional water and water-related problems;

Conducting research and development activities and related studies directed toward solving water and water-related problems of high national priority, and toward developing and demonstrating methods, equipment, and processes that will established practical means for economical production, from sea and other saline or chemically contaminated water, of water suitable for agricultural, industrial, municipal, and other beneficial uses;

Performance of water resources scientific information and technology transfer programs to furnish summary information to the Nation's water resources community about ongoing research projects and results of completed projects, and to ensure that research and development results are interpreted and made known to potential users in ways such results can be understood and applied.

For further information, contact the Office of Water Research and Technology, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–4607.

Office of Hearings and Appeals

The Office of Hearings and Appeals was established by the Secretary on April 8, 1970, to consolidate related functions and to provide for more effective Departmental appeals procedures.

The Office of Hearings and Appeals is responsible for Departmental quasi-judicial and related functions. Administrative law judges and five formal boards of appeal render decisions in cases pertaining to contract disputes; Indian probate and administrative appeals; public and acquired lands and their resources; submerged offshore lands of the Outer Continental Shelf; surface coal mining control and reclamation; claims under the Alaska Native Claims Settlement Act; and enforcement of the importation and transportation of rare and endangered species. The Director of the Office of Hearings and Appeals may assign administrative law judges for the purpose of holding rulemaking hearings and may also assign administrative law judges or established ad hoc boards of appeal to meet special requirements of disputes not falling under on of the previously listed categories. Decisions of the boards are final for the Department.

The Office includes the headquarters organization and six offices in the field for Departmental administrative law judges and 11 field offices for Indian probate administrative law judges. It also includes an office in Alaska which serves as the headquarters of the Alaska Native Claims Appeal Board.

For further information, contact the Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Phone, 703–557–1500.

Office of Territorial Affairs

The Office of Territorial Affairs was established on February 6, 1973, by Secretarial Order No. 2951. The Office is responsible for the promotion of the economic, social, and political development of the territories of Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. The Office also discharges the responsibilities of the Secretary of the Interior as they relate to those and all other noncontiguous territories under the jurisdiction of the Secretary.

For further information, contact the Office of Territorial Affairs, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–6971.

Office of Youth Programs

The Office of Youth Programs was established by Secretary's Order Number 2885 of January 7, 1965, as amended under the authority of the Economic Opportunity Act of 1964; and subsequent Secretarial delegations under the Comprehensive Employment and Training Act of 1973, the Youth Conservation Corps Act of 1974, and the Youth Demonstration Projects Act of 1977. This Office discharges the authority of the Secretary in all matters pertaining to Departmental programs of employment and training for youth including the Job Corps Civilian Conservation Centers Program, the United States Youth Conservation Corps, the Young Adult Conservation Corps, and such other programs as the Secretary may designate.

The Office of Youth Programs establishes the basic policies, programs, and priorities for the Department; provides policy direction, guidance, and interpretation for the participating bureaus and offices; coordinates their

activities; maintains sufficient controls to provide the Secretary with information needed to operate the programs, to effect statutory coordination with the Department of Agriculture and the Department of Labor, and to insure responsiveness to the Congress, and the public; performs a continuing analysis of the program's resources, needs, and expenditures; obtains, allocates, and controls the financial, manpower, and material resources necessary to carry out the programs; reviews and evaluates program performance to identify deficiencies and prescribes corrective measures; and implements management systems and procedures necessary to achieve program goals. The Office also provides consolidated administrative services support for assigned programs.

The Office of Youth Programs operates the Fort Simcoe Job Corps Civilian Conservation Center and certain YCC projects on Federal lands other than those administered by the Department of the Interior. The field organization is divided into ten regions, each of which is headed by a Regional Director.

For further information, contact the Office of Youth Programs, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–5951.

Regional Offices—Office of Youth Programs

Region	Address
NORTHEAST—Maine, Vermont, New Hampshire	Custom House, Room 804A, 8 McKinley Square, Boston, MA 02109.
NORTH ATLANTIC—New York, New Jersey, Delaware	Veterans Administration Bldg., Room 28, 252 7th Ave., New York, NY 10001.
MID-ATLANTIC—Pennsylvania, West Virginia, Virginia, Maryland, District of Columbia.	2nd and Chestnut Streets, Suite 600, Philadelphia, PA 10106.
SOUTHEAST—Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida, Virgin Islands, Puerto Rico.	Peachtree 25th Bldg., Suite 333, 1720 Peachtree Road, NW., Atlanta, GA 30309.
MID-WEST—Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio.	175 W. Jackson, Room A-1153, Chicago, IL 60604.
SOUTHWEST—New Mexico, Oklahoma, Arkansas, Texas, Louisiana.	1100 Commerce Street, Room 8B37, Dallas, TX 75242.
NORTH CENTRAL—Nebraska, Iowa, Kansas, Missouri	911 Walnut Street, Room 1702, Kansas City, MO 64102.
ROCKY MOUNTAIN—Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado.	Lake Plaza South, Room 617, 44 Union Blvd., Lakewood, CO 80228.
WESTERN—California, Nevada, Arizona, Hawaii, Trust Territories of the Pacific Islands.	Federal Office Bldg., Room 14470, 450 Golden Gate, San Francisco, CA 94102.
NORTHWEST—Washington, Oregon, Idaho, Alaska	601 4th and Pike Bldg., Room 307, Seattle, WA 98101.

Office of Minerals Policy and Research Analysis

The Office of Minerals Policy and Research Analysis was established on May 21, 1976, by combining the Office of Minerals Policy Development and the Office of Research and Development, under the authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262). The Office is the primary minerals policy analysis office for the Assistant Secretary—Energy and Minerals, and is the focal point for minerals policy development and coordination in the Department of the Interior. The Office is responsible for the overall corrdination of the analyses conducted by Department of the Interior. The Office is responsible for the overall coordination of the analyses conducted by Departmental minerals organizations, development of comprehensive minerals policy, overseeing the development of new minerals research and development programs, evaluating the progress and results of all minerals research and development conducted or sponsored by the Department of the Interior, and advising the related organizations reporting to the Assistant Secretary—Energy and Minerals in the development of their minerals programs, associated and research programs, and in the formulation of their minerals research and development budgets.

For further information, contact the Office of Minerals Policy and Research Analysis, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–8696.

Ocean Mining Administration

The Ocean Mining Administration, under the supervision of the Assistant Secretary—Energy and Minerals, was established by Secretarial Order 2971 of February 24, 1975. It is responsible for policy development for the promotion and continuation of a domestic ocean-mining capability in deep seabed areas. Additional responsibilities include jurisdictional issues in international negotiations relating to the resources of the Continental Shelf; the implementation of a domestic ocean mining program with special emphasis on its relationship to ongoing and future negotiations on the law of the sea and ocean mining; supervision of ocean minerals economic, technology, and resource assessments; supervision of ocean mineral resources environmental studies; and liaison with other Federal agencies concerned with ocean mineral resources development and regulatory aspects of ocean mining.

The Ocean Mining Administration provides central management focus for Department of the Interior activities relating to seabed mineral resources beyond national jurisdiction by reviewing budget and program activities of other departmental organizational units for consistency with overall ocean mineral resource policy and program objectives.

For further information, contact the Ocean Mining Administration, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–2125.

National Mine Health and Safety Academy

The National Mine Health and Safety Academy at Beckley, West Virginia, was established under provisions of Pub. L. 89–577 and Pub. L. 91–173 to train coal and metal/nonmetal mine inspectors and other technical specialists required to enforce the regulatory provisions of these Acts. The Academy also offers training in health and safety management to selected mining personnel, Federal and State government employees, and students in mining-related fields to enhance knowledge of and compliance with the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. 95–164).

The Academy offers resident, short course, and continuing education programs, as well as special seminars and publications in technical and management subjects, to support efforts to improve the working environment of the Nation's miners and reduce accidents and injuries in the mining industry.

For further information, contact the National Mine Health and Safety Academy, P.O. Box 1166, Beckley, West Virginia 25801. Phone, 304–255–0451.

Bureaus

U.S. Fish and Wildlife Service

The United States Fish and Wildlife Service's national responsibility in the service of wildlife and people reaches back over 100 years to the establishment in 1871 of a predecessor agency, the Bureau of Fisheries. First created as an independent agency, the Bureau of

Fisheries was later placed in the Department of Commerce. A second predecessor agency, the Bureau of Biological Survey, was established in 1885 in the Department of Agriculture.

The two Bureaus and their functions were transferred in 1939 to the Department of the Interior. They were consolidated into one agency and redesignated the Fish and Wildlife Service in 1940 by Reorganization Plan III (54 Stat. 1232).

Further reorganization came in 1956 when the Fish and Wildlife Act (70 Stat. 1119) created the United States Fish and Wildlife Service and provided for it to replace and succeed the former Fish and Wildlife Service. The Act established two Bureau within the new Service: the Bureau of Commercial Fisheries and the Bureau of Sport Fisheries and Wildlife.

In 1970, under Reorganization Plans 3 and 4, the Bureau of Commercial Fisheries was transferred to the Department of Commerce. The Bureau of Sport Fisheries and Wildlife, which remained in Interior, was renamed by Act of Congress in April 1974 (88 Stat. 92) as the United States Fish and Wildlife Service.

The Service is composed today of a headquarters office in Washington, D.C., six regional offices in the lower 48 States, an Alaska area office, and a variety of field units and installations. These include 391 National Wildlife Refuges comprising more than 34 million acres; 13 major fish and wildlife laboratories and centers; 45 cooperative research units at universities across the country; 91 National Fish Hatcheries; and a nationwide network of wildlife law enforcement agencies.

The objective of the United States Fish and Wildlife Service, which is responsible for wild birds, mammals (except certain marine mammals), inland sport fisheries, and specific fishery research activities, is to assure maximum opportunity for the American people to benefit from fish and wildlife resources as part of their natural environment. Within this framework, the Service assists in the development of an environmental stewardship ethic for our society based on ecological principles, scientific knowledge of wildlife, and a sense of moral responsibility; guides the conservation, development, and management of the Nation's fish and wildlife resources, and administers a national program which provides opportunities to the American public to understand, appreciate, and wisely use these resources.

In the area of resource management, the Service provides leadership for the protection and improvement of land and water environments (habitat preservation), which directly benefits the living natural resources, and adds quality to human life. Activities include:

Biological monitoring, through scientific research; surveillance of pesticides, heavy metals, and thermal pollution; studies of fish and wildlife populations; and ecological studies;

Environmental impact assessment through river basin studies, including hydroelectric dams, nuclear powersites, stream channelization, dredge and fill permits; associated research; and environmental impact statement review;

Area planning and preservation involving river basins, wilderness areas, and special studies, such as oil shale and geothermal energy.

The Service is responsible for improving and maintaining fish and wildlife resources by proper management of migratory birds and other wildlife; control of population imbalances and fulfilling the public demand for recreational fishing while maintaining the Nation's fisheries at a level and in a condition that will assure their continued survival. Specific wildlife and fishery resources programs include:

Migratory birds—Wildlife refuge management for production, migration, and wintering; game law enforcement; research, including bird banding, harvest and survival rate studies; breeding, migrating, and wintering surveys; and disease studies;

Mammals and nonmigratory birds—Refuge management of resident species (primarily big game); law enforcement; research on disease and population distribution, including marine mammals, species transplants; and technical assistance;

Animal damage control—Operational measures through cooperative programs to control predator, rodent, and bird depredations on crops and livestock; research on nonlethal control methods and predator-prey relationships;

Cooperative fish and wildlife research units—Located at 45 universities to conduct research and supervise graduate student research, complementing the Service's wildlife and fishery research programs;

Coastal anadromous fish—Hatchery production, stocking, and research on nutrition, disease, and habitat requirements in 16 of the 24 coastal States;

Great Lakes fisheries—Hatchery production of lake trout; fishery management in cooperation with Canada and the States, and research;

Reservoir fisheries—Hatchery production, and stocking of large impoundments and control methods;

Other inland fisheries—Hatchery production and stocking of State-managed waters, and Indian lands; technical assistance; and research on genetics, disease, nutrition, and taxonomy.

The Service provides national and international leadership in the area of endangered fish and wildlife from the standpoint of both restoration as well as preventive measures involving threatened species. This program includes development of species lists, recovery plans, conduct of status surveys, coordination of efforts nationally and internationally; research on propagation methods, distribution, genetics, and behavior; operation of wildlife refuges; law enforcement, foreign importation enforcement; and consultant services to foreign countries.

Environmental education and public information programs include conservation education talks and TV and radio appearances; preparation of news releases, leaflets, and brochures; operation of environmental study areas on Service lands for use by school groups and teachers; operation of visitor centers, self-guided nature trails, observation towers, display ponds, etc.; and providing for recreational activities, such as hunting, fishing, wildlife photography, swimming, and picnicking.

The Service's anadromous fish program provides for reimbursements to State and other non-Federal cooperators of up to 60 percent of the cost of projects designed to conserve, develop, and enhance the anadromous fishery resources of the Nation, including fish in the Great Lakes that ascend streams to spawn.

The following receipts and funds are administered by the Service:

Migratory Bird Conservation Accounts. Receipts from the sale of Migratory Bird Hunting and Conservation (duck) Stamps are utilized to acquire, by fee or easement, migratory bird refuges and water fowl production areas.

National Wildlife Refuge Fund. Receipts derived from the sale of products from National Wildlife Refuges are used for payments to counties, in which refuges are located, for schools and roads, management of the refuge system, and enforcement of the Migratory Bird Treaty Act.

Federal Aid in Fish Restoration and Management. Receipts derived from the excise tax on items of sport fishing tackle provide for reimbursement to States for up to 75 percent of the cost of

approved State fish restoration and management projects, including their fishery research, surveys of fish populations, and acquisition and improvement of fish habitat.

Federal Aid in Wildlife Restoration. Receipts derived from the excise taxes on ammunition, firearms, and bows and arrows are similarly disbursed to the States for up to 75 percent of the cost of approved State wildlife restoration projects, including State acquisition and development of land and water areas for wildlife management research and the cost of approved hunter safety programs.

Contributed Funds. Funds donated by individuals and groups are used for fish and wildlife programs, including wetlands preservation and sea lamprey control work supported by the Great Lakes Fishery Commission.

Youth Conservation Programs. The Service operates three Job Corps Civilian Conservation Centers with 620 corpsmen. The Mingo Job Corps Civilian Conservation Center is located at Mingo National Wildlife Refuge, Puxico, MO; the Treasure Lake Job Corps Civilian Conservation Center is located at Wichita Mountains National Wildlife Refuge, Coche, OK; and the Iroquois Job Corps Civilian Conservation Center is located at Iroquois National Wildlife Refuge, NY.

The Service operates approximately 108 residential and non-residential Youth Conservation Corps camps at selected National Wildlife Refuges, National Fish Hatcheries and Research Centers during the summer (8 weeks) providing a conservation work-experience for 2,300 youths, ages 15 through 18.

The Service operates 24 residential and non-residential Young Adult Conservation Corps camps located at various National Wildlife Refuges, National Fish Hatcheries and Research Centers. Over 3,500 young adults 16–23 years of age will be employed year around in the development of the Nation's natural resources.

For further information, contact the Assistant Director—Public Affairs, United States Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–5634.

(For pertinent codified regulations issued by the U.S. Fish and Wildlife Service, see 50 CFR Chapters I and IV.)

Regional Offices—United States Fish and Wildlife Service

Region	Address and phone
ATLANTA—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands.	17 Executive Park Dr. NE., Atlanta, Ga. 30329 (404–881–4671).
ALBUQUERQUE—Arizona, New Mexico, Oklahoma, Texas	P.O. Box 1306, Albuquerque, N. Mex. 87103 (505–766–2321).
ANCHORAGE—Alaska	813 D St., Anchorage, Alaska 99501 (907–276–3800).
BOSTON—Connecticut, Delaware, Maine, Maryland, Massachsuetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.	One Getaway Center, Suite 700, Newton Corner, Mass. 02158 (617–965–5100).
DENVER—Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.	P.O. Box 25486, Denver Federal Center, Denver, Colo. 80225 (303–234–2209).
PORTLAND—California, Hawaii, Idaho, Nevada, Oregon, Washington.	P.O. Box 3737, Portland, Oreg. 97208 (503–231–6118).
TWIN CITIES—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	Federal Bldg., Fort Snelling, Twin Cities, Minn. 55111 (612–725–3500).

National Park Service

The National Park Service was established in the Department of the Interior on August 25, 1916 (39 Stat. 535; 16 U.S.C. 1).

The National Park Service administers for the American People an extensive system of national parks, monuments, historic sites, and recreation areas. The objectives of the National Park Service are to administer the properties under its jurisdiction for the enjoyment and education of our citizens, to protect the natural environment of the areas, and to assist States, local governments, and citizen groups in the development of park areas, the protection of the natural environment, and the preservation of historic properties.

The National Park Service has a Service Center in Denver that provides planning, architectural, engineering, and other professional services; and a Center for production of interpretive exhibits, audiovisual materials, and publications in Harpers Ferry, W. Va. There are 300 units in the National Park System, including national parks and monuments of noteworthy natural and scientific value; scenic parkways, riverways, seashores, lakeshores, and reservoirs; and historic sites associated with important movements, events, and personalities of the American past.

Activities. The National Park Service develops and implements park management plans and staffs the areas under its administration. It relates the natural values and historical significance of these areas to the public through talks, tours, films, exhibits, publications, and other interpretive media. It operates campgrounds and other visitor facilities and provides—usually through concessions—lodging, food, and transportation services in many areas.

For further information, contact the Chief, Office of Public Affairs, National Park Service, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–7394.

(For pertinent codified regulations issued by the National Park Service, see 36 CFR Chapter I.)

Regional Offices—National Park Service

Region	Address
NORTH ATLANTIC—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey.	15 State St., Boston, Mass. 02109.114.
MID-ATLANTIC—Pennsylvania, Maryland, West Virginia, Delaware, Virginia.	143 S. 3d St., Philadelphia, Pa. 19106.
SOUTHEAST—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, Virgin Islands.	1895 Phoenix Blvd., Atlanta, Ga. 30349.
MIDWEST—Ohio, Indiana, Michigan, Wisconsin, Illinois, Minnesota, Iowa, Missouri, Nebraska, Kansas.	1709 Jackson St., Omaha, Nebr. 68102.
ROCKY MOUNTAIN—Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado.	P.O. Box 25287, Denver, Colo. 80225.
SOUTHWEST—Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	Box 728, Santa Fe, N. Mex. 87501.
WESTERN—Arizona, California, Nevada, Hawaii, Guam, Northern Mariana Islands.	450 Golden Gate Ave., San Francisco, Calif. 94102.
PACIFIC NORTHWEST—Alaska, Idaho, Oregon, Washington	601 Fourth And Pike Bldg., Seattle, Wash. 98101.
NATIONAL CAPITAL—Washington, D.C. and nearby Maryland and Virginia.	1100 Ohio Dr. SW., Washington, D.C. 20242.

Bureau of Indian Affairs

The Bureau of Indian Affairs was created in the War Department in 1824 and transferred to the Department of the Interior at the time of its establishment in 1849. The Snyder Act of 1921 (42 Stat. 208; 25 U.S.C. 13) provided substantive law for appropriations covering the conduct of activities by the Bureau of Indian Affairs. The scope and character of the authorizations contained in this act were broadened by the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.).

The principal objectives of the Bureau are to actively encourage and train Indian and Alaska Native people to manage their own affairs under the trust relationship to the Federal Government; to facilitate, with maximum involvement of Indian and Alaska Native People, full development of their human and natural resource potentials; to mobilize all public and private aids to the advancement of Indian and Alaska Native people for use by them; and to utilize the skill and capabilities of Indian and Alaska Native people in the direction and management of programs for their benefit.

Functions. In carrying out these objectives, the Bureau works with Indians and Alaska Native people, other Federal agencies, State and local governments, and other interested groups in the development and implementation of effective programs for their advancement.

The Bureau seeks for them adequate educational opportunities in public education systems, assists them in the creation and management of educational systems for their own benefit, or provides from Federal resources the educational systems needed; actively promotes the improvement of their social welfare by working with them to obtain and provide needed social and community development programs and services; works with them in the development and implementation of programs for their economic advancement and for full utilization of their natural resources consistent with the principles of resource conservation.

The Bureau also acts as trustee for their lands and monies held in trust by the United States, assisting them to realize maximum benefits from such resources.

For further information, contact the Public Information Staff, Bureau of Indian Affairs, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–7445.

(For pertinent codified regulations issued by the Bureau of Indian Affairs, see 25 CFR Chapter I and 41 CFR Chapter 14H.)

Area Offices—Bureau of Indian Affairs

Area	Headquarters
Aberdeen, S. Dak. 57401	115 4th Ave. SE.
Albuquerque, N. Mex. 87104	5301 Central Ave. NE.
Anadarko, Okla 73005	Federal Bldg., P.O. Box 368.
Billings, Mont. 59105	316N. 26th St.
Juneau, Alaska 99802	Box 3–8000.
Minneapolis, Minn. 55402	831 2d Ave. S.
Muskogee, Okla. 74401	Federal Bldg.
Window Rock, Ariz. 86515	Navajo Area Office.
Phoenix, Ariz. 85011	124 W. Thomas Rd.
Portland, Oreg. 97208	1425 NE. Irving St.
Sacramento, Calif. 95825	2800 Cottage Way.
Eastern Area	1951 Constitution Ave. NW., Washington, D.C. 20245.

Bureau of Land Management

The Bureau of Land Management (BLM) was established July 16, 1946, by the consolidation of the General Land Office (created in 1812) and the Grazing Service (formed in 1934). This was done in accordance with the provisions of sections 402 and 403 of Presidential Reorganization Plan 3 of 1946 (5 U.S.C. 133y–16).

The Federal Land Policy and Management Act of 1976 (90 Stat. 2743) enacted into law on October 21, 1976, repealed and replaced many obsolete or overlappig statutes. It provides a basic mission statement for BLM and establishes policy guidelines and criteria for the management of public lands and resources administered by the Bureau, with the exception of the Outer Continental Shelf which is administered under other authority.

The Bureau's basic organization consists of a headquarters in Washington, D.C.; a Service Center in Denver, Colo., and a Fire Center in Boise, Idaho, that have bureauwide support responsibilities; and a field organization of State, district, resource areas, and Outer Continental Shelf offices. The Bureau also utilizes a system of Advisory Councils to assist in the development of management plans and policies.

The Bureau is responsible for the total management of 417 million acres of public lands. These lands are located primarily in the Far West and Alaska, however, scattered parcels are located in other States. In addition to minerals management responsibilities on the public lands and the Outer Continental Shelf, BLM is also responsible for subsurface resource management of an additional 169 million acres where mineral rights have been reserved to the Federal government.

Resources managed by the Bureau include timber, minerals, oil and gas, geothermal energy, wildlife habitat, endangered plant and animal species, rangeland vegetation, recreation and cultural values, and wild and scenic rivers, designated conservation and wilderness areas, and open space. Bureau programs provide for the protection (including fire suppression), orderly development, and use of the public lands and resources under principles of multiple use and sustained yield. Land use plans are developed with public involvement to provide orderly use and development while maintaining and enhancing the quality of the environment. The Bureau also manages watersheds to protect soil and enhance water quality; develops recreational opportunities on public lands; administers programs to protect and manage wild horses and burros; and, under certain conditions, makes land available through sale to individuals, organizations, local governments, and other Federal agencies when such transfer is in the public interest. Lands may be leased to State and local government agencies and to nonprofit organizations for certain purposes.

The Bureau has responsibility to issue rights-of-way, in certain instances, for crossing Federal lands under other agencies jurisdiction. It also has general enforcement authority. Receipts from the public lands and related resources administered by BLM totaled over $2.9 billion in fiscal year 1978.

The Bureau is responsible for the survey of Federal lands and establishes and maintains public land records and records of mining claims. It administers a program of payments in lieu of taxes based on the amount of federally owned lands in counties and other units of local government.

The Bureau is responsible for the survey of Federal lands and maintains public land records.

For further information, contact the Office of Public Affairs, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–4151.

(For pertinent codified regulations issued by the Bureau of Land Management, see 43 CFR Chapter II.)

Field Offices—Bureau of Land Management

State offices	Area of responsibility	Address/phone
Alaska	Alaska	701 C St., Box 13, Anchorage, Alaska 99513. Phone, 907-271-5076.
Arizona	Arizona	2400 Valley Bank Center, Phoenix, Ariz. 85073. Phone, 602-261-3873.
California	California	Federal Bldg., Sacramento, Calif. 95825. Phone 916-484-4676.
Colorado	Colorado	Colorado State Bank Bldg., Denver, Colo. 80202. Phone, 303-837-4325.
Eastern States	All States Bordering on and east of the Mississippi River.	7981 Eastern Ave., Silver Spring, Md. 20910. Phone, 301-427-7500.
Idaho	Idaho	Federal Bldg., Boise, Idaho 83724. Phone, 208-384-1401.
Montana	Montana, North Dakota, South Dakota	Granite Tower Bldg., 222 N. 32d St., Billings, Mont. 59101. Phone, 406-657-6461.
Nevada	Nevada	Federal Bldg., Reno, Nev. 89509. Phone, 702-784-5451.
New Mexico	New Mexico, Oklahoma	Federal Bldg., Santa Fe, N. Mex. 87501. Phone, 505-988-6217.
Oregon	Oregon, Washington	729 NE. Oregon St., Portland, Oreg. 97208. Phone, 503-231-6251.
Utah	Utah	University Club Bldg., 136 E. South Temple St., Salt Lake City, Utah 84111. Phone 801-524-5311.
Wyoming	Wyoming, Kansas, Nebraska	Federal Bldg., Cheyenne, Wyo. 82001. Phone, 307-778-2326.

Outer Continental Shelf (OCS) Offices

Alaska	Alaska OCS	800 A St., Anchorage, Alaska 99510. Phone 907-276-2955.
New York	Atlantic OCS (north from Florida-Georgia State line).	Federal Bldg., Suite 32-120, 26 Federal Plaza, New York, N.Y. 10007. Phone, 212-264-2960.
New Orleans	Gulf of Mexico and Florida OCS	Hale Boggs Federal Bldg., 500 Camp St., New Orleans, La. 70130. Phone 504-589-6541.
Pacific	Pacific OCS (including Hawaii OCS)	300 N. Los Angeles St., Los Angeles, Calif. 90012. Phone, 213-688-7234.
Service and support offices: Denver Service Center		Federal Center Bldg. 50, Denver, Colo. 80225. Phone 303-234-2329.
Boise Interagency Fire Center.		3905 Vista Ave., Boise, Idaho 83705. Phone, 208-384-9421.

Bureau of Reclamation

The Reclamation Act of 1902 (43 U.S.C. 391 et seq.), authorized the Secretary of the Interior to locate, construct, operate, and maintain works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the Western States. To perform these functions, the Secretary in July 1902 established a Reclamation Service in the Geological Survey. In March 1907 the Reclamation Service was separated from the Survey, and in June 1923 the name was changed to Bureau of Reclamation.

The basic objectives of the Federal Reclamation program are to assist the States, local governments, and other Federal agencies to stabilize and stimulate local and regional economies, enhance and protect the environment, and improve the quality of life through development of water and related land resources throughout the 17 contiguous Western States and Hawaii.

Reclamation projects, through a multiple-purpose concept, provide for some or all of the following purposes: municipal and industrial water supply, hydroelectric power generation, irrigation water service, water quality improvement, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, and related uses. Through contractual agreements with project beneficiaries, the Bureau arranges for repayment to the Government of reimbursable project construction, operation, and maintenance costs. About 85 percent of all direct project costs are reimbursable. Interest is paid on costs allocated to power and to municipal and industrial water service.

Major functions of the Bureau include: investigation and development of plans for the regulation, conservation, and utilization of water and related resurces, including basin-wide water studies and new sources of fresh water supplies, power capacity, and energy; research programs to maximize use of resources, including weather modification; design and construction of authorized projects for which funds have been appropriated by the Congress; repair and rehabilitation of existing projects; operation and maintenance of Bureau-constructed facilities which are not transferred to local organizations; review of operation and maintenance of Bureau-built facilities which have been transferred to local organizations; settlement of public or acquired lands on Bureau projects; administration of the Small Reclamation Projects Act of 1956, and of loans for construction or rehabilitation of irrigation systems; and negotiation, execution, and administration of repayment contracts, water-user operation and maintenance contract, and contracts relating to the irrigation of excess lands.

The Bureau has responsibility for the operation and maintenance of 50 hydroelectric power plants and constructs hydroelectric power plants on its projects as authorized by the Congress.

In cooperation with other agencies, the Bureau prepares and/or reviews environmental statements for proposed Federal water resource projects; renders technical assistance to foreign countries in water resource development and utilization; and administers youth conservation programs.

For further information, contact the Office of Public Affairs, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240. Phone, 202-343-4662.

(For pertinent codified regulations issued by the Bureau of Reclamation, see 43 CFR Chapter I.)

Major Offices—Bureau of Reclamation

Office	Headquarters
Commissioner's Office	Room 7654, Department of the Interior, Washington, D.C. 20240.
Engineering and Research Center.	Bldg. 67, Box 25007, Denver Federal Center, Denver, Colo. 80225.
Pacific Northwest Region	550 W. Fort St., Box 043, Boise, Idaho 83724.
Mid-Pacific Region	Federal Office Bldg. 2800 Cottage Way, Sacramento, Calif. 95825.
Lower Colorado Region	Nevada Hwy. and Park St., Box 427, Boulder City, Nev. 89005.
Upper Colorado Region	125 S. State, Box 11568, Salt Lake City, Utah 84147.
Southwest Region	317 E. 3d, Box H-4377, Amarillo, Tex. 79101.
Upper Missouri Region	316 N. 26th St., Box 2553, Billings, Mont. 59103.
Lower Missouri Region	Bldg. 20, Box 25247, Denver Federal Center, Denver, Colo. 80225.

Heritage Conservation and Recreation Service

The Heritage Conservation and Recreation Service was established by the Secretary on January 25, 1978.

As the Federal focal point for planning, evaluation, and coordination related to natural, cultural, and recreation resources, the Service manages programs that emphasize responsiveness to national need and a national commitment to preserving and maintaining the heterogeneous components of our Nation's Heritage. It encourages and assists all governmental and private interests to conserve,

develop, restore, maintain and utilize natural, cultural and recreation resources for the benefit and enjoyment of present and future generations.

Activities. Under the Land and Water Conservation Act of 1965, the Service administers a program of financial assistance grants to State and local governments for comprehensive planning, land acquisition, and facility development. The Fund also helps finance the acquisition of Federal lands and water areas for recreational purposes. The Historic Preservation Fund which provides matching grants-in-aid to States and to the National Trust for Historic Preservation for historic surveys and plans, acquisition, restoration, and rehabilitation of historic and cultural properties, is administered by the Service. In addition, the Service provides financial assistance to States for the protective acquisition of critical natural resources.

The Service participates directly in the planning, coordination, and establishment of uniform policies relating to recreation and fish and wildlife benefits and costs of Federal multipurpose water resource projects.

The Service has responsibility for formulating and implementing a comprehensive Nationwide Outdoor Recreation Plan that encompasses the needs and demands of the public for outdoor recreation, the current and foreseeable availability of outdoor recreation resources to meet those needs, critical outdoor recreation problems, and recommended desirable actions to be taken at each level of government and by private interests. The Service also promotes coordination of Federal plans and activities relating to outdoor recreation; cooperates with and provides implementation assistance to States, political subdivisions, and private interests; encourages interstate and regional cooperation, monitors and stimulates research relating to outdoor recreation; and cooperates with and provides technical assistance to other Federal departments and agencies. Certain rivers and trails are identified for possible study for inclusion in the national wild and scenic rivers and trails systems. Under the Department of Transportation Act the possible adverse effects of transportation projects and programs on parks, recreation areas, and wildlife and waterfowl refuges are reviewed. Another important part of the Service's mission, under the National Environmental Policy Act is to review Federal actions having an impact on outdoor recreation. The Service also acts on applications from States and local governments requesting the conveyance of surplus Federal real property for public park and recreation purposes.

The Service has been assigned responsibility to administer the Urban Park and Recreation Recovery Program as provided in the National Parks and Recreation Act of 1978 (Title X of Pub. L. 95–625). Funding will be available to rehabilitate existing indoor and outdoor recreation facilities.

In addition, Heritage Conservation and Recreation Service sponsors programs to identify and recognize natural and historic landmarks, to recover archeological remains, and to record significant architectural and engineering works.

For further information, contact the Division of Personnel and Management, Heritage Conservation and Recreation Service, Department of the Interior, 440 G St., NW, Washington, D.C. 20243. Phone, 202–343–4275.

(For pertinent codified regulations issued by the Heritage Conservation and Recreation Service, see 43 CFR Parts 3 and 31, and 36 CFR Chapter XII.)

Regional Offices—Heritage Conservation and Recreation Service

Region	Address
NORTHEAST—Maine, Vermont, New Hampshire, New York, Massachusetts, Connecticut, Rhode Island, Pennsylvania, New Jersey, Maryland, Delaware, Wester Virginia, Virginia, District of Columbia.	600 Arch St., Philadelphia, Pa. 19106.
SOUTHEAST—Alabama, Florida, Georgia, Kentucky, Tennessee, Mississippi, North Carolina, Puerto Rico, South Carolina, Virgin Islands.	148 International Blvd., Atlanta, Ga. 30303.
LAKE CENTRAL—Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin.	Federal Building, Ann Arbor, Mich. 48104.
MID-CONTINENT—Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.	Denver Federal Center, Bldg. 41, P.O. Box 25387, Denver Colo. 80225.
SOUTH CENTRAL—Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	5000 Marble Ave. NE., Albuquerque, N. Mex. 87110.
NORTHWEST—Idaho, Oregon, Washington	915 2d Ave., Seattle, Wash. 98174.
PACIFIC SOUTHWEST—American Samoa, Arizona, California, Guam, Hawaii, Nevada.	450 Golden Gate Ave., San Francisco, Calif. 94102.
ALASKA AREA—Alaska	1011 E. Tudor, Suite 29, Anchorage, Alaska 99503.

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement was established in the Department of the Interior by the Surface Mining Control and Reclamation Act of 1977 on August 3, 1977 (Pub. L. 95–87, 91 Stat. 445).

The primary goal of the agency is to create a nationwide program that protects society and the environment from the adverse effects of coal mining operations, while it assures an adeqate supply of coal to meet the Nation's energy needs.

Major objectives of the Office include establishment of minimum national standards for regulating the surface effects of coal mining, assistance to the States in developing and implementing regulatory programs, and promotion of the reclamation of previously mined areas.

Headquarters for the agency are located in Washington, D.C. In addition, there are five regional offices, in Charleston, W.Va., Knoxville, Tenn., Indianapolis, Ind., Kansas City, Mo., and Denver, Colo., as well as district and field offices in each of these regions. A typical regional office has major organization components for administration, technical services, inspection and enforcement, abandoned mined lands reclamation, and administration of State, Federal and Indian lands programs. District offices inspect mining operations and provide direct oversight to State programs.

Activities. Major activities of the Office of Surface Mining are carried out through four directorates: Abandoned Mined Lands, Inspection and Enforcement, State and Federal Programs, and Technical Services and Research.

Abandoned Mined Lands formulates policy and provides guidance for State, Federal and Indian reclamation programs and administers the Abandoned Mine Reclamation fund, moneys provided by a tax levied on coal mine operations, to be used for reclaiming and restoring land and water resources adversely by past coal mining.

Inspection and Enforcement provides policy and guidance for assessment of penalties, conduct and evaluation of inspection and enforcement programs, preparation and assistance in appeals, and protection of mine operator's

employees from discrimination because of actions taken under the Act.

State and Federal Programs reviews and evaluates State program applications, provides technical assistance and grants-in-aid to States for development of initial regulatory programs, provides policy, procedures and guidance for the designation of lands unsuitable for mining and for the small operator assistance program.

Technical Services and Research formulates policy and procedures, provides technical requirements for permits, reclamation plans and performance standards, develops criteria for and initiates, monitors, and reports on grants to institutions. The office also develops, in coordination with other OSM directorates, the curricula and operations of technical training.

For further information on the Office of Surface Mining and its programs, contact the Office of Public Affairs, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240. Phone, 202–343–4719.

(For pertinent codified regulations issued by the Office of Surface Mining Reclamation and Enforcement, see 30 CFR Chapter VII.)

Regional Offices—Office of Surface Mining Reclamation and Enforcement

Region	Location
Region I—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, Connecticut, New Jersey, Maryland, Pennsylvania, Delaware, West Virginia, and Virginia.	First Floor, Thomas Hill Bldg., 950 Kanawha Blvd., East, Charleston, West Virginia 25301.
Region II—Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi.	530 Gay Street, S.W., Suite 500, Knoxville, Tenn. 37902.
Region III—Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota.	Federal Building, U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.
Region IV—Iowa, Missouri, Nebraska, Kansas, Oklahoma, Arkansas, Texas, and Louisiana.	Scarritt Building, 818 Grand Avenue, Kansas City, MO 64106.
Region V—North Dakota, South Dakota, Montana, Wyoming, Colorado, Utah, Arizona, Nevada, California, Idaho, Oregon, Washington, Alaska, Hawaii, and New Mexico.	Post Office Building, 1832 Stout Street, Denver, CO 80205

Bureau of Mines

The Bureau of Mines was established July 1, 1910, in the Department of the Interior by the Organic Act of May 16, 1910 (36 Stat. 369; 30 U.S.C. 1, 3, 5–7), as amended. The 1910 act has been supplemented by several statutes, including those that authorize production and sale of helium, and research on environmental problems associated with minerals.

The Bureau of Mines is primarily a research and factfinding agency. Its goal is to help to insure that the Nation has adequate mineral supplies for security and other needs. Applied and basic research are conducted to develop the technology for the extraction, processing, use, and recycling of the Nation's mineral resources at a reasonable cost without harm to the environment or the workers involved. Typical areas of research are mine health and safety, recycling of solid wastes, abatement of pollution and land damage caused by mineral extraction and processing operations, and development of ways to use domestic low-grade ores as alternative sources of critical minerals that must currently be imported. In addition, the Bureau helps administer some environmental repair programs specifically authorized by laws such as the Appalachian Regional Development Act.

The Bureau also collects, compiles, analyzes, and publishes statistical and economic information on all phases of mineral resource development, including exploration, production, shipments, demand, stocks, prices, imports, and exports. Special studies are frequently made on subjects of particular national interest, such as the effects of potential economic, technologic, or legal developments on resource availability.

For further information, contact the Office of Mineral Information, Bureau of Mines, 2401 E Street NW., Washington, D.C. 20241. Phone, 202–634–1004.

(For pertinent codified regulations issued by the Bureau of Mines, see 30 CFR Chapter VI.)

Geological Survey

(National Center, 12201 Sunrise Valley Drive, Reston, Va. 22092)

The Geological Survey was established by the act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), which provided for "the classification of the public lands and the examination of the geological structure, mineral resources, and products of the national domain." The act of September 5, 1962 (76 Stat. 427; 43 U.S.C. 31(b)), expanded this authorization to include such examinations outside the national domain. Topographic mapping and chemical and physical research were recognized as an essential part of the investigations and studies authorized by the act of March 3, 1879, and specific provision was made for them by Congress in the act of October 2, 1888 (25 Stat. 505, 526).

Provision was made in 1894 for gaging the streams and determining the water supply of the United States (28 Stat. 398). Authorizations for publication, sale, and distribution of material prepared by the Geological Survey were contained in several statutes (43 U.S.C. 41–45; 44 U.S.C. 260–262).

The broad objectives of the Geological Survey are to perform surveys, investigations, and research covering topography, geology, and the mineral and water resources of the United States; classify land as to mineral character and water and power resources; enforce departmental regulations applicable to oil, gas, and other mining leases, permits, licenses, development contracts, and gas storage contracts; and publish and disseminate data relative to the foregoing activities.

Conservation. The Survey classifies Federal lands as to their value for leasable minerals or for reservoir and waterpower sites; evaluates Federal and Outer Continental Shelf lands for tract selection, tract evaluation, and reserve inventory purposes in aid of mineral leasing and subsequent operations; supervises the operations of private industry on geothermal, oil shale, mining, and oil and gas leases on public domain, acquired, Indian and Outer Continental Shelf lands to ensure maximum utilization and to prevent waste of the mineral resources, and to ensure the protection of the environment and to prevent pollution; assures the public a fair market return for the disposition of its mineral resources; establishes maximum rates of production for producing wells on the Outer Continental Shelf; maintains production accounts and collects royalties; prepares and publishes maps and reports of mineral and water resources investigations on Federal lands; and provides certain Federal agencies geologic and engineering advice, evaluations, and inspection services for the management and disposition of public lands and mineral resources.

Geology. The Survey conducts highly diversified research programs to increase understanding and to aid in management of the mineral and energy potential of the land area of the United States and of the adjacent continental

margins. These programs provide basic information on the character, magnitude, location, and distribution of mineral, energy, and land resources, as well as on the principles and processes involved in their formation. This information also provides a basis for many critical decisions and actions relating to land use, urban planning and development, construction practices, environmental and health problems and earthquake, volcanic, and other natural hazards. Special programs include the investigation and evaluation of geothermal resources, the maintenance of seismic and geomagnetic observatories as part of an earthquake hazards reduction program, offshore oil and gas resource appraisal, onshore oil and gas investigations, and mineral land assessments.

Topographic Mapping. The Geological Survey prepares, publishes, and revises the several map series which are components of the National Mapping Program. These series include topographic maps at several standard scales, photo-image maps, State maps, various U.S. base maps, and other special map products. Area of coverage includes the United States, its outlying areas, and Antarctica.

It operates the National Cartographic Information Center, which collects, processes, and disseminates information concerning maps, aerial photography, geodetic positions, and elevations. The Survey also coordinates mapping activities financed by Federal funds; conducts research in topographic surveying and mapping; updates and revises the National Atlas; and furnishes the staff necessary to conduct studies and maintain an information and records depository on domestic names for the U.S. Board of Geographic Names.

Water Resources. The Survey provides the hydrologic information and understanding needed for the optimum utilization and management of the Nation's water resources for the overall benefit of the people of the United States. This is accomplished, in large part, through cooperation with other Federal and non-Federal agencies by: (1) Collecting, on a systematic basis, data needed for the continuing determination and evaluation of the quantity, quality, and use of the Nation's water resources; (2) conducting analytical and interpretive water resource appraisals describing the occurrence, availability, and the physical, chemical, and biological characteristics of surface and ground water; (3) conducting supportive basic and problem-oriented research in hydraulics, hydrology, and related fields of science to improve the scientific basis for investigations and measurement techniques and to understand hydrologic systems sufficiently well to quantitatively predict their response to stress, either natural or manmade; (4) disseminating the water data and the results of these investigations and research through reports, maps, computerized information services, and other forms of public releases; (5) coordinating the activities of Federal agencies in the acquisition of and access to water data for streams, lakes, reservoirs, estuaries, and ground waters; and, (6) providing scientific and technical assistance in hydrologic fields to other Federal, State and local agencies, to licensees of the Federal Energy Regulatory Commission, and to international agencies on behalf of the Department of State.

Land Information and Analysis Programs. The Earth Resources Observation Systems Program (EROS) is a departmental program that develops techniques to obtain and analyze remotely sensed satellite and aircraft imagery data and to promote the use of these techniques in the solution of land resources and environmental management problems. The program also provides training courses, workshops, and other assistance in the technology of using remotely sensed data as well as the processing and distribution of these data.

The Resources and Land Investigations Program (RALI) develops and coordinates directories and catalogs of land and resource information; and investigates, develops, and demonstrates multi-disciplinary methodologies and models for solution of environmental resource, and land inventory problems.

The Geography Program provides a basic program of investigations in the modern science of geography in support of fundamental earth science and land-use data analysis mapping.

The Earth Sciences Applications Program directs and coordinates the core disciplines of the Geological Survey to demonstrate the applications of earth science information to land-use decisionmaking problems.

The Environmental Impact Analysis Program provides direction, coordination, and expertise for preparation and review of environmental impact statements. For further information, contact the Information Officer, Geological Survey, Department of the Interior, National Center, 12201 Sunrise Valley Drive, Reston, Va. 22092. Phone, 703–860–7444.

(For pertinent codified regulations issued by the Geological Survey, see 30 CFR Chapter II.)

Regional Offices—Geological Survey

Region	Address/Phone
EASTERN—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Tennessee, Kentucky, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Puerto Rico, Virgin Islands.	109 National Center, Reston, VA 22092. Phone, 703–860–7414.
CENTRAL—North Dakota, South Dakota, Montana, Wyoming, Nebraska, Utah, Colorado, Kansas, Iowa, Missouri, Oklahoma, New Mexico, Texas, Arkansas, Louisiana.	Box 25046, Denver Federal Center, Denver, CO 80225. Phone, 303–234–4630.
WESTERN—Washington, Oregon, Idaho, California, Nevada, Arizona, Alaska, Hawaii.	345 Middlefield Rd., Menlo Park, CA 94025. Phone, 415–323–2711.

[FR Doc. 79–16292 Filed 5–24–79; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 831–79]

Report on the Implementation of Executive Order No. 12044, "Improving Government Regulations"

AGENCY: Department of Justice.

ACTION: Report on the implementation of Executive Order No. 12044.

SUMMARY: This is the Department's final report on implementing Executive Order No. 12044 (43 FR 12661), which is intended to foster improvement in government regulations and the procedures by which they are issued.

EFFECTIVE DATE: May 9, 1979.

FOR FURTHER INFORMATION CONTACT: Larry A. Hammond, Deputy Assistant Attorney General, Office of Legal

Counsel, Department of Justice, Washington, D.C. 20530, (202) 633–3657.

SUPPLEMENTARY INFORMATION: The present Attorney General's order enunciates, in more detail than the draft report published on May 26, 1978 (43 FR 22922), Departmental guidelines for implementing Executive Order No. 12044. A few comments were received in response to the draft proposal, and they were carefully studied. In light of those comments, and especially in view of the suggestions of the Office of Management and Budget, which the Executive order charges with assuring its effective implementation, the present Attorney General's order was prepared to reflect fully the goals and procedures mandated by the Executive order.

The major areas of change in the order include the following: a statement of the aims of the Executive order; basic definitions for use in administering this Attorney General's order; elaboration of the Executive order's requirements of preparing a Semiannual Agenda, of promoting public participation, of effectively overseeing the regulatory process, of identifying "significant" regulations and ones subject to a "regulatory analysis"; a statement of a process for reviewing existing regulations. The changes reflected in this final report have been designed to make clearer the Department's sense of the mandate of the Executive order, in order both to so inform the public and to guide the issuing components.

Procedures mandated by the Executive order are expressly not intended to cause delay in the regulatory process, to supersede existing statutory responsibilities, or to add to existing responsibilities in rulemaking in any ways other than those explicitly stated. Moreover, as noted in Section 7 of the Executive order, "[i]t is not intended . . . to provide new grounds for judicial review" of government regulations.

The following supplementary information is a summary of comments received in response to the Department's draft report on implementing the Executive order. One commenter noted that the Department's draft report did not explicitly cover implementation of Executive Order no. 11764, which delegates to the Attorney General the President's authority to approve agency regulations under Section 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000d–1, relating to nondiscrimination in federally assisted programs. However, the draft report was not intended to provide an exhaustive listing of regulations covered by the Executive order.

Another commenter recommended that the Department provide an opportunity for greater participation of the public in the development of regulations of the Drug Enforcement Administration, with a 120-day period for comment on significant regulations, and a 60-day period for comment on nonsignificant regulations. While the Department is concerned that an opportunity for meaningful public comment exist, Section 7 of Executive Order No. 12044 expressly provides that it is not intended to create delay in the regulatory process. That is not to deny that longer than a 60-day public comment period may be provided where feasible and appropriate. Similarly, although the Department has no objection to providing a 60-day comment period for nonsignificant regulations where feasible and appropriate, that is not being required in order to avoid institutionalized delays in the regulation-making process.

With respect to criteria of "significant" regulations, one commenter observed that the standards in the draft report were unclear. The Executive order intends that issuing components of Departments and agencies have a certain leeway in determining what is "significant" in terms of their programs. At the same time, it is necessary to give guidance to the issuing components. In light of those factors and of the criteria of the Executive order, the standards for identifying "significant" regulations have been recast.

One commenter recommended that the Department include in its criteria for reviewing existing regulations a requirement that unnecessary gender-based distinctions and terminology be removed. The Department is sensitive to the need not to make unnecessary gender-based distinctions, and considers that its regulations do not differentiate on the basis of sex. As to the question whether the pronoun "he" should be used, the Department notes that the masculine form of the third-person pronoun has a universal meaning, and refers to persons of either sex unless the context indicates otherwise. (See 1 U.S.C. 1.)

Other comments related to the need to clarify guidelines of some of the Department's components, and to provide for greater participation of State and local governments in the components' regulation-making process. They are being brought to the attention of the heads of the issuing components.

For a description of the Department's regulatory activity, see 43 FR 22922–23, the draft report on implementing Executive Order No. 12044.

Organization of this Order

I. Purpose
II. Definitions
III. Requirements relating to the Process of Developing Significant Regulations:
(A) Semiannual Agenda of Regulations
(B) Opportunity for Public Participation
(C) Approval of Significant Regulations
(D) Criteria for Identifying Significant Regulations
IV. Regulatory Analyses
V. Review of Existing Regulations
VI. Compliance with Executive Order No. 12044

I. Purpose

The purpose of this order is to establish guidelines for Departmental procedures in order to implement Executive Order No. 12044. Section 1 of the Executive order summarizes its policy goals in the following terms:

> Regulations shall be as simple and clear as possible. They shall achieve legislative goals effectively and efficiently. They shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments.

The Executive order seeks to assure that the need for and aims of regulations are clearly established, that there is effective oversight of the regulatory process, that public participation is allowed, that "meaningful alternatives are considered and analyzed before the regulation is issued," and that compliance burdens are minimized to the greatest extent possible.

Section 1 of the order must be read in close conjunction with Section 7, which makes it clear that while the order is intended to improve regulatory practices, "[i]t is not intended to create delay in the process or provide new grounds for judicial review." Further, nothing in it "shall be considered to supersede existing statutory obligations concerning rulemaking." The foregoing limitations also apply to this Attorney General's order.

II. Definitions

(A) *Regulation.* The Executive order defines "regulation" in Section 6(a) as referring to "both rules and regulations issued by agencies including those which establish conditions for financial assistance." That section also provides that closely related sets of regulations "shall be considered together" for purposes of the order's requirements.

The Department understands that the intent of the Executive order is only to

reach, in the first place, regulations subject to notice-and-comment procedures, as well as regulations establishing conditions for financial assistance. Further, Section 6(b) establishes six exemptions from coverage, which include, but are not limited to, regulations initiated pursuant to formal rulemaking, regulations concerning military or foreign affairs functions, and regulations dealing with internal agency management or personnel. As to internal agency regulations, as well as foreign affairs regulations, the summary of public comments published along with the Executive order provides that "[r]egulations in these two areas are excluded from notice and comment requirements in the Administrative Procedure Act and are excluded from the order." (43 Fr 12669.)

Two further points should be made. First, although the Executive order is intended to reach, in the first instance, regulations subject to notice-and-comment procedures as well as ones establishing conditions for financial assistance, nothing in it in terms or by implication requires agencies to follow procedures other than those explicitly contemplated by it. Thus, procedural requirements that some courts have imposed on the basis of their interpretation of the Administrative Procedure Act (APA) are not independently imposed by the Executive order or this Attorney General's order. Second, the Executive order's main requirements are directed at regulations deemed "significant." Thus, after it is determined that a regulation is either subject to notice-and-comment procedures or that it establishes conditions for financial assistance, and that the listed exemptions do not apply, it must be ascertained whether the regulation is "significant" and thus subject to the Executive order's key requirements. (For criteria of significance, see III(D) below).

(B) *Director of the issuing component.* "Director of the issuing component" refers to the chief executive of the Bureau, Division, Office, Board, Administration, Service, Institute, Commission or other organizational component of the Department that initiates and issues regulations.

(C) *Operating unit (or units).* "Operating unit (or units)" refers to the unit (or units) of the issuing component with primary responsibility for developing a regulation.

III. Requirements relating to the Process of Developing Significant Regulations

Section 2 of the Executive order mandates revisions in agency procedures for developing significant regulations.

(A) *Semiannual Agenda of Regulations.* Section 2(a) of the Executive order requires the publication at least semiannually of an "agenda of significant regulations under development or review." A primary goal of a Semiannual Agenda is to provide the public with information about regulatory activity in an agency.

A Semiannual Agenda is an outline or plan of things to come. Its function is not to create, by implication or otherwise, any new legal rights or requirements, substantive or procedural. The requirement of a Semiannual Agenda also does not supersede or affect other procedural requirements imposed on agencies, such as by the APA.

(1) Each issuing component shall prepare a Semiannual Agenda covering those new significant regulations or existing significant regulations under review for possible revision for which the component is primarily responsible.

(2) A Semiannual Agenda normally will be drafted by the staff of the operating unit of the issuing component with greatest familiarity with a regulation, and an Agenda entry should be based on information existing in the issuing component at the time the Agenda is prepared. To assure effective oversight of the development of a Semiannual Agenda, it is to be reviewed and approved by the director of the issuing component.

(3) Since only "significant" regulations are to be included in a Semiannual Agenda, a determination of the significance of a proposed regulation—or, if necessary, a preliminary determination—should be made by the issuing component early in the development of an Agenda. An Agenda should cover new significant regulations under development at the time the Agenda is prepared, or then anticipated to be under development in the future. It should also include existing significant regulations under review for possible revision, or ones anticipated to be thus under review prior to the publication of the next Semiannual Agenda.

(4) The following information is to be included in an entry in a Semiannual Agenda:

(a) *Title of the Regulation.*

(b) *Discussion of the Regulation*—A description of the regulation and the need for it;

(c) *Legal Basis*—The source of legal authority for the regulation, such as a statute, Executive order, etc. (with a legal citation);

(d) *Regulatory Analysis*—A statement as to whether a regulatory analysis (discussed in IV below) will be necessary; and

(e) *Knowledgeable Official*—The name, address and telephone number of an official or staff member of the issuing component knowledgeable about the regulation.

With respect to regulations previously listed on an Agenda, a statement of their status shall be included on the subsequent Agenda.

(5) After a component's head has approved the component's Semiannual Agenda, it will be reviewed at the Department level to make sure that the process contemplated by Executive Order No. 12044 is being followed. Each component will present its Semiannual Agenda for review to either the Associate Attorney General or the Deputy Attorney General, depending on which one exercises administrative oversight over the component. The reviewing official shall see that information provided for each significant regulation is complete, that the Semiannual Agenda entries set forth the legal basis of the regulations, and that the Agenda is written clearly. If a Semiannual Agenda is found to be deficient, it will be returned to the issuing component for revision. After seeing that an agenda is complete and meets the Executive order's requirements, the Associate or Deputy Attorney General will return it to the issuing component, which will then publish it in the **Federal Register**. Also, a copy will be transmitted to the Attorney General for his information, and to assure overall consistency with the aims of the Executive order.

(6) In the event that an issuing component initiates the development or the review for possible revision of a significant regulation, when such action was unanticipated at the time one Semiannual Agenda was prepared and before the next Semiannual Agenda is to be compiled, it should update its Agenda to cover the new action. An issuing component's current Agenda is to be available for public inspection (although it need not be published), and a copy of the updated portions shall be transmitted to either the Associate Attorney General or the Deputy Attorney General, depending on which one exercises administrative oversight over the component in question. The updated Agenda should contain the same information outlined in (4) above

for Semiannual Agenda entries, and it should be reviewed by the director of the issuing component. Also, the current Agenda should be updated with respect to a particular significant regulation by the time that notice of that proposed regulation is published in the **Federal Register.**

(7) At the time that an issuing component submits a Semiannual Agenda for Departmental review, it should also submit a separate document containng the information called for in Section 2(b) of Executive Order No. 12044. Thus, for each proposed regulation listed on the Semiannual Agenda, the issuing component should discuss the issues to be considered, the alternative approaches to be explored, a tentative plan for obtaining public comment, and target dates for completing steps in the development of the regulation. Such documents, which need not be published, will be transmitted to the Attorney General for his information. It is also expected that each issuing component will develop procedures assuring that its head will have reviewed proposed regulatory initiatives at an early stage of their development.

(b) *Opportunity for Public Participation.* Section 2(c) of the Executive order directs agencies to "give the public an early and meaningful opportunity to participate in the development of agency regulations." In particular, it is intended to give affected entities, including State and local governments, a chance to comment on proposed regulations. No single method for fulfilling this mandate is identified, but agencies are asked to consider a variety of ways to involve the public and affected entities in the early stages of proposed regulation-making. The Executive order does not supersede notice or participation requirements based on statutes or other sources, and it does not set forth requirements concerning decisionmaking on the rulemaking record.

(1) The responsibility for encouraging public participation is lodged with the issuing component primarily involved in preparing or revising a regulation.

(2) Issuing components shall provide, whenever reasonably possible, at least 60 days for the public to comment on proposed significant regulations. When that is not possible, the proposed significant regulation shall be accompanied by a brief statement of the need for a shorter time for comment. When public comment is to be limited to less than 60 days, such decision shall be reviewed by the director of the issuing component.

(3) To conform with Executive order, issuing components should consider such additional courses of action as the following: publishing Advance Notices of Proposed Rulemaking; holding open conferences or public hearings; sending notices of proposed regulations to publications likely to be read by those affected; or holding public seminars and meetings with interested parties. The issuing component shall take care to assure that all interested groups are afforded adequate opportunity to submit their views.

(4) If a significant regulation requires a "regulatory analysis" pursuant to Section 3 of the Executive order (discussed in IV below), Section 3(b)(2) of that order requires that notice of such proposed regulation include "an explanation of the regulatory approach that has been selected or is favored and a short description of the other alternatives considered." Also, it shall include a "statement of how the public may obtain a copy of the draft regulatory analysis."

(C) *Approval of Significant Regulations.* Section 2(d) of the Executive order is intended to deal with approval of significant regulations prior to final publication.

(1) Approval authority shall be exercised by the Attorney General, or by the official delegated approval responsibility, or by the official who has approval authority pursuant to a statute. In the normal case, it is expected that approval authority will be exercised by the director of the issuing component. Unless precluded by law, the Attorney General will retain the discretion during the process of developing a regulation of reserving to himself the approval function.

(2) As the Executive order provides, the official exercising approval authority should confirm that:

(a) The proposed regulation is needed;

(b) The regulation's direct and indirect effects have been adequately considered;

(c) Alternative approaches have been weighed and the least burdensome one has been selected;

(d) Public comments have been carefully considered in the process of preparing the regulation;

(e) The regulation is written in clear English and is understandable to those who must comply with it;

(f) An estimate has been made of the new reporting requirements or recordkeeping burdens resulting from compliance with the regulation;

(g) The name, address and telephone number of an official or staff member of the issuing component knowledgeable about the regulation is included in the publication of the regulation; and

(h) A plan for evaluating the regulation after its issuance has been prepared.

(3) To assist the approving official in making the foregoing determinations, it is expected that normally a document, which may be called a summary regulatory report, will be prepared for review by the approving official at the time of approval. Such a document should discuss the factors listed in (2) above.

(D) *Criteria for Identifying Significant Regulations.* In Section 2(e), the Executive order delegates to agencies the task of establishing criteria for identifying "significant" regulations. The intent of the Executive order is to provide agencies with the discretion needed to determine what is significant to their own programs and particular constituencies. It thus is clear that no single inflexible test of "significance" is contemplated by the Executive order.

(1) In keeping with the intent of the Executive order, the Department does not propose to establish a narrow formula for determining "significance." The determination of "significance" is for issuing components, who are in closest touch with the subject matter of the regulation and the affected constituencies. However, it is clear that, when determining significance, the issuing components should look to the type and number of individuals and entities affected, the compliance and reporting requirements of a regulation, the direct and indirect effects of a regulation on the economy and competition in it, and the relationship of a proposed regulation to those of other programs and agencies.

(2) A regulation should normally be considered "significant" when:

(a) It substantially affects a large portion of the people, businesses, organizations, or state or local governments at which it is directed; or

(b) Even though it may not so affect a large portion of such entities, it nevertheless has a substantial effect on the issuing component's programs, those charged with complying with the regulation, the national or regional economy, or programs of other agencies or organs of government (including state or local governments).

(3) When the issuing component has not determined that a proposed regulation is "significant," such regulation shall be accompanied by a statement to that effect when the proposed regulation is published for comment (assuming that the regulation

is otherwise covered by the Executive order).

(4) Officials in the operating unit with primary responsibility for a regulation will, in the first instance, apply the above-stated criteria for identifying "significant" regulations. Such determinations will be reviewed by the director of the issuing component, although the director may delegate review authority to an individual responsible to him. The decisionmaking process for determining whether a regulation is significant should be continually reviewed, as it is important that each regulation be analyzed on its own terms.

(5) As noted in (A)(3) above, since only "significant" regulations are to be included in a Semiannual Agenda, a determination of the significance of a proposed regulation—or, if necessary, a preliminary determination—should be made by the issuing component early in the development of an Agenda.

IV. Regulatory Analyses

Section 3 of the Executive order provides that certain significant regulations with "major economic consequences for the general economy, for individual industries, geographical regions or levels of government" require a regulatory analysis in their support. Such an analysis shall be based on "a careful examination of alternative approaches early in the decisionmaking process."

(A) The Department's regulations will be considered to have major economic consequences and therefore to require regulatory analyses in their support if they:

(1) Cause an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for individual industries, levels of government or geographic regions; or

(3) If the Attorney General or the director of the issuing component determines that a regulatory analysis is necessary.

(B) As provided by Section 3 of the Executive order, a regulatory analysis is not required in rulemaking proceedings "pending at the time this Order (EO 12044) is issued" (March 23, 1978) if an Economic Impact Statement had already been prepared in accordance with Executive Order Nos. 11821 and 11949.

(C) For regulatory analyses to be meaningful, their preparation should be closely connected with the process of developing a regulation. It is anticipated that normally the determination of whether a regulation will require a regulatory analysis will be made at the time that it is ascertained whether a regulation is significant. The officials of the operating unit developing a regulation will be responsible for assuring that the preparation of a regulation and the drafting of a regulatory analysis are in fact coordinated.

(D) If it is necessary to gather additional economic information before deciding whether a regulatory analysis will be required, and thus in effect to postpone the decision, the ultimate determination of whether to prepare such an analysis shall normally be made no later than the beginning of the final drafting of the regulation.

(E) If a regulatory analysis is required, the notice of proposed rulemaking should include an explanation of the regulatory approach selected or favored, a short description of other alternatives considered, and a statement of how the public may obtain a copy of the draft regulatory analysis. A final regulatory analysis normally will not be prepared until after the notice of proposed rulemaking has been published and the period for public comment has elapsed.

(F) The regulatory analysis shall normally be prepared under the supervision of the operating unit of the issuing component with primary responsibility for the regulation, and it shall be reviewed and approved by the director of the issuing component.

V. Review of Existing Regulations

Section 4 of the Executive order requires agencies to conduct periodic reviews of existing regulations in order to promote the simplification and clarification of regulations, and the elimination of those no longer needed. However, the decision to select a regulation for review for possible revision should not by itself be construed to indicate that the rule is not fully in force and need not be complied with during the period of review, or that it will necessarily be modified or discarded.

(A) Agencies should "concentrate on those regulations which no longer serve their intended purpose, which have caused administrative difficulties, or which have been affected by new developments." (43 FR 12669). In selecting regulations for review for possible revision, issuing components shall consider the following factors:

(1) The continued need for the regulation;

(2) The type and number of complaints of suggestions received;

(3) The burdens imposed on those directly or indirectly affected by the regulation;

(4) The need to simplify or clarify language;

(5) The need to eliminate or modify overlapping or duplicative regulations;

(6) The length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have altered the area affected by the regulation; and

(7) The need for further interpretation or clarification of the regulation in light of later administrative or judicial determinations.

(B) The criteria outlined above for selecting existing regulations for review for possible revision are to be applied by the personnel and officials in the operating unit with primary responsibility for regulation, with oversight by the director of the issuing component. When an existing significant regulation is selected for review for possible revision, the process of review for possible revision is to conform to the Executive order's procedural requirements for developing new significant regulations. Thus, existing significant regulations selected for review for possible revision should be included in a Semiannual Agenda, and the entries in the Agenda about such regulations should cover the same items discussed about new sigificant regulations. (See III(A) above.) Similarly, the Executive order's requirements pertaining to public participation and to approval of significant regulations also apply to existing significant regulations selected for review for possible revision.

(C) The issuing components should review all of their existing regulations in terms of the criteria in (A) above at least once every four years. The schedule within which to accomplish such review is a matter for the issuing components to determine. When an existing regulation is reviewed by a component in terms of the criteria listed in (A) above, and the regulation is selected for review for possible revision, the review process is governed by the procedural requirements of the Executive order, as noted in (B) above. When an existing regulation is reviewed but *not* selected for possible revision, notice to that effect should be given in the next Semiannual Agenda. Such notice should include the title and citation of the regulation, date of review, and the address of an official or staff member knowledgeable about the regulation.

(D) Section 4 of the Executive order requires agencies to identify regulations for initial review. The Department's regulations for initial review are those listed in the draft report on

implementing Executive Order 12044, 43 FR 22923–24.

VI. Compliance with Executive Order 12044

To help assure that the provisions of Executive Order 12044 are complied with fully and uniformly throughout the Department, the Office of Legal Counsel shall be responsible for responding to legal questions concerning the Executive order as it bears on the Department's operations. Also, the Office of Legal Counsel shall make recommendations to the Attorney General on matters requiring his approval or decision under the Executive order.

Dated: May 9, 1979.

Michael J. Egan,

Acting Attorney General.

[FR Doc. 79-16397 Filed 5-24-79; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 79-2]

Raphael C. Cilento, M.D.; Denial of Registration

On December 27, 1978, the Administrator of the Drug Enforcement Administration (DEA) directed to the Respondent, Raphael C. Cilento, M.D., of Brooklyn, New York, an Order to Show Cause proposing to deny Dr. Cilento's application for registration as a practitioner under the Controlled Substances Act. The bases cited for the proposed action were the Respondent's felony conviction in a Florida state court and the subsequent revocation of his DEA registration.

By letter dated January 3, 1979, the Respondent requested a hearing on the issues raised by the Order to Show Cause. Subsequently, this matter was placed on the docket of the Honorable Francis L. Young, Administrative Law Judge. Judge Young notified both the Government and the Respondent of the scheduled date for the hearing in this matter and caused a Notice of Hearing to be published in the **Federal Register**, 44 FR 9635. Additionally, Judge Young requested that both parties identify their proposed witnesses and any documents which they expected to offer in evidence at the hearing. The Government complied with this request; the Respondent did not reply to it.

Judge Young convened the hearing of this matter in Washington, D.C., on February 27, 1979. Neither the Respondent, nor anyone claiming to represent the Respondent, attended the hearing. No evidence was offered on his behalf. Government counsel appeared and offered in evidence two documents: the Administrative Law Judge's opinion and recomendations in an earlier administrative matter involving this Respondent, Docket No. 77–13, and the Administrator's final order in that matter, published in the **Federal Register** on April 7, 1978, 43 FR 14749.

On March 29, 1979, pursuant to 21 CFR 1316.65, Judge Young transmitted to the Administrator his report of the proceedings in this matter, together with recommended findings of fact, conclusions of law and a recommended decision. After reviewing the record of this matter in its entirety, the Administrator, pursuant to 21 CFR 1316.66, hereby publishes his final order in the matter of Dr. Cilento's application for registration.

Documents and testimonial evidence admitted in the earlier DEA administrative hearing, and incorporated by reference in the documents offered in this proceeding, clearly show that on September 15, 1976, in the Circuit Court for the Eleventh Judicial Circuit, in and for the Dade County, Florida, the Respondent was convicted of a felony offense relating to controlled substances. The record of the earlier DEA proceeding provides substantial evidence and amply justification for the action contemplated in the present matter; that is, the denial of the Respondent's application for registration in Brooklyn, New York. The Administrator further finds that the Respondent has failed to take advantage of the opportunity afforded him to show cause why his pending application should not be denied.

The Respondent has been convicted of a felony offense relating to controlled substances within the meaning and intent of 21 U.S.C. 824(A)(2). This agency has consistently held that where a registration can be revoked pursuant to 21 U.S.C. 824, an application for registration can be denied pursuant to 21 U.S.C. 823, since the law would not require the useless act of granting a registration one day only to revoke it on the next. See, *In the Matter of Serling Drug Co.*, Docket No. 74–12, 40 FR 11918 (1975); *In the Matter of Norman Bridge Drug Co., Inc.*, Docket No. 74–22, 41 FR 3108 (1976). There is, therefor, a lawful basis for the denial of the Respondent's pending application for registration. While substantial reason has been shown for the denial of the Respondent's application, no mitigatory or countervailing evidence has been produced by, or on behalf of, the Respondent. The Administrative Law Judge has recommended that the Respondent's application be denied; the Administrator concurs.

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 in 28 CFR 0.100, the Administrator hereby orders that the application for registration of Raphael C. Cilento, M.D., executed on or about July 17, 1978, be, and it hereby is, denied, effective June 25, 1979.

Dated: May 21, 1979.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 79-16402 Filed 5-24-79; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Committee on Apprenticeship, Reestablishment

Notice is given that after consultation with the General Services Administration and annual comprehensive review, it has been determined that the Federal Committee on Apprenticeship, whose charter had been extended to May 4, 1979, is hereby reestablished for the period May 5, 1979, to January 5, 1981. This action is necessary and in the public interest.

Signed at Washington, D.C., this 18th day of May 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 79-16487 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-79-65-C]

Knox Creek Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Knox Creek Coal Corporation, Drawer B, Hurley, Va. 24620, has filed a petition to modify the application of 30 CFR 77.1605(k) (berms) to its No. 1 Preparation Plant located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95–164.

The substance of the petition follows:

1. Instead of providing berms or guards on the outer bank of its roadway,

the petitioner proposes the following alternative method:

a. Daily inspection of all coal-hauling vehicles will be made and defects will be corrected before placing the vehicle in service. A record of the inspection and repair on each vehicle will be kept by a supervisory employee.

b. Loaded vehicles will have the right-of-way on the highwall side of the haulage road regardless of their direction of travel.

c. All rules of the road will be posted on bulletin boards throughout the mine area, and such rules will be made part of the mine's training and retaining programs.

d. Two-lane roads will be maintained with a minimum width of 30 feet; where widths of less than 30 feet are provided, the roads will be designated as single-lane.

e. In areas of single-lane traffic, a minimum width of 16 feet will be maintained, with passing points provided at intervals of not more than 1,000 feet; if visibility is obscured by brush or other materials, passing points will not be more than 500 feet apart.

f. Warning and stop signs will be posted in appropriate areas.

g. All haulage wheels will have original manufacturer's brakes, engine or Jacobs brakes and emergency braking system.

h. All equipment operators will be trained in the area of haulage equipment and safety of vehicles on haulage roads.

i. Where abrupt drop-offs are present along the outer banks, elevation will be provided to cause vehicles to gravitate toward the highwall side of the road.

j. Roadway surfaces will be kept free of debris, excessive water and ice, and maintained as free as practicable of washboarding.

k. Adequate supplies of crushed stone or other suitable materials will be stored at appropriate locations for use on slippery road surfaces.

2. The petitioner states that this alternative method will achieve no less protection for its miners than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 25, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 18, 1979.

Eckehard Muessig,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-16488 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-78-34-M]

Stauffer Chemical Co.; Petition for Modification of Application of Mandatory Safety Standard

Stauffer Chemical Company of Wyoming, P.O. Box 513, Green River, Wyoming 82935, has filed an addendum to its petition to modify the application of 30 CFR 57.21-46 (ventilation), to its Big Island Mine, located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petitioner's statement follows:

(1) The petitioner proposes to extend its single entry decline 580 feet to the bottom of its new production shaft (as indicated on a drawing supplied with the petition).

(2) Adequate ventilation will be provided by using a permissible auxiliary fan capable of supplying 20,000 CFM of fresh air to the working face. Exhaust air will be coursed directly to the returns.

(3) Adequate roof support will be provided by using 54 inch by ⅝ inch roof bolts with 6 by 6 inch plates spaced on 48 inch centers.

(4) The decline is needed to improve working conditions while cleaning the bottom of the production shaft and will assure no less protection than the standard.

(5) The proposed entry will provide the following advantages: two means of access to the shaft bottom, an enlarged working area, improved ventilation, a means to provide adequate dust control, an enlarged sump, safer working conditions, mechanized cleanout.

(6) The petitioner requests the modification until December 31, 1980, when its development project will be completed.

Persons interested in this petition may furnish written comments on or before June 25, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 15, 1979.

Eckehard Muessig,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-16303 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

California State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health, (hereinafter called Regional Administrator—OSHA) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 1, 1973 notice was published in the **Federal Register** (38 FR 10717) of the approval of the California plan and the adoption of Subpart K to Part 1952 containing the decision.

The California plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. State standards have been revised in accordance with Part 1953 to meet the requirement of adopting Federal Standard revisions and State initiated changes. Accordingly, California has revised these standards and promulgated them in accordance with applicable State procedures. By letter dated March 13, 1979 from Dorothy H. Fowler Assistant Program Manager, California Occupational Safety and Health Administration to Gabriel J. Gillotti, Regional Administrator, OSHA, and incorporated as part of the plan, the State submitted proof documents concerning standards equivalent to Federal amendments to Hazardous Materials standards of 29 CFR 1910.106(a)(13), 1910.106(e)(3), 1910.106(e)(5), 1910.106(e)(6), 1910.106(e)(8) and 1910.109(i)(1); Personal Protective Equipment 29 CFR 1910.132(a), 1910.133(a), 1910.134(a), 1910.134(b), 1910.134(c), 1910.134(e), 1910.135 and 1910.136; Materials Handling and Storage 29 CFR 1910.179(a)(13); Machinery and Machine Guarding 29 CFR 1910.217(b)(7)(v) and 1910.217(c)(5); Welding, Cutting and

Brazing 29 CFR 1910.252(a), 1910.252(d) and 1910.252(e); Special Industries 29 CFR 1910.261(j)(4)(iv), 1910.261(j)(5)(i), 1910.263(e)(1)(v) and 1910.263(e)(1)(viii); Electrical 29 CFR 1910.308/309, 1910.308(NEC 410–52) and 1910.308(NEC 710–22); Ship Repairing 29 CFR 1915.1; Shipbuilding 29 CFR 1916.1; Shipbraking 29 CFR 1917.1; Longshoring 29 CFR 1918.1 and 1918.2; Occupational Health and Environmental Controls 29 CFR 1926.50(b), 1926.50(c), 1926.50(d), 1926.50(e) and 1926.50(f); Personal Protective and Life Saving Equipment 29 CFR 1926.103(a) and 1926.106; Rollover Protective Structures; Overhead Protection 29 CFR 1926.1000(a) and 1926.1000(f). The State initiated standard changes with no comparable Federal standard concerned Informing Employees of Emergency Procedurs, Written Plan, Glass, Walkways, Erection Guide for Trusses and Beams, Personal Protective Clothing and Equipment for Firefighters, Ear and Neck Protection, Shields for Dye Casting Machines, Open Tanks—Vats and Other Containers Containing Corrosive Liquids and Nitrocellulose. These standards, which are contained in Title 8, Chapter 4 of California Administrative Code were promulgated (date filed with the Secretary of State) between the dates of January 31, 1978 and July 13, 1978.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards. The detailed standards comparison is available at the locations specified below.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator—OSHA, 450 Golden Gate Avenue, Room 9470, San Francisco, California 94102 and California Occupational Safety and Health Administration, Room 3052, 455 Golden Gate Avenue, San Francisco, California 94102; and Office of the Directorate of Federal Compliance and State Programs, Room N3101, 200 Constitution Avenue N.W., Washington, D.C. 20210.

4. *Public participation.* Under § 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the California plan as a proposed change and making the OSHA Regional Administrator's approval effective upon publication for the following reason.

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be unnecessary.

This decision is effective May 25, 1979.

(Sec. 18, Pub. L. 91–956, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at San Francisco, California this 5th day of April 1979.

Gabriel J. Gillotti,

Regional Administrator.

[FR Doc. 79-16490 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-26-M

Virgin Islands Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On September 11, 1973, notice was published in the **Federal Register** (38 FR 24896) of the approval of the Virgin Islands plan and adoption of Subpart S to Part 1952 containing the decision.

The Virgin Islands plan provides for the adoption of Federal standards as Virgin Islands standards by reference. The authority to adopt such standards is contained in Title 3, Section 940, of the Virgin Islands Code.

In response to Federal standards changes, the State has submitted by a letter dated November 15, 1978 from Mr. Jean D. Larsen, Assistant Commissioner of the Virgin Islands Department of Labor and Director of the Division of Occupational Safety and Health, to Mr. Alfred Barden, Regional Administrator, and incorporated as a part of the plan, State certification documenting promulgation of regulations adopting all changes and additions to Occupational Safety and Health standards, 29 CFR Parts 1910, 1918, 1926, and 1928 as 24 V.I.R.R. 36(b) 1, 2, 3, 4 up to and including April 20, 1978.

By a letter dated March 23, 1979 from Mr. Louis L. Llanos, Acting Director of the Virgin Islands Department of Labor and Director of the Division of Occupational Safety and Health, to Mr. Alfred Barden, Regional Administrator, the State submitted and incorporated as a part of the plan, State certification documenting promulgation of State standards comparable to Occupational Exposure to Inorganic Arsenic, 29 CFR 1910.1018, as published in the **Federal Register** (43 FR 19584) dated May 5, 1978; Occupational Exposure to Cotton Dust, 29 CFR 1910.1043, as published in the **Federal Register** (43 FR 27350) dated June 23, 1978; Occupational Exposure to Benzene: Liquid Mixtures, 29 CFR 1910.1028, as published in the **Federal Register** (43 FR 27962) dated June 27, 1978; Occupational Exposure to Cotton Dust in Cotton Gins, 29 CFR 1910.1046, as published in the **Federal Register** (43 FR 28474) dated June 30, 1978; Occupational Exposure to Cotton Dust: Corrections, 29 CFR 1910.1043, as published in the **Federal Register** (43 FR 28473) dated June 30, 1978; Special Provisions for Air Contaminants—Asbestos, 29 CFR 1910.19, as published in the **Federal Register** (43 FR 28473) dated June 30, 1978; Preservation of Employee Exposure and Medical Records, 29 CFR 1910.20, as published in the **Federal Register** (43 FR 31329) dated July 21, 1978; Occupational Exposure to Cotton Dust in Cotton Gins: Corrections, 29 CFR 1910.1046, as published in the **Federal Register** (43 FR 35035) dated August 8, 1978; Occupational Exposure to Cotton Dust: Corrections, 29 CFR 1910.1043, as published in the **Federal Register** (43 FR 35032) dated August 8, 1978; Occupational Exposure to Cotton Dust; Waste Processors and Users; Suspension of effective date, 29 CFR 1910.1043 as published in the **Federal Register** (43 FR 39087) dated September 1, 1978.

2. *Decision.* Having reviewed the Virgin Islands Regulations providing for the adoption of Federal standards by reference, it has been determined that Virgin Islands Regulations are identical to Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Region II, 1515 Broadway, Room 3445, New York, New York 10036; Office of the Director for Federal Compliance and State Programs, Room N–3605, 200 Constitution Avenue, NW., Washington, D.C. 20210;

Department of Labor, Government of the Virgin Islands, Dronigans Gade, Charlotte Amalie, St. Thomas, V.I. 00801, and at Hospital Street, Christiansted, St. Croix, V.I. 00820.

4. *Public participation.* under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virgin Islands plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal Law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State Law and further participation would be unnecessary.

The decision is effective May 25, 1979.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at New York City, New York, this twenty eighth day of March 1979.

Alfred Barden,

Regional Administrator.

[FR Doc. 79-16491 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

[TA-W-4989]

Alabama Casuals Company, Inc., Uniontown, Ala.; 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.

The investigation was initiated on March 20, 1979, in response to a worker petition received on March 6, 1979, which was filed on behalf of workers and former workers producing ladies' sportswear at Alabama Casuals Company, Incorporated. The investigation revealed that the plant produces ladies' dresses and suits. It is concluded that all of the requirements have been met.

U.S. imports of dresses and suits decreased absolutely and relatively in 1977 compared with 1976 and increased absolutely in 1978 compared to 1977.

Alabama Casuals Company performed contract work for its parent firm, a clothing manufacturer. With the closure of Alabama Casuals, the parent firm ceased all domestic production operations. This manufacturer owns and operates sewing plants outside the U.S. which produce ladies' sportswear, including dresses and suits, for domestic manufacturers. The completed garments are imported into the U.S. by the domestic manufacturers.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' dresses and suits produced at Alabama Casuals Company, Incorporated, Uniontown, Alabama 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 Alabama Casuals Company, Incorporated, Uniontown, Alabama who became totally or partially separated from employment on or after May 5, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16486 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5235]

Campbell Mining Co., Summersville, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on April 16, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers producing coal for Campbell Mining Company, Summersville, West Virginia. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

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.

The Vice President of Campbell Mining Company and the Associate Corporate Counsel of Campbell's sole customer notified the Office of the Trade Adjustment Assistance that all coal mined by the Campbell Mining Company is distributed solely to foreign users. Therefore any imports of coal would have no relevant effect on sales and/or production and employment at Campbell Mining Company.

Conclusion

After careful review, I determine that all workers of Campbell Mining Company, Summersville, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16467 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4524]

Casey Manufacturing Co. Casey, Ill.; Negative Determination Regarding Application for Reconsideration

By a petition received on March 13, 1979, 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 producing children's shoes at the Casey Manufacturing Company, Casey, Illinois. The determination was published in the Federal Register on February 23, 1979, (44 FR 10796).

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, supported by the Vice President of Ettelbrick Shoe Company, claim in their application for reconsideration that the number of hours worked declined in some departments of the Casey Manufacturing Company in 1978 compared to 1977 and that production and employment declined at the Casey Manufacturing Company in the first two months of 1979 compared to the same period in 1978 and that there was substantial underemployment in 1979 at Casey because of the low level of production.

The Department's review of the investigative file revealed that workers at Casey were denied eligibility because they did not meet the first group eligibility requirement as stated in Section 22 of the trade Act of 1974, i.e., that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated or are threatened to become totally or partially separated.

While in some circumstances it may be consistent with the intent of the Act to apply the eligibility criteria to a subdivision of the firm, in this case there appears to be no basis for applying them to any unit smaller than the firm itself. Shoe production is a completely integrated operation among all departments at Casey Manufacturing. The firm does not meet the employment criterion in Section 222 of the Act.

The Department does not agree with the petitioners' claim that a 1979 employment and production decline compared to 1978 is relevant for rebutting the basis of the Department's denial since these worker separations are beyond the period of investigation on which the initial denial was based.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact 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 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 70-16466 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5167]

City Coal and Supply Company, Inc., Princeton, W. Va.; Negative Determination 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.

The investigation was initiated on April 6, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of City Coal and Supply Company, Incorporated, Princeton, West Virginia, a trucking service for coal and stone quarries.

City Coal and Supply Company, Incorporated is engaged in providing the service of transporting by truck coal from a customer's mine, and stone, sand or salt for road construction. The coal hauling operation is not currently being performed.

Thus, workers of City Coal and Supply Company, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to City Coal and Supply Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

The City Coal and Supply Company, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal, stone, sand, and salt by truck at City Coal and Supply Company, Incorporated, Princeton, West Virginia are employed by that firm. All personnel actions and payroll transactions are controlled by the City Coal and Supply Company, Incorporated. All employee benefits are provided and maintained by the City Coal and Supply Company, Incorporated. Workers are not, at anytime, under employment or supervision by customers of the City Coal and Supply Company, Incorporated. Thus, City Coal and Supply Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of City Coal and Supply Company, Incorporated, Princeton, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-16469 Filed 5-24-79; 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 June 4, 1979.

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 June 4, 1979.

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 21st day of May 1979.

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
Cooper Wiss (Retail Wholesale, Department Store, Union).	Newark, N.J.	5/18/79	5/14/79	TA-W-5,436	Shears, scissors.
Cooper Wiss (Retail Wholesale, Department Store, Union).	Maplewood, N.J.	5/18/79	5/14/79	TA-W-5,437	Shears, scissors.
Matz Tanning Co., Inc. (workers)	Peabody, Mass.	5/18/79	5/15/79	TA-W-5,438	Suede splits for shoes, leather garments, bags, belts, and other accessories.
Seatrain Shipbuilding Corp. (United Industrial Workers of North America).	Brooklyn, N.Y.	5/8/79	5/4/79	TA-W-5,439	Ships and barges.
Wilson-Tex Corp. (company)	Brazil, Ind.	5/11/79	5/8/79	TA-W-5,440	Machinery used in forming socket joints on plastic pipes.

[FR Doc. 79-16470 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4586, 4586a, 4587, 4587a, 4588, 4589, 4589a]

Eastern Associated Coal Corp.; Negative Determination Regarding Application for Reconsideration

In the matter of Keystone, W. Va. (TA-W-4586, 4586a); Herndon, W. Va. (TA-W-4587, 4587a, 4588); Sophia, W. Va. (TA-W-4589, 4589a).

By letter of April 4, 1979, the petitioning union 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 producing metallurgical coal at Keystone mines 1,2,3,4 at Keystone, West Virginia, Herndon, West Virginia, and Sophia, West Virginia of the Eastern Associated Coal Corporation. The determination was published in the Federal Register on March 16, 1979, (44 FR 16049).

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 petitioning union claims that the Department's comparing 1978 production and sales data to 1977 production and sales data is artificial and arbitrary. The use of a 5–10 year period would show production and sales data in more absolute terms. Furthermore, no consideration of 1979 sales or production was made.

The Department's review revealed that the worker group at Eastern Associated Coal Corporation's Keystone 1,2,3, and 4 mines did not meet all the criteria necessary for a worker group certification. Workers at Keystone 1 mine experienced increased production and sales during the period not affected by the two strikes April–June and October–November 1978 compared to the same periods in 1977. The Norfolk and Western Railroad strike was from July 7, 1978, to October 10, 1978, and the UMW strike was from December 6, 1977, to March 27, 1978. With respect to Keystone 2 and 3 and Preparation Plant and Keystone 4 mine and Preparation Plant, both sales and production of coal increased in quantity in 1978 compared to 1977. The Department does not agree with the petitioning union's claim that the comparison of 1977 and 1978 sales and production data is artificial and arbitrary. The Trade Act of 1974 does not permit the certification of workers who were separated from employment more than one year before the date of the petition on which the certification was granted. Therefore, of particular interest to the Department in its investigation are lack of work layoffs occurring within one year of the date of the petition, i.e., those occurring in 1978. While a longer time frame for comparison might be relevant for other purposes, the most relevant comparison in terms of a finding of worker eligibility under the Trade Act would be to compare 1978 to 1977.

Projections of 1979 sales or production data would not be relevant to the Department's determination since potential or future business losses would not be an important factor in worker separations which occurred in 1978.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of facts 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 18th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-16471 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5335]

Fashion Leathers, Inc., New York, N.Y.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974 (19 USC 2273), an investigation was initiated on May 2, 1979, in response to a worker petition received on April 25, 1979, which was filed on behalf of workers and former workers selling ladies' handbags at Fashion Leather Bags, New York, New York. During the course of the investigation it was determined that the correct name of the company was Fashion Leathers, Inc., and that men's leather coats were produced.

During the course of the investigation, it was established that all workers of Fashion Leathers, Inc. were separated from employment by September 15, 1976.

Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is April 20, 1979, and, thus, workers terminated prior to April 20, 1978, are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 21st day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-16472 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5286]

Fenton Shoe Corp., Cambridge, Mass.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on April 25, 1979, in response to a worker petition received on April 17, 1979, which was filed on behalf of workers and former workers producing women's shoes at the Fenton Shoe Corporation, Cambridge, Massachusetts. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales and production at Fenton Shoe increased, in quantity and value, during the period April 1978 to March 1979, compared to the period April 1977 to March 1978.

Conclusion

After careful review, I determine that all workers of the Fenton Shoe Corporation, Cambridge, Massachusetts, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16473 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5336]

Fleshman Trucking, Inc., Rainelle, W. Va.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974 (19 USC 2273), an investigation was initialled on May 2, 1979, in response to a worker petition received on April 23, 1979, which was filed on behalf of workers and former workers of Fleshman Trucking, Inc., Rainelle, West Virginia, a truck hauler of coal.

On April 2, 1979, a petition was filed on behalf of the same group of workers (TA-W-5239).

Since the identical group of workers is the subject of the ongoing investigation TA-W-5239, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 21st day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-16474 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5019 and 5020]

Holly Sugar Corp., Tracy, Calif., and Hamilton City, Calif.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 21, 1979, in response to a worker petition received on March 15, 1979, which was filed by the United Sugar workers of America—Distillery, Rectifying, Wine and Allied Workers International Union on behalf of workers and former workers producing beet sugar at the Tracy (TA-W-5019) and Hamilton City (TA-W-5070), California plants of Holly Sugar Corporation. It is concluded that all of the requirements have been met.

Imports of cane and beet sugar (raw value) increased both absolutely and relative to domestic production in 1977 from 1976 and decreased in 1978 compared to 1977. U.S. production of sugar decreased in 1977 from 1976 and in 1978 from 1977 while sugar imports reached an all-time high in 1977. The ratio of imports to domestic production increased from 65 percent in 1976 to 95 percent in 1977 and decreased to 78 percent in 1978. The ratio of imports to domestic production averaged 62 percent in the 1975-1976 period and averaged 86 percent in the 1977-1978 period.

The U.S. International Trade Commission conducted an investigation under Section 201 of the Trade Act of 1974 and in March 1977 issued a finding that sugar was being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic sugar industry. The Commission also conducted an investigation under Section 22 of the Agricultural Adjustment Act and in

April 1978 issued a finding that sugar was being imported in such quantities as to render, or tend to render, ineffective the price support program conducted by the U.S. Department of Agriculture for sugar cane and sugar beets.

Beet acreage planted, beet tonnage processed, and number of slicing days declined annually from 1976 through 1978 at the Tracy and Hamilton City beet refineries of Holly Sugar Corporation.

Holly Sugar Corporation purchased imported refined sugar in December 1977 and January 1978. This imported sugar was sold to customers during the period December 1977 to January 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 the beet sugar produced at the Tracy and Hamilton City plants of Holly Sugar Corporation 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 Holly Sugar Corporation, Tracy and Hamilton City, California engaged in employment related to the production of beet sugar who became totally or partially separated from employment on or after March 13, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 20th day of May 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-16475 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4936]

Kinney Shoe Corp., Perry Norvell Plant, Huntington, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 13, 1979, in response to a worker petition received on March 5, 1979, which was filed by the Retail Clerks International Union on behalf of workers and former workers producing men's footwear at the Perry Norvell Shoe Factory, Huntington, West Virginia. The investigation revealed that the Perry Norvell Shoe Factory is the Perry Norvell plant of Kinney Shoe Corporation, and that it produces men's dress shoes and work shoes. It is concluded that all of the requirements have been met.

All workers at the Perry Norvell plant of Kinney Shoe are engaged in employment related to the production of both men's work shoes and men's dress shoes and therefore cannot be identified by product line. Sales and production of men's dress shoes at the plant have increased, while sales and production of men's work shoes, as well as total plant sales and production, have decreased. Therefore, employment declines at the plant are attributable to decreased production of men's work shoes.

U.S. imports of work footwear increased both absolutely and relative to domestic production in 1977 compared with 1976 and in 1978 compared with 1977.

All men's work shoes produced at the Perry Norvell plant are sold to the Retail Division of Kinney Shoe Corporation. Imports of men's work shoes by the Retail Division increased absolutely and relative to company production from 1976 to 1977 and increased again from 1977 to 1978. Imports scheduled for delivery during the first six months of 1979 have increased substantially compared with imports delivered during the same period in 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's work shoes produced at the Perry Norvell plant, Huntington, West Virginia, of Kinney Shoe Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Perry Norvell plant, Huntington, West Virginia of Kinney Shoe Corporation who became totally or partially separated from employment on or after September 18, 1978 and before May 15, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 11th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16476 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4996]

The Lamson & Sessions Co., Birmingham, Ala.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 20, 1979, in response to a worker petition received on March 15, 1979, which was filed by the United Steelworkers of America on behalf of workers and former workers producing industrial fasteners at the Birmingham, Alabama, plant of the Lamson and Sessions Company. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

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.

April 30, 1976, the Office of Trade Adjustment Assistance issued a certification of eligibility to apply for worker adjustment assistance applicable to workers at the Birmingham plant of the Lamson and Sessions Company (TA-W-630). That certification expired on April 30, 1978—two years from its date of issuance.

Production of nuts and bolts at the Birmingham plant, measured in both quantity and value, increased during 1978 compared to 1977 and during the first quarter of 1979 compared to the first quarter of 1978. Compared to the same quarters in the previous year, production at Birmingham, measured in quantity and value, increased during the first, third and fourth quarters of 1978. Measured in value, production increased during the first, second and third

quarters of 1978 and the first quarter of 1979 compared to the previous quarters.

Average total employment at the Birmingham plant increased during 1978 compared to 1977. Layoffs of production workers in late 1978 and 1979 were temporary, except for a few workers who were laid off in May 1979 when cold nut forming machines were moved to another Lamson and Sessions facility.

Conclusion

After careful review, I determine that all workers of the Birmingham, Alabama plant of the Lamson and Sessions Company are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-16477 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5154]

Lochgelly Supply, Inc., Lochgelly, W. Va.; Termination of Investigation

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of investigations regarding certifications 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.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Lochgelly Supply Company, Lochgelly, West Virginia, a contract hauler. The investigation revealed that the correct company name is Lochgelly Supply, Incorporated, and that the company never began operations.

Lochgelly Supply, Incorporated, had not transacted any business of any kind as yet at the time of the investigation. The company has never had any employees. It is not possible, therefore, to determine trends of sales and production or to measure statistically the impact of imports. In addition, it would not be possible for anyone to meet the worker qualifying requirements of Section 231 of the Act. Consequently the investigation has been terminated.

Signed at Washington, D.C., this 21st day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-16478 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4997]

Lowell Shoe Co., Lowell, Mass.; 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.

The investigation was initiated on March 20, 1979, in response to a worker petition received on March 15, 1979, which was filed on behalf of workers and former workers producing women's shoes at the Lowell, Massachusetts, plant of the Lowell Shoe Company. The investigation revealed that the specific product is women's duty shoes. It is concluded that all of the requirements have been met.

U.S. imports of women's and misses' non-rubber footwear, except athletic, increased from 204.4 million pairs in 1977 to 225.9 million pairs in 1978. The ratio of imports to domestic production increased from 134.6 percent in 1977 to 145.0 percent in 1978.

A Labor Department survey of a sample of customers purchasing women's duty shoes from the Lowell Shoe Company revealed that some major customers decreased purchases from Lowell Shoe in 1978 compared to 1977 and increased purchases of imported women's duty shoes during the same period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's duty shoe produced at Lowell, Massachusetts plant of the Lowell Shoe Company 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 the Lowell, Massachusetts plant of the Lowell Shoe Company who became totally or partially separated from employment on or after September 8, 1978 are eligible to apply for adjustment assistance under Title II, Chpater 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-16479 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5021]

Mac Kamp Embroiderers, Inc., West New York, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 21, 1979, in response to a worker petition received on March 16, 1979, which was filed on behalf of workers and former workers producing embroidery at Mac Kamp Embroiderers, Inc., West New York, New Jersey. Without regard to wheter any of the other criteria have been met, the following criterion has not been met:

that increases of imports of article 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.

Imports of ornamented fabrics, a category which includes embroidery, decreased both absolutely and relative to domestic production in 1978 from 1977. Mac Kamp Embroiderers ceased production when its owner sold the physical assets of the company and retired.

Conclusion

After careful review, I determine that all workers of Mac Kamp Embroiderers, Inc., West New York, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research

[FR Doc. 79-16480 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4978 et al.]

Malden Mills, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-4978, TA-W-4979, TA-W-4980, TA-W-4981, TA-W-4982, Malden Mills, Incorporated; Lawrence, Massachusetts; North Berwick, Maine; Hudson, New Hampshire; Barre, Vermont; Bridgeton, Maine.

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.

The investigation was initiated on March 19, 1979, in response to a worker petition received on March 12, 1979, which was filed on behalf of workers and former workers producing knitted, woven and flocked pile fabrics at the following plants of Malden Mills, Incorporated: Lawrence, Massachusetts; North Berwick, Maine; Hudson, New Hampshire; Barre, Vermont; and Bridgeton, Maine (TA-W-4982). In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

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.

Malden Mills, Incorporated has five locations: Lawrence, Massachusetts (TA-W-4978); North Berwick, Maine (TA-W-4979); Hudson, New Hampshire (TA-W-4980); Barre, Vermont (TA-W-4981); and Bridgeton, Massachusetts (TA-W-4982). Of these, only Lawrence produces finished fabric. The other four plants produce only greige goods, an earlier stage in the production of finished fabric. All plants other than the Lawrence plant send all their production to the Lawrence plant for finishing, sales and distribution.

Sales of fabric by Malden Mills, Incorporated, adjusted for price increases using data supplied by the company, increased in 1977 compared to 1976 and 1978 compared to 1977.

Combined production at all plants of Malden Mills increased in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978.

Production at the Lawrence and Bridgeton plants increased from 1977 to 1978 and in the first quarter of 1979 compared with the same period of 1978. Production at the Hudson plant increased each quarter compared to the same quarter of the previous year from the second quarter of 1978 through the first quarter of 1979. Production at the Barre plant increased from 1977 to 1978 and decreased in the first quarter of 1979 compared with the same period of 1978. Production at the North Berwick plant decreased from 1977 to 1978 and in the first quarter of 1979 compared with the same period of 1978. These declines can be attributed to changes in customers' preferences for holstery fabric from tufted fabric and more recently woven fabric to knitted and knitted fur fabric.

Conclusion

After careful review, I determine that all workers of Malden Mills, Incorporated: Lawrence, Massachusetts; North Berwick, Maine; Hudson, New Hampshire; Barre, Vermont; and Bridgeton, Maine are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16481 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5030]

Mutual Manufacturing Co., Inc., Lawrence, Mass.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 23, 1979 in response to a worker petition received on March 20, 1979 which was filed on behalf of workers and former workers producing men's and boys' cloth and leather coats at Mutual Manufacturing Company, Inc., Lawrence, Massachusetts. The investigation revealed that the plant primarily produces men's and boys' non-tailored outer jackets. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' non-tailored outer jackets increased both absolutely and relative to domestic production in 1977 compared to 1976. U.S. imports increased absolutely in 1978 compared to 1977.

The Department conducted surveys of customers purchasing men's and boys' non-tailored jackets produced at Mutual Manufacturing Company, Inc. The surveys revealed that customers representing a significant portion of Mutual Manufacturing Company, Inc.'s decline in production decreased purchases from the subject firm and increased purchases of imported men's and boys' jackets in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' non-tailored outer jackets produced at Mutual Manufacturing Company, Inc., Lawrence, Massachusetts 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 Mutual Manufacturing Company, Inc., Lawrence, Massachusetts, who became totally or partially separated from employment on or after March 14, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-16482 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5022]

South River Coat Co., South River, N.J.; Negative Determination 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.

The investigation was initiated on March 21, 1979 in response to a worker petition received on March 19, 1979 which was filed on behalf of workers and former workers producing women's coats at South River Coat Company, South River, New Jersey. The investigation revealed that South River Coat Company produces women's designer jackets, skirts and pants. In the following determination, at least one of the criteria has not been met:

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.

The Department surveyed the manufacturers who supplied South River Coat Company with contract work in 1977, 1978 and the first quarter of 1979. The survey revealed that these manufacturers did not import women's jackets or suits, or utilize foreign contractors in 1977, 1978 and the first quarter of 1979. The manufacturers' sales increased from 1977 to 1978 and in the first quarter of 1979 compared to the first quarter of 1978.

Furthermore, production at South River Coat increased from 1977 to 1978 and in the first quarter of 1979 compared to the first quarter of 1978. Production equals sales, since South River Coat is a contractor.

Conclusion

After careful review, I determine that all workers of South River Coat Company, South River, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration, and Planning.

[FR Doc. 79-16483 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5246]

Ury Coal Co., Pineville, W. Va.; Termination of Investigation

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on April 16, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers engaged in hauling coal at Ury Coal Company, Pineville, West Virginia.

The petitioner requested withdrawal of the petition in a letter. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C., this 21st day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-16484 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4822]

U.S. Stove Co.; Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of [TA-W-4822], [TA-W-4823], [TA-W-4824], U.S. Stove Company, Chattanooga, Tenn., Bridgeport, Ala., South Pittsburg, Tenn.

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Adjustment Assistance on April 24, 1979, applicable to workers and former workers of U.S. Stove Company, Bridgeport, Alabama and Chattanooga and South Pittsburg, Tennessee. The Notice of Certification was published in the **Federal Register** on May 1, 1979, (44 FR 25531).

At the request of some former workers, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. A review of the case revealed that layoffs of workers occurred shortly before the original impact date of August 1, 1978.

The intent of the certification is to cover all workers at the Chattanooga and South Pittsburg, Tennessee plants of U.S. Stove Company who were affected by the decline in production of wood and coal stoves related to import competition. This certification, therefore, is revised providing a new impact date of July 28, 1978 for both plants.

The revised certification applicable to TA-W-4822, 4823, and 4824 is hereby issued as follows:

All workers of the Bridgeport Division, Bridgeport, Alabama plant (TA-W-4823) of the U.S. Stove Company who became totally or partially separated from employment on or after February 2, 1978; all workers at the Chattanooga, Tennessee plant (TA-W-4822) and all workers at the South Pittsburg Division of the South Pittsburg, Tennessee plant (TA-W-4824) of the U.S. Stove Company who became totally or partially separated from employment on or after July 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16485 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5232]

Will-Bob Truck Service, Inc., Charmco, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on April 12, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Will-Bob Truck

Service, Incorporated, Charmco, West Virginia, a transporter of coal.

Will-Bob Truck Service, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to a tipple.

Thus, workers of Will-Bob Truck Service, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to Will-Bob Truck Service, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Will-Bob Truck Service, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Will-Bob Truck Service, Incorporated, Charmco, West Virginia are employed by that firm. All personnel actions and payroll transactions are controlled by Will-Bob Truck Service, Incorporated. All employee benefits are provided and maintained by Will-Bob Truck Service, Incorporated. Workers are not, at anytime, under employment or supervision by customers of Will-Bob Truck Service, Incorporated. Thus, Will-Bob Truck Service, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Will-Bob Truck Service, Incorporated, Charmco, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16485 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5187]

Royal Trucking Company, Inc., Shady Spring, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on April 6, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Royal Trucking, Incorporated, Shady Spring, West Virginia, a trucking service. The investigation revealed that the correct name is Royal Trucking Company, Incorporated.

Royal Trucking Company, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to an unloading site.

Thus, workers of Royal Trucking Company, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to Royal Trucking Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Royal Trucking Company, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Royal Trucking Company, Incorporated, Shady Spring, West Virginia are employed by that firm. All personnel actions and payroll transactions are controlled by Royal Trucking Company, Incorporated. All employee benefits are provided and maintained by Royal Trucking Company, Incorporated. Workers are not, at anytime, under employment or supervision by customers of Royal Trucking Company, Incorporated. Thus, Royal Trucking Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Royal Trucking Company, Incorporated, Shady Spring, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16438 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4255]

Salant & Salant Inc; Union City, Tenn.; Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) and in accordance with Section 223(a) of such Act, on January 26, 1979 the Department of Labor issued a Notice of Negative Determination of Eligibility to Apply for Adjustment Assistance applicable to workers and former workers of Salant & Salant, Incorporated, Union City, Tennessee.

The Notice of Negative Determination was published in the **Federal Register** on February 2, 1979 (44 FR 6804).

Subsequent to the publication of the original determination, the Office of Trade Adjustment Assistant received further information that revealed that all the group eligibility requirements have met.

Imports of men's and boy's woven cotton and man-made jeans and dungarees increased in 1977 compared to 1976 and in the first three quarters of 1978 compared to the same period in 1977.

A survey by the Department revealed that customers of the Union City, Tennessee plant decreased domestic purchase of men's jeans and increased purchases of imported men's jeans in 1978 compared to 1977.

Conclusion

Based on the additional evidence, a review of the entire record and in accordance with the provisions of the Act, I make the following certification.

"All workers of the Union City, Tennessee plant of Salant and Salant, Incorporated who became totally or partially separated from employment on or after June 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16439 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4963-4973]

Henry I. Siegel Co., Inc.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Henry I. Siegel Company, Inc.; Camden, Tennessee; Tiptonville, Tennessee; Trezevant, Tennessee; Johnson City, Tennessee; Verona, Mississippi; Gleason, Tennessee; Saltillo, Tennessee; Hohenwald, Tennessee; South Fulton, Tennessee; Bruceton, Tennessee (Rowland Mill Rd); Bruceton, Tennessee; (Lexington St); [TA-W-4963-4973].

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 investigations 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.

The investigation was initiated on March 16, 1979 in response to a worker petition received on March 14, 1979 which was filed on behalf of workers and former workers producing apparel products at the following plants of Henry I. Siegel Company, Incorporated: Camden, Tiptonville, Trezevant, Johnson City, Tennessee; Verona, Mississippi; Gleason, Saltillo, Hohenwald, South Fulton, Bruceton at Rowland Mill Rd. and at Lexington St., Tennessee. In the following determinations, at least one of the criteria has not been met for the first four (4) plants identified below. For all other plants listed below, all of the criteria have been met.

TA-W-4964—Tiptonville, Tennessee—Products: vests and other apparel products

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.

The average number of production workers at the Tiptonville, Tennessee plant increased in FY 1978 compared with FY 1977, and increased during the period November through March 1979 compared with the same period in FY 1978. Average quarterly employment increased in every quarter when compared with the same quarter of the previous year, during the period of possible certification. There is no indication of immediate threat of separation of workers at this plant.

TA-W-4966—Johnson City, Tennessee—Product: Pants

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.

Plant production increased in FY 1978 compared with FY 1977, and increased during the period November through January FY 1979 compared with the same period in FY 1978. Quarterly plant production increased in every quarter when compared with the same quarter of the previous year during the period of possible certification. This plant was not affected by corporate declines in pants sales and production.

TA-W-4967—Verona, Mississippi—Product: Vests

TA-W-4973—Bruceton, Tennessee (Lexington St.)—Product: Coats and various apparel, excluding the cutting department

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Corporate production of sport coats and jackets increased in FY 1978 compared with FY 1977, and increased during the period November through January FY 1979 compared with the same period in FY 1978.

Production of sport coats and jackets at the Verona, Mississippi plant and the Bruceton, Tennessee plant increased in FY 1978 compared with FY 1977, and increased during the period November through January FY 1979 compared with the same period in FY 1978.

TA-W-4963—Camden, Tennessee—Product: Pants

TA-W-4965—Trezevant, Tennessee—Product: Pants

TA-W-4968—Gleason, Tennessee—Product: Pants, including cutting department

TA-W-4970—Hohenwald, Tennessee—Product: Pants

TA-W-4971—South Fulton, Tennessee—Product: Pants, including cutting department

TA-W-4972—Bruceton, Tennessee—(Rowland Mill Rd.) Distribution Center

TA-W-4973—Bruceton, Tennessee—(Lexington St.) Centralized Operations, including cutting department

Imports of men's and boys' woven cotton and man-made jeans and dungarees increased in terms of quantity in 1978 compared with 1977, and increased in 1977 compared with 1976.

Imports of men's and boys' dress and sport trousers and shorts increased in terms of quantity in 1978 compared with 1977, and increased in 1977 compared with 1976.

Imports of women's, misses', and children's slacks and shorts increased in terms of quantity in 1978 compared with 1977, and increased in 1977 compared with 1976.

The Department conducted a survey of customers purchasing pants form H.I.S. Some survey respondents indicated they increased purchases of imported pants and decreased purchases from H.I.S. during the period 1976 through 1978.

TA-W-4969—Saltillo, Tennessee—Product: Shirts

Imports of men's and boys' woven sport shirts increased in quntity in 1978 compared with 1977.

Imports of women's, misses', and children's blouses and shirts increased in quantity in 1977 compared with 1976, and increased in 1978 compared with 1977.

The Department conducted a survey of customers purchasing shirts from H.I.S. Some customers indicated they increased purchases of imported shirts an decreased purchases from H.I.S. during the period 1976 through 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the apparel products produced at the Camden, Trezevant, Gleason, Saltillo, Hohenwald and South Fulton, plants, and at the centralized operations locations at Lexington Street and Rowland Mill Road, Bruceton, Tennessee of Henry I. Siegel Company, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of those plants. In accordance with the provisions of the Act, I make the following certification:

All workers of Camden, Tennessee; Trezevant, Tennessee; Gleason, Tennessee cutting department; Saltillo, Tennessee; South Fulton, Tennessee (excluding the cutting department); Bruceton, Tennessee (Rowland Mill Rd. Distribution Center); and the Bruceton, Tennessee (Lexington St. centralized operations including cutting) plants of Henry I. Siegel Company, Incorporated who became totally or partially separated from employment on or after March 9, 1978;

All workers of Gleason, Tennessee (excluding the cutting department) plant of

Henry I. Siegel Company, Incorporated who became totally or partially separated from employment on or after June 15, 1978;

And all workers of the Hohenwald, Tennessee and the cutting department of South Fulton, Tennessee plants of Henry I. Siegel Company, Incorporated who became totally or partially separated from employment on or after July 1, 1978 are certified eligible to apply for adjustment assistance under of 1974.

I further determine that all workers of the Tiptonville, Tennessee; Johnson City, Tennessee; and Verona, Mississippi plants, and workers producing coats and other apparel (excluding the cutting department) at the Bruceton, Tennessee (Lexington Street) plant of Henry I. Siegel Company, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16440 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4479]

Ernst Strauss, Inc., Los Angeles, Calif.; Affirmative Determination Regarding Application for Reconsideration

On March 2, 1979, the petitioning union requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance for workers and former workers of Ernst Strauss, Inc., Los Angeles, California. This determination was published in the Federal Register on January 30, 1979, (44 FR 5959).

The petitioning union raises one basic issue in the application; namely, that the appropriate subdivision should be redefined from Ernst Strauss, Inc., Los Angeles, to the Ernst Strauss Department of Ernst Strauss, Inc., Los Angeles, California.

Conclusion

After review of the application, I conclude that the claim of the petitioning union is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 16th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16441 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5098]

Tamroy Mining, Inc., Mount Hope, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 30, 1979 in response to a worker petition received on March 27, 1979 which was filed by the United Mine Workers of America, District 29, on behalf of workers and former workers mining coal at Tamroy Mining, Incorporated, Mount Hope, West Virginia. The investigation revealed that the firm primarily mines metallurgical coal. Without regard to whether the other criteria have been met, the following criterion has not been met:

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.

Tamroy Mining, Incorporated sells nearly all of its metallurgical coal to one customer. This customer sells the coal to several sales agents who subsequently resell it to their customers. The Department of Labor conducted a survey of these sales agents which revealed that nearly all of the metallurgical coal is exported.

Conclusion

After careful review, I determine that all workers of Tamroy Mining, Incorporated, Mount Hope, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-16442 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5002]

Tucker Knits, Inc., New York, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 20, 1979 in response to a worker petition received on March 15, 1979 which was filed on behalf of workers and former workers producing women's dresses and sportswear at Tucker Knits, Incorporated, New York, New York. The investigation revealed that Tucker Knits produced pantsuits. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

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.

Tucker Knits, Incorporated produces ladies' pantsuits. The Office of Trade Adjustment Assistance conducted a survey with Tucker's major customers and with those who had reduced purchases from Tucker. The survey revealed that imported pantsuits were a significant proportion of only one customer's total purchases. However, this customer represented an insignificant influence on Tucker's total sales for 1978. Most of the customers who decreased business with Tucker also decreased their purchases of pantsuits from other domestic sources and from foreign sources in 1978 versus 1977 or in the first quarter of 1979 compared to the same period of 1978. Several respondents stated that their decline in pantsuit purchases were resultant from a shift in fashion away from pantsuits, as skirts and dresses have gained in popularity.

Conclusion

After careful review, I determine that all workers of Tucker Knits, Incorporated, New York, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16443 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5108]

The Van Heusen Co., Pottsville, Pa.; Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on April 4, 1979 in response to a worker petition received on April 2, 1979 which was filed on behalf of workers and former workers producing men's sport shirts at the Pottsville, Pennsylvania plant of The Van Heusen Company. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' knit sport and dress shirts increased absolutely from 1976 to 1977 and from 1977 to 1978.

U.S. imports of men's and boys' woven sport shirts increased relative to domestic production from 1976 to 1977 and increased absolutely from 1977 to 1978.

Company imports of men's sport shirts increased absolutely and in proportion to total company sales of sport shirts in 1978 compared to 1977 and in January of 1979 compared to January of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's sport shirts produced at the Pottsville, Pennsylvania plant of The Van Heusen Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Pottsville, Pennsylvania plant of The Van Heusen Company who became totally or partially separated from employment on or after October 16, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16444 Filed 5-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5075-5082]

The Van Heusen Co. Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of the Van Heusen Co.; Aguadilla, Puerto Rico; Ozark, Ala.; Clio, Ala.; Clayton, Ala.; Hartford, Ala.; Opp, Ala.; Geneva, Ala.; Des Arc, Ark. [TA-W-5075-5082].

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for workers 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.

The investigation was initiated on March 29, 1979 in response to worker petitions received on March 27, 1979 which were filed on behalf of workers and former workers producing men's dress shirts, men's sport shirts and men's pajamas and leisurewear at the Aguadilla, Puerto Rico plant, at six Alabama plants (in Ozark, Clio, Clayton, Hartford, Opp and Geneva), and at the Des Arc, Arkansas plant of The Van Heusen Company. The investigation revealed that five plants (in Aguadilla, Clayton, Harford, Opp and Geneva) produced men's dress shirts; two plants (in Clio and Des Arc) produce men's sport shirts; and the Ozark plant produces men's pajamas and leisurewear. It is concluded that all the requirements have been met.

U.S. imports of men's and boys' woven dress and business shirts increased absolutely and relative to domestic production from 1976 to 1977 and increased absolutely from 1977 to 1978.

U.S. imports of men's and boys' woven sport shirts decreased absolutely but increased relative to domestic production from 1976 to 1977 and increased absolutely from 1977 to 1978.

U.S. imports of men's and boys' knit sport and dress shirts increased absolutely from 1976 and 1977 and from 1977 to 1978.

U.S. imports of men's and boys' pajamas increased absolutely and relative to domestic production from 1976 and 1977 and increased absolutely from 1977 to 1978.

Company imports of men's dress shirts and sport shirts increased absolutely and in proportion to total company sales of dress and sport shirts in 1978 compared to 1977 and in January of 1979 compared to January of 1978.

Company imports of men's pajamas began in the fourth quarter of 1978 and have increased to a substantial proportion of company sales of men's pajamas 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 men's dress shirts, men's sport shirts and men's pajamas produced at the plants of The Van Heusen Company in Aguadilla, Puerto Rico; Ozark, Alabama; Clio, Alabama; Clayton, Alabama; Hartford, Alabama; Opp, Alabama; Geneva, Alabama; and Des Arc, Arkansas contributed importantly to the decline in sales or production and to the total or partial separation of workers of these plants. In accordance with the provisions of the Act, I make the following certification:

All workers at the plants of The Van Heusen Company in Aguadilla, Puerto Rico; Ozark, Alabama; Clio, Alabama; Clayton, Alabama; Hartford, Alabama; Opp, Alabama; Geneva, Alabama; and Des Arc, Arkansas who became totally or partially separated from employment on or after September 18, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16445 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5109]

Weber Knitting Mills, Inc., Butler, N.J.; 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.

The investigation was initiated on April 4, 1979 in response to a worker petition received on April 2, 1979 which was filed on behalf of workers and former workers producing men's, women's and children's sweaters at Weber Knitting Mills, Incorporated, Butler, New Jersey. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' sweaters increased absolutely and relative to domestic production from 1975 to 1976. U.S. imports increased absolutely from 1976 to 1977 and from 1977 to 1978.

U.S. imports of women's, misses' and children's sweaters increased both abolutely and relative to domestic production from 1975 to 1976. Imports of sweaters in 1977 were greater than the average level of imports for the years 1973 through 1976. The ratio of imports of sweaters to domestic production (IP ratio) exceeded 140 percent in 1976 and in 1977. The IP ratio in 1977 was higher than the average IP ratio for the period 1973 through 1976. This ratio is not yet available for 1978.

A survey of manufacturers for whom Weber Knitting Mills performed contractual work was conducted by the U.S. Department of Commerce. The survey revealed that the manufacturers decreased their utilization of Weber Knitting Mills in 1978 as compared to 1977. A survey of the manufacturers' retail customers showed that customers decreased their purchases of sweaters from the manufacturers and increased their purchases of imported sweaters during this same time period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's, women's and children's sweaters produced at Weber Knitting Mills, Incorporated, Butler, New Jersey 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 Weber Knitting Mills, Incorporated, Butler, New Jersey who became totally or partially separated from employment on or after March 26, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16446 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4718]

Westforth Manufacturing Co., Inc., Williamsport, Pa.; Affirmative Determination Regarding Application for Reconsideration

On April 18, 1979, the management of Westforth Manufacturing, acting on behalf of workers at the firm, 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 Westforth Manufacturing Company, Inc., Williamsport, Pennsylvania. This determination was published in the **Federal Register** on March 23, 1979, (44 FR 17829).

The petitioner claims that had the Department considered those workers in the shipping and contract inspection departments of Westforth Manufacturing an identifiable subdivision apart from the remainder of the firm, the Department would have found employment and production in that subdivision adversely affected by import competition.

Conclusion

After review of the application, I conclude that this claim of the petitioner is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 17th day of May 1979.

C. Michael Aho,

Certifying Officer.

[FR Doc. 79-16447 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5083]

Wyoming Valley Garment Company, Inc., Wilkes-Barre, Pa.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 29, 1979 in response to a worker petition received on March 27, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's trousers at Wyoming Valley Garment Company, Incorporated in Wilkes-Barre, Pennsylvania. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

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.

A Departmental investigation revealed that Wyoming Valley Garment Company primarily produces men's trousers on a contract basis. A survey of Wyoming Valley's trouser manufacturers disclosed that they do not employ foreign contractors nor do they import any slacks; in addition the total sales of the manufacturers have increased in each of the past three years. The manufacturers indicated that they award production contracts to Wyoming Valley Garment Company, Incorporated only in cases of excess production. Several manufacturers have reduced contracts with Wyoming Valley over the past several years and transferred production to their own domestic manufacturing facilities.

Conclusion

After careful review, I determine that all workers of Wyoming Valley Garment

Company, Incorporated, Wilkes-Barre, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16448 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4984]

Messerman Sportswear, Inc.; Los Angeles, Calif.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 19, 1979 in response to a worker petition received on March 15, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' sportswear (blouses, dresses and pants) at Messerman Sportswear, Los Angeles, California. The investigation revealed that the correct name of the firm is Messerman Sportswear, Incorporated. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's slacks and shorts increased in 1977 compared with 1976 and increased again in 1978 compared with 1977.

U.S. imports of women's, misses', and children's blouses and shirts increased in 1977 compared with 1976 and increased again in 1978 compared with 1977.

U.S. imports of women's, misses', and children's dresses increased in 1978 compared with 1977.

Garment manufacturers which reduced contract work with Messerman Sportswear, Incorporated from 1977 to 1978 were surveyed regarding their total domestic and foreign contract work. One manufacturer which substantially reduced its contract work for women's jeans and slacks with Messerman Sportswear, Incorporated from 1977 to 1978, also reduced its total work for those products with domestic contractors and substantially increased its contract work with foreign sources over the same period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's slacks and jeans produced at Messerman Sportswear, Incorporated, Los Angeles, California 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 Messerman Sportswear, Incorporated, Los Angeles, California who became totally or partially separated from employment on or after March 5, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 18th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16436 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5023]

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. In the following case, it is concluded that all of the requirements have been met.

American Shear Knife Co., American Shear Knife Division, Homestead, Pa.

The investigation was initiated on March 23, 1979 in response to a worker petition received on March 22, 1979 which was filed by the United Steel Workers of America on behalf of workers and former workers producing cutting tools for industrial purposes at the Homestead, Pa. plant of the American Shear Knife Co., American Shear Knife Div. The investigation revealed that the plant produces industrial knives, wear plates and rolls and it regrinds knives. It is concluded that all of the criteria have been met.

Imports of metal cutting tools increased in value from $33.6 million in 1976 to $40.6 million in 1977 and $67.3 million in 1978.

Company imports of knives, wear plates and rolls, although related to a two-month plant-wide strike in November–December 1977, increased from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with knives, wear plates and rolls produced at the Homestead, Pa. plant of the American Shear Knife Co., American Shear Knife Div. 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 the Homestead, Pa. plant of the American Shear Knife Co., American Shear Knife Div. engaged in employment related to the production of knives, wear plates and rolls who became totally or partially separated from employment on or after March 19, 1978 and before December 31, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. Workers separated after December 31, 1978 are denied program benefits.

Signed at Washington, D.C. this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16421 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4786 et al.]

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-4786 and 4787, Eastern Isles Manufacturing, Incorporated, Grundy, Va., Richlands, Va. and TA-W-4787A. The Eastern Isles, Incorporated, New York, N.Y.

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.

The investigation was initiated on February 9, 1979, in response to a worker petition received on January 22, 1979, which was filed on behalf of workers and former workers producing ladies' and children's sleepwear at the Grundy, Va. and Richlands, Va. plants of Eastern Isles Mfg., Inc. Eastern Isles Mfg., Inc. is a wholly owned subsidiary of The Eastern Isles, Inc., New York, N.Y. and the investigation was expanded to include the New York, N.Y. office of the parent company. The investigation revealed that the Grundy, Va. plant produced primarily women's and children's robes and that the Richland, Va. plant primarily produced women's and children's robes and sleepwear. In the following determination at least one of the criteria has not been met:

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.

Imports of women's, misses', and children's robes, dressing gowns, and housecoats increased absolutely and relatively in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

Imports of women's, girls', and children's nightwear (excluding sets with robes) increased absolutely and relatively in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

Data obtained from a Department survey of customers of Eastern Isles indicated that customers which decreased purchases of women's and children's sleepwear and/or robes and increased purchases of like or directly competitive imported articles in 1978 compared to 1977 represented an insignificant proportion of Eastern Isles' decline in sales.

Conclusion

After careful review, I determine that all workers of the Grundy, Va. and Richlands, Va. plants of Eastern Isles Mfg., Inc. and all workers of the New York, N.Y. office of The Eastern Isles, Inc. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16428 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5165]

C & R Trucking, Inc., Avondale, W. Va.; Negative Determination 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.

The investigation was initiated on April 6, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of C & R Trucking, Incorporated, Avondale, West Virginia, a contract hauler of coal.

C & R Trucking, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to a processing tipple.

Thus, workers of C & R Trucking, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to C & R Trucking, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

C & R Trucking, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at C & R Trucking, Incorporated, Avondale, West Virginia are employed by that firm. All personnel actions and payroll transactions are controlled by C & R Trucking, Incorporated. All employee benefits are provided and maintained by C & R Trucking, Incorporated. Workers are not, at anytime, under employment or supervision by customers of C & R Trucking, Incorporated. Thus, C & R Trucking, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of C & R Trucking, Incorporated, Avondale, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21th day of May 1979.

C. Michael Aho,

Certifying Officer.

[FR Doc. 79-16426 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5070]

Belva Coal Co., Man, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 29, 1979 in response to a worker petition received on March 27, 1979 which was filed by the United Mine Workers of America, District 29, on behalf of workers and former workers mining coal at Belva Coal Company, Man, West Virginia. It is concluded that all of the requirements have been met.

While U.S. imports of metallurgical coal have been negligible, U.S. imports of coke increased from 1,311 thousand tons in 1976 to 1,829 thousand tons in 1977 and to 5,722 thousand tons in 1978.

The ratio of imports to domestic production for coke increased from 2.2 percent in 1976 to 3.4 percent in 1977 and to 11.8 percent in 1978.

Coke is metallurgical coal at a later stage of processing. Since a domestic article may be "directly competitive with" an imported article at a later stage of processing, imports of coke can be considered in determining import injury to workers producing metallurgical coal.

A sample survey of major customers of Belva Coal Company revealed that customers decreased their purchases of metallurgical coal from Belva while increasing purchases of imported coke in 1978 when compared with 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at Belva Coal Company, Man, West 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 Belva Coal Company, Man, West Virginia who became totally or partially separated from employment on or after July 14, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16424 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4961]

Brierwood Shoe Corp., Northern Shoe Division, Oconto, Wis.; 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.

The investigation was initiated on March 16, 1979 in response to a worker petition received on March 12, 1979 which was filed by the Boot and Shoe Workers Division of the Retail Clerks International Union on behalf of workers and former workers producing men's workboots at the Brierwood Shoe Corporation, Oconto Division, Oconto, Wisconsin. The investigation revealed that the petition was filed on behalf of workers and former workers of the Oconto, Wisconsin plant of the Northern Shoe Division of the Brierwood Shoe Corporation. The investigation also revealed that the Oconto plant produces men's outdoor shoes in addition to men's workboots. It is concluded that all of the requirements have been met.

U.S. imports of work footwear increased absolutely and relatively in 1977 compared to 1976 and in 1978 compared to 1977.

U.S. imports of athletic footwear increased from 1976 to 1977 and then declined from 1977 to 1978. The ratio of imports to domestic production for athletic footwear was 280 percent in 1978.

A Departmental survey of the major customers of the Northern Shoe Division of Brierwood Shoe Corporation revealed that customers decreased purchases of workboots and outdoor shoes from Northern Shoe in the first three months of 1979 compared to the same period of 1978. These customers increased their purchases of imported work footwear and outdoor shoes in 1978 compared to 1977 and in the first three months of 1979 compared to the same period in 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's workboots and outdoor shoes produced at the Oconto, Wisconsin plant of the Northern Shoe Division of the Brierwood Shoe Corporation 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 the Oconto, Wisconsin plant of the Northern Shoe Division of the Brierwood Shoe Corporation who became totally or partially separated from employment on or after August 19, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16425 Filed 5-24-79; 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 June 4, 1979.

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 June 4, 1979.

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 18th day of May 1979.

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
Arno Moccasin Company (Lewiston & Auburn Shoeworkers Protective Assoc., R.C.I.U.).	Lewiston, Maine	5/14/79	5/1/79	TA-W-5,419	Men's, women and some children's shoes.
Annie Jean Originals (Company)	New York, N.Y.	5/14/79	5/8/79	TA-W-5,420	Junior knit tops.
Charliet Undergarment Company (workers)	Passaic, N.J.	5/14/79	4/25/79	TA-W-5,421	Ladies' night gowns and terry robes.
Charmose, Inc. (ILGWU)	Hatboro, Pa.	5/14/79	5/8/79	TA-W-5,422	Ladies' blouses and dresses.
Cuddle Knit Knitting Mills (workers)	Deer Park, N.Y.	5/14/79	5/10/79	TA-W-5,423	Ladies' knitwear and sweaters.
Flat Top Colliery Corp., Flat Top Mine #3 (U.M.W.A.).	Raleigh County, W. Va.	5/7/79	5/2/79	TA-W-5,424	Contract mining of coal.
H & M Knitting Co., Inc. (workers)	Port Jervis, N.Y.	5/14/79	5/10/79	TA-W-5,425	Men's sweaters (golf).
Hoover NSK Ball Bearing (workers)	Wayne, N.J.	5/14/79	5/7/79	TA-W-5,426	Ball bearings.
Marvelo Dress Co. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,427	Ladies' blouses and dresses.
Royal China (workers)	Sebring, Ohio	5/10/79	5/7/79	TA-W-5,428	Ironstone and stoneware dish sets.
Singer Company, Plant #1 (workers)	Milwaukee, Wis.	5/10/79	5/4/79	TA-W-5,429	Heating and air condition valves.
Singer Company, Plant #II (workers)	Wauwatosa, Wis.	5/10/79	5/4/79	TA-W-5,430	Heating and air condition valves.
Steve Gee, Ltd., (company)	New York, N.Y.	5/14/79	5/8/79	TA-W-5,431	Junior knit tops.
Take In Coals, Inc. (U.M.W.A.)	Coal City, W. Va.	5/10/79	5/7/79	TA-W-5,432	Mining of coal.
Triple "C" Construction Company (workers)	Huntington, W. Va.	5/14/79	5/10/79	TA-W-5,433	Construction for general projects around mining site.
Universal Sportswear (ILGWU)	Howell, N.J.	5/14/79	5/8/79	TA-W-5,434	Ladies' skirts.
Walworth Corporation (U.S.W.A.)	South Greensburg, Pa.	5/14/79	5/8/79	TA-W-5,435	Valves and accessories.

[FR Doc. 79-16422 Filed 5-24-79; 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 June 4, 1979.

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 June 4, 1979.

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 16th day of May 1979.

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
Bagatelle International Ltd. (ILGWU)	Warminster, Pa.	5/14/79	5/8/79	TA-W-5,402	Cut material, warehouse and ship ladies' sportswear separates.
M. Bell Company (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,403	Ladies' dresses.
Bleeker Street (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,404	Ladies' dresses.
Carmen J. Inc. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,405	Ladies' sportswear.
Louis Clark, Inc. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,406	Blouses, ladies' sportswear.
CMM, Inc. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,407	Wedding and bridemaids gowns.
Gold Seal Garter Corporation (ILGWU)	New York, N.Y.	5/14/79	5/5/79	TA-W-5,408	Brassieres, girdles and garter belts.
Good Luck Glove Co. (ACTWU)	Georgiana, Ala.	5/14/79	5/2/79	TA-W-5,409	Work, garden, semidress, and utility gloves.
Jay-El Dress Co. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,410	Ladies' dresses.
Lucy-Ann Fashions, Inc. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,411	Contractor of ladies' dresses.
Michele Dress Co. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,412	Ladies' dresses.
Packaging Associates, Inc. (company)	Bridgewater, N.J.	5/14/79	4/26/79	TA-W-5,413	Vinyl, plastic and cloth head scaling products.
Rand & Rand, Inc. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,414	School uniforms.
S. Rothschild & Company (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,415	Children's and juniors outerwear.
I. Scland & Son, Inc. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,416	Ladies' sportswear.
Style Setter Fashions (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,417	Ladies' dresses and other clothing.
Susan Garment Co. (ILGWU)	Philadelphia, Pa.	5/14/79	5/8/79	TA-W-5,418	Ladies' sportswear.

[FR Doc. 79-16423 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5238]

Fantasia Fashions Perth Amboy, N.J.; Investigation Regarding Certification Of Eligibility To Apply For Worker Adjustment Assistance: Correction

In FR Doc. 79-12681 appearing on page 24960 in the **Federal Register** of April 27, 1979, due to an administrative error, the petitioner "Fantasia Fashions" TA-W-5,238 appearing in the Appendix on page 29461 was published incorrectly and should be corrected to read "Amboy Knits".

Signed at Washington, D.C., this 14th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-16431 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4292]

Fitchburg Yarn Co., Fitchburg, Mass.; Negative Determination Regarding Application for Reconsideration

On February 21, 1979, the Amalgamated Clothing and Textile Workers Union 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 Fitchburg Yarn Company, Fitchburg, Massachusetts. The determination was published in the **Federal Register** on February 2, 1979, (44 FR 6807).

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.

In its application for reconsideration, the petitioning union claims that the Department erred in its industry analysis by assuming all yarns substitutable with the acrylic yarn produced exclusively by the workers of the Fitchburg Yarn Company, Fitchburg, Massachusetts. Further, the petitioner questions the comprehensiveness of the Department's customer survey.

The basis for the Department's denial is that increased imports of articles like or directly competitive with articles produced at Fitchburg Yarn have not contributed importantly to the separations of workers and to the decline in sales and production at the firm.

The Department's industry analysis determined that the ratio of imports to domestic production for all yarns remained below 2 percent in each year from 1974 through 1977. A survey of Fitchburg Yarn Company's customers revealed that most did not increase purchases of imported yarn while decreasing purchases from Fitchburg Yarn during the first three quarters of 1978 compared with the same period in 1977. Increases in purchases of imported yarn by those customers who did reduce purchases from Fitchburg Yarn were insignificant in relation to Fitchburg Yarn's total sales.

The petitioning union asserts that the competitive position of imported acrylic yarn is significantly different than the competitive position of imported yarns in general. The union has supplied the Department with data which would suggest that the ratio of imports to domestic production of acrylic yarn by itself has increased from 14.5 percent during the first three quarters of 1977 to 37.4 percent over the same period in 1978. However, these data apparently apply only to acrylic yarn spun on the worsted system. Fitchburg Yarn, however, does not produce on the worsted system; rather, it uses the mid-fiber system. According to information supplied by the union, over 90 percent of imported acrylic yarn is produced on the worsted system. The data notwithstanding, it must be noted that the import-to-production ratio alone using aggregate import data would be an insufficient basis for certification.

The results of a reviewed and expanded customer survey confirmed the Department's original determination that the contributed importantly test has not been met. None of those customers in the expanded survey increased purchases of imported yarn while decreasing purchases from Fitchburg Yarn.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact 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 16th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16432 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5050]

Allen Testproducts Division, Allen Group, Kalamazoo, Mich.; Negative Determination 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.

The investigation was initiated on March 29, 1979 in response to a worker petition received on March 26, 1979 which was filed on behalf of workers and former workers producing engine analyzers, related cast equipment, also main heads and circuit boards at the Allen Testproducts Division of the Allen Group, Kalamazoo, Michigan. In the following determination, at least one of the criteria has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

The Allen Testproducts Division is engaged in the production of automobile engine analyzers. (Of the other products cited, main heads and circuit boards are components of engine analyzers; "related cast equipment" is a small engine analyzer unit.) Sales in constant dollars of automobile engine analyzers increased in 1978 compared to 1977 and

increased in the first quarter of 1979 compared to the like period of 1978. Layoffs which occurred in the first quarter of 1979 were attributable to a shift in production to Allen Testproducts Division's plant in Puerto Rico.

Conclusion

After careful review, I determine that all workers of the Allen Testproducts Division of the Allen Group, Kalamazoo, Michigan, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16420 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5035]

Cluett, Peabody and Co., Inc.; Eveleth, Minn. (Eveleth II Plant); Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 23, 1979 in response to a worker petition received on March 16, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's underwear at the Eveleth, Minnesota plant of The Arrow Company Division of Cluett, Peabody and Company, Incorporated. The investigation revealed that this plant is known as the Eveleth II plant. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

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.

The Department of Labor conducted a sample survey of Arrow's customers. Most of the customers surveyed did not purchase ge any imported men's underwear in 1977, 1978, or the first quarter of 1979. Those customers that imported underwear did so in small quantities, on a trial basis, and did not repeat purchases.

Conclusion

After careful review, I determine that all workers at the Eveleth II plant, located in Eveleth, Minnesota, of The Arrow Company Divison of Cluett, Peabody and Company, Incorporated, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16427 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5052]

General Motors Corp., Delco-Remy, New Brunswick, N.J.; Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 29, 1979 in response to a worker petition received on March 27, 1979 which was filed by the International Union of Electrical Workers on behalf of workers and former workers producing automobile batteries at the New Brunswick, New Jersey, Delco-Remy plant of General Motors Corporation. In the following determination, at least one of the criteria has not been met:

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.

Evidence developed during the course of the investigation indicated that, although U.S. imports of automotive batteries increased in terms of value in 1977 compared to 1976 and in 1978 compared to 1977, imports relative to domestic production were less than two percent from 1975 through 1978. Furthermore, U.S. production of automotive batteries increased in both quantity and value in each year from 1976 through 1978. The U.S. has been a net exporter of automotive batteries, in terms of value, in each year from 1975 through 1978.

The battery industry has been in a state of rapid transition over the past two years as major merchandisers have converted to the "maintenance-free" battery. Production of conventional batteries terminated at the New Brunswick plant in early 1979. The plant now produces a complete line of maintenance-free batteries. This production changeover and a phasing out of some older style batteries were the sole reasons for layoffs at the New Brunswick plant.

Conclusion

After careful review, I determine that all workers at the New Brunswick, New Jersey plant of General Motors Corporation, Delco-Remy are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16433 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5216]

ACMI Knitwear Inc., Perth Amboy, N.J.; Negative Determination 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.

The investigation was initiated on April 12, 1979 in response to a worker petition received on April 10, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing knit products at ACMI Knitwear, Perth Amboy, New Jersey. The investigation revealed that Acmi Knitwear produces men's knit sport shirts. In the following

determination, at least one of the criteria has not been met:

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.

The Department surveyed the manufacturers which supplied Acmi with contract work in 1977, 1978 and the first four months of 1979. These manufacturers reported that they did not purchase imported men's knit sport shirts or utilize foreign contractors in 1977, 1978 or the first four months of 1979. The manufacturers' sales increased from 1977 to 1978 and in the first four months of 1979 compared to the first four months of 1978.

Conclusion

After careful review, I determine that all workers of ACMI Knitwear, Incorporated, Perth Amboy, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16419 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5038]

Eaton Corp., Molded Products Division, Akron, Ohio; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 26, 1979 in response to a worker petition received on March 15, 1979 which was filed by the United Rubber Workers of America on behalf of workers and former workers producing industrial rubber elements for airflex clutches at Eaton Corporation, Molded Products Division, Akron, Ohio. In the following determination, at least one of the criteria has not been met:

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.

Total company sales of rubber elements increased in quantity and value in 1978 compared to 1977, and in the first 3 months of 1979 compared to the first 3 months of 1978.

Employment declines at Eaton Corporation can be attributed to the company's decision to transfer production of its rubber elements from its Akron, Ohio plant to a company plant in Laurinburg, North Carolina. Production of rubber elements began in Laurinburg in october 1978. Production has decreased at Akron and increased at Laurinburg in almost each succeeding month since October 1978.

Conclusion

After careful review, I determine that all workers of Eaton Corporation, Molded Products Division, Akron, Ohio are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 16th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16430 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4862]

Negative Determination 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. In the following determination, at least one of the criteria has not been met.

Eaton Corp., Massillon Division, Massillon, Ohio

The investigation was initiated on February 28, 1979 in response to a worker petition received on February 26, 1979 which was filed by the Allied Industrial Workers on behalf of workers and former workers producing industrial fasteners at the Massillon, Ohio Division of Eaton Corporation. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

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.

Company sales increased in value in 1977 compared to 1976, and in 1978 compared to 1977. Both inter-company sales and sales of products representing a major portion of output by the Massillon plant increased in quantity and value in 1978 compared to 1977. Company employment increased in 1977 compared to 1976, and remained unchanged in 1978 compared to 1977. Layoffs occurring in 1978 were short term in nature and resulted from normal fluctuation in business activity.

Conclusion

After careful review, I determine that all workers of the Massillon, Ohio Division of Eaton Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16429 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5181]

Hilltop Trucking, Inc., Beaver, W. Va.; Negative Determination 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.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Hilltop Trucking, Incorporated, Beaver, West Virginia, an independent trucker.

Hilltop Trucking, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to the railroad.

Thus, workers of Hilltop Trucking, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduction demand for their services from the parent firm, or a firm otherwise related to Hilltop Trucking, Incorporated by ownership, or a firm related by control. In any case, the reducing in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Hilltop Trucking, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company. All workers engaged in transporting coal by truck at Hilltop Trucking, Incorporated, Beaver, West Virginia are employed by that firm. All personnel actions and payroll transactions are controlled by Hilltop Trucking, Incorporated. All employee benefits are provided and maintained by Hilltop Trucking, Incorporated. Workers are not, at anytime, under employment or supervision by customers of Hilltop Trucking, Incorporated. Thus Hilltop Trucking, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Hilltop Trucking, Incorporated, Beaver, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16434 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5186]

Rowe Trucking Co., Inc., Bradshaw, W. Va.; Negative Determination 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.

The investigation was initiated on April 6, 1979, in response to a worker petition received on March 30, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Rowe Trucking Company, Incorporated, Bradshaw, West Virginia, a contract hauler of coal.

Rowe Trucking Company, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to a loading ramp.

Thus, workers of Rowe Trucking Company, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to Rowe Trucking Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Rowe Trucking Company, Incorporated and its customers have no controlling interest in one anther. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Rowe Trucking Company, Incorporated, Bradshaw, West Virginia are employed by that firm. All personnel actions and payroll transactions are controlled by Rowe Trucking Company, Incorporated. All employee benefits are provided and maintained by Rowe Trucking Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of Rowe Trucking Company, Incorporated. Thus, Rowe Trucking Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Rowe Trucking Company, Incorporated, Bradshaw, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of May 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16437 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5127, 5128, 5129, and 5130]

Indian Creek Coal Co., Mine Nos. 1, 2, 4, and 12, Wyoming County, W. Va., Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America Union on behalf of workers and former workers mining coal at Indian Creek Coal Company, Inc., Mines No. 1, 2, 4, and 12, in Wyoming County, West Virginia.

The Notice of Investigation was published in the **Federal Register** on April 17, 1979 (44 FR 22206-7). No public hearing was requested and none was held.

In a letter dated May 2, 1979 the petitioner requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C. this 18th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-16435 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5115]

Becker Jeans, Becker, Miss.; 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.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 4, 1979, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing

men's jeans at Becker Jeans, Becker, Mississippi. It is concluded that all of the requirements have been met.

Imports of men's and boys' cotton man-made jeans and dungarees increased in 1977 compared with 1976 and increased absolutely in 1978 compared with 1977.

The Department conducted a survey of customers of Becker Jeans. The survey revealed that customers decreased purchases of men's jeans from Becker Jeans and increased their reliance on men's jeans purchased from foreign sources in the first nine months of 1978 compared with the same period of 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's jeans produced at Becker Jeans, Becker, Mississippi 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 Becker Jeans, Becker, Mississippi who became totally or partially separated from employment on or after March 6, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16306 Filed 5-22-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5016]

Cobblers, Inc., Jersey Shore Division, Jersey Shore, Pa; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 21, 1979 in response to a worker petition received on March 19, 1979 which was filed on behalf of workers and former workers producing women's shoes, boots and sandals at the Jersey Shore Division of Cobblers, Incorporated, Jersey Shore, Pennsylvania. It is concluded that all of the requirements have been met.

Imports of women's nonrubber footwear, except athletic, increased relative to domestic production in 1977 compared with 1976. Imports increased both absolutely and relative to domestic production in 1978 compared with 1977. The ratio of imports to domestic production of women's nonrubber footwear has exceeded 100 percent in every year since 1974.

A Department survey revealed that retail customers of Cobblers, Incorporated increased purchases of imported women's footwear in 1978 compared with 1977 and in the first quarter of 1979 compared with the like period in 1978. These customers decreased their purchases from Cobblers during the same periods of comparison.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's shoes, boots and sandals produced at the Jersey Shore Division of Cobblers, Incorporated, Jersey Shore, Pennsylvania contributed importantly to the decline in sale 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 the Jersey Shore Division of Cobblers, Incorporated, Jersey Shore, Pennsylvannia engaged in employment related to the production of women's shoes, boots and sandals who became totally or partially separated from employment on or after October 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16307 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4921, 4921A, 4921B]

J. Schoeneman Co. et al., Winchester, Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 12, 1979 in response to a worker petition received on March 5, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's suits and sport coats at J. Schoeneman Company, Winchester, Virginia. The petition was expanded to include plants in Wilmington, Delaware and Chambersburg, Pennsylvania. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' tailored suits increased absolutely from 1976 to 1977, decreased absolutely from 1977 to 1978 and increased absolutely in the first two months of 1978 compared to the like period in 1977.

U.S. imports of men's and boy's tailored dress and sport coats decreased absolutely in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

The Department conducted a survey of customer of J. Schoeneman Company. The survey revealed that customers increased import purchases of men's suits and sport coats while decreasing purchases of these products from the subject firm in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's suits and sport coats produced at J. Schoeneman Company, Winchester, Virginia, Chambersburg, Pennsylvania and Wilmington, Delaware 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 J. Schoeneman, Winchester, Virginia; Chambersburg, Pennslyvania; and Wilmington, Delaware who became totally or partially separated from employment on or after March 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 11th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16310 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TAW-5017]

Forest Hills Sportswear Co., Lawrenceburg, Tenn.; Negative Determination 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. In the following determination at least one of the criteria has not been met.

TA-W-5017. Forest Hills Sportswear Co., Lawrenceburg, Tenn.

The investigation was initiated on March 21, 1979 in response to a worker petition received on March 19, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's suit trousers and men's slacks and women's pants and skirts at Forest Hills Sportswear Company, Lawrenceberg, Tennessee, a division of Chromalloy American Corporation, Clayton, Missouri. Without regard to whether any of the other criteria have been met, the following criterion has not been met;

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.

Total production of all articles produced at Forest Hills Sportswear Company increased, in quantity, in each of the last three quarters of 1978 and in the first quarter of 1979 compared to the same quarter one year earlier.

Prior to October 1978, the firm produced only men's dress trousers and trousers for men's suits. Aggregate production of these types of trousers decreased in the fourth quarter of 1978 and in the first quarter in 1979. This decline, however, was more than offset by the high level of production of women's pants and skirts (begun in October 1978), which resulted in an increase in total production at the firm during the fourth quarter of 1978 and the first quarter of 1979 compared to the like quarter one year earlier.

Sales of all garments produced at Forest Hills was constant, in quantity and value, in 1978 as compared to 1977 and increased during the first two months of 1979 as compared to the same period of 1978.

In addition, the average number of production workers at the firm remained constant in 1978 compared to 1977 and increased in the first two months of 1979 compared to the same period one year earlier.

Conclusion

After careful review, I determine that all workers of Forest Hills Sportswear Company, Lawrenceburg, Tennessee are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of May 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-16304 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4858 et al.]

Broderick and Bascom Rope Co., St. Louis, Mo. et al.; Negative Determination 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. In the following determination, at least one of the criteria has not been met.

TA-W-4858, TA-W-4859, TA-W-4873, TA-W-5008—Broderick and Bascom Rope Co., St. Louis, Mo., Houston, Tex., Peoria, Ill., Seattle, Wash.

Investigations were initiated on February 28, 1979 and March 21, 1979 in response to worker petitions received on February 22, February 26, and March 19, 1979 which were filed by the International Association of Machinists and Aerospace Workers and the United Steelworkers of America on behalf of workers and former workers producing steel wire rope at Broderick and Bascom Rope Company, St. Louis, Missouri; Houston, Texas; Peoria, Illinois; and Seattle, Washington. Without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to the Peoria and Houston plants:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Production increased at each plant in 1978 compared to 1977. Sales data are not available on an individual plant basis.

Without regard to whether any of the other criteria have been met with respect to the Seattle plant, the following criterion has not been met:

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.

Virtually all of the decline in production which occurred at the Seattle plant in 1978 was attributable to the re-build of machinery, and was more than compensated by increased production at Houston and Peoria. Total company production and sales by quantity and value were higher in 1978 than in 1977.

Conclusion

After careful review, I determine that all workers of the Broderick and Bascom Rope Company, St. Louis, Missouri; Houston, Texas; Peoria, Illinois; and Seattle, Washington are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. Signed at Washington, D.C. this 11th day of May 1979.

Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-16305 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5018]

GAF Corp., Dyestuffs Division, Charlotte, N.C.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 21, 1979 in response to a worker petition received on March 19, 1979 which was filed on behalf of workers and former workers producing dyestuffs for textiles, paints and papers at the Charlotte, North Carolina facility of GAF Corporation, Dyestuffs Division. The investigation revealed that the Charlotte, North Carolina facility was a sales and distribution operation marketing dyestuffs and other chemicals for GAF's Dyestuffs Division. In the following determination, at least one of the criteria has not been met:

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.

The Charlotte, North Carolina operation marketed and warehoused dyestuffs and chemicals for GAF's Dyestuffs Division. Its major source of production was the Dyestuff Division's Rensselaer, New York production facility. The discontinuation of the Charlotte operations in April 1978 was attributable to the sale by GAF of its dyestuffs operation including the Rensselaer plant.

The decision to sell the Rensselaer plant was announced in mid-1977. Import competition did not lead to declines in sales or production of dyestuffs or to declines in production—related employment at the Rensselaer plant prior to its sale to an industry competitor in April 1978.

Conclusion

After careful review, I determine that all workers of the Charleston, North Carolina facility of GAF Corporation, Dyestuffs Division are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16308 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4983]

Meggan, Inc., Los Angeles, Calif.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 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.

The investigation was initiated on March 19, 1979 in response to a worker petition received on March 15, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' dresses at Meggan, Incorporated, Los Angeles, California. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

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.

Meggan, Incorporated produces on a contract basis for one manufacturer. A Departmental survey of the manufacturer revealed that its total sales increased in 1978 over 1977. The manufacturer did not import ladies' dresses nor use foreign contractors for such production in 1977 or 1978. Furthermore, the manufacturer plans to maintain the same level of contract work with Meggan in 1979 as that awarded to the company in 1978.

Conclusion

After careful review, I determine that all workers of Meggan, Incorporated, Los Angeles, California are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-16309 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-28-M

Pension and Welfare Benefit Programs

[Application No.: L-1142]

State of Louisiana Apprenticeship and Educational Training Program; Proposed Exemption Relating to a Transaction Involving Operating Engineers Local 406

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This proposed exemption would exempt from the restrictions of sections 406(a)(1) (A) and (D), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) the purchase of the Operating Engineers Local 406 State of Louisiana Apprenticeship and Educational Training Program (the Plan) of a parcel of land from Local 406 Realty Corporation (the Corporation), a non-profit Louisiana corporation owned by all of the members of Local 406 of the International Union of Operating Engineers (the Local). Effective February 1, 1978, this proposed exemption would also exempt from the restrictions of sections 406(b)(1) and 406(b)(2) of the Act, the lease of said parcel of land to the Plan from the Corporation, provided, however, that the proposed exemption with respect to the lease will terminate 180 days after the date on which such exemption is granted.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor (the Department) on or before June 29, 1979.

ADDRESS: All written comments and all requests for a hearing (preferably three copies) should be addressed to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Exemption Application No. L-1142. The application for exemption and all comments relating thereto will be available for public inspection at the Public Documents Room of Pension and Welfare Benefit Programs, Room N4677, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Rudolph Nuissl, Office of Fiduciary

Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216; 202–523–7352. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a)(1)(A) and (D), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act). The exemption was requested on behalf of the Board of Trustees of the Plan pursuant to Section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains representations with regard to the pending exemption which are summarized below. Interested persons are referred to the application and supporting documents on file with the Department for a complete statement of the representations of the applicant.

1. Operating Engineers Local 406, State of Louisiana Apprenticeship and Educational Training Program is a welfare plan as defined in section 3(1) of the Act and was established in accordance with section 302(c)(6) of the Labor Management Relations Act of 1947, as amended. Pursuant to the terms of applicable collective bargaining agreements, employer contributions are made to the Plan with respect to approximately 4,500 Plan participants.

The Plan provides training opportunities through an apprenticeship program to persons interested in a career as a heavy equipment mechanic, heavy equipment operator and plant equipment operator. The Plan also provides skill improvement training for journeymen members of the Local. The geographical jurisdiction of the Local embraces the entire State of Louisiana.

As of June 30, 1978, the Plan had net assets of approximately $722,983.00, with annual contributions of approximately $280,000.

2. The Plan desires to purchase from the Corporation a parcel of land located on Old Gentilly Road, New Orleans, Louisiana, containing approximately 52,251 square feet and adjoining the Local's principal office (the Land). The Land is currently being used by the Plan under lease from the Corporation in connection with the Plan's apprenticeship and training programs. The lease, which the applicant represents satisfies all of the conditions specified in Section II of Prohibited Transaction Exemption 78–6 (43 FR 23024, May 30, 1978), commenced on February 1, 1978 and expired on January 31, 1979 but provides an option for renewal for two additional years. The Plan intends to construct office and training facilities at its own expense upon the Land once title thereto is acquired by the Plan.

3. An appraisal of the Land prepared at the request of the Plan's Board of Trustees by Donald M. Frilot, an MAI appraiser, estimates that as of August 5, 1976, the fair market value of the Land was $74,300.

The Plan proposes to purchase the Land for cash at a price equal to its fair market value at the time of purchase. No finder's fee, brokerage fee or other fee or charge will be involved in the proposed transaction. In view of the length of time which has passed since the appraisal was made, the proposed exemption provides that the purchase price to be paid for the Land by the Plan may not exceed its fair market value at the time of the transaction.

4. Pursuant to the requirements of the Corporation's Articles of Incorporation, each and every member of the Local has an equal ownership interest in the Corporation, and all of the Corporation's directors and officers are officers of the Local. Of the six trustees of the Plan, three were appointed by the Local and are members of the Local; two of the union trustees serve as officers of the Local. The Plan's union trustees did not abstain from participation in negotiating or approving the lease of the Land from the Corporation and will not abstain from negotiating or approving the purchase of the Land from the Corporation, because the union trustees believe that such abstention would be inconsistent with a requirement of the Labor Management Relations Act of 1947 that the Plan be jointly administered by union and employer representatives.

5. The applicant asserts that the proposed exemption as to the lease and the sale of the Land would be in the interests of the Plan and its participants and beneficiaries because the proximity of the site to the Local's headquarters provides advantages of cost and efficiency in the operation of the Plan, as well as convenience for the Plan's participants and beneficiaries. In this regard, the applicant represents that since so comparable land is available in the vicinity at similar terms, denial of the requested exemption would prevent the Plan from conducting its operations in an efficient and economical manner and result in substantial relocation expenses to the Plan.

The applicant asserts that the proposed exemption as to the lease would be protective of the rights of the participants and beneficiaries of the Plan because the lease satisfies all of the conditions specified in Section II of Prohibited Transaction Exemption 78–6 and because the exemption with respect to the lease would terminate 180 days after the date on which such exemption is granted. In addition, the applicant represents that the proposed exemption with respect to the sale of the Land would be protective of the rights of the participants and beneficiaries of the Plan because the proposed purchase price will not exceed the fair market value of the Land at the time of purchase.

Finally, the applicant represents that the proposed exemption as to the lease and the sale of the Land would be administratively feasible because the lease is of short duration and because the sale will be a one-time cash transaction.

Notice to Interested Persons

A copy of this notice of the proposed exemption will be posted on or before June 4, 1979, in conspicuous places for a period of not less than 30 days at union offices in New Orleans, Baton Rouge, Lafayette, Lake Charles, Monroe and Shreveport, Louisiana. Copies of this notice of pendency will also be mailed to the several employer associations which are parties to the trust agreement creating and governing the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to the plan to which the exemption is applicable from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under sections 406(a)(1)(B), (C) or (E), or sections 406(a)(2) or 406(b)(3) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act,

the Department must find that the exemption is administratively feasible, in the interests of the plan and of the participants and beneficiaries of the plan, and protective of the rights of such participants and beneficiaries; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a)(1) (A) and (D), 406(b)(1) and 406(b)(2) shall not apply to the purchase by the Plan from the Corporation of a certain parcel of land located on Old Gentilly Road, New Orleans, Louisiana, adjacent to the Local's principal office, for a purchase price not exceeding the fair market value of such property at the time of purchase. In addition, if the exemption is granted, effective February 1, 1978, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act shall not apply to the lease of said parcel of land to the Plan from the Corporation provided, however, that the exemption with respect to the lease will terminate 180 days after the date on which such exemption is granted.

The pending exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 17th day of May 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-16143 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ENDOWMENT FOR THE HUMANITIES

Advisory Committee, Humanities Panel; Meeting

April 18, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended,) notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506, in room 1134, from 9 a.m. to 5:30 p.m. on June 8, 1979.

The purpose of the meeting is to review NEH Research Collections Program applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, N.W., Washington, D.C. 20506, or call area code 202–724–0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 79-16408 Filed 5-24-79; 8:45 am]

BILLING CODE 7536-01-M

Advisory Committee, Humanities Panel; Meeting

April 18, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506, in room 1134, from 9 a.m. to 5:30 p.m. on June 15, 1979.

The purpose of the meeting is to review NEH Research Collections Program applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, NW., Washington, D.C. 20506, or call area code 202–724–0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 79-16409 Filed 5-24-79; 8:45 am]

BILLING CODE 7536-01-M

Advisory Committee, Humanities Panel; Meeting

May 21, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street, N.W., Washington, DC 20506, in room 1130, from 9 a.m. to 5:30 p.m. on June 21 and 22, 1979.

The purpose of the meeting is to review Youthgrants in the Humanities applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have

determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, N.W., Washington, DC 20506, or call area code 202–724–0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 79–16410 Filed 5–24–79; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Reactor Fuel; Meeting

The ACRS Subcommittee on Reactor Fuel will hold an open meeting on June 11 and 12, 1979, in Room 1046, 1717 H Street, N.W., Washington, DC 20555 to discuss the current and proposed NRC research programs in the area of fuel behavior for consideration of a report to Congress on NRC research. Notice of this meeting was published on April 20, 1979 (44 FR 23609).

In accordance with the procedures outlined in the **Federal Register** on October 4, 1978, (45 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Monday, June 11 and Tuesday, June 12, 1978, 8:30 a.m. until the conclusion of business each day.*

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hold discussions with representatives of the NRC Staff, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the subject is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Thomas G. McCreless, (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 21, 1979.

[FR Doc. 79–16297 Filed 5–24–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8681]

Energy Fuels Nuclear, Inc.; Statement for White Mesa Uranium Project

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 Final Environmental Statement prepared by the Commission's Office of Nuclear Material Safety and Safeguards related to the application for operation of the proposed White Mesa Uranium Project located in San Juan County, Utah, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555. The Final Statement is also being made available at the Utah State Clearinghouse, Utah Planning Coordinator, Office of the Governor, State Capitol Building, Salt Lake City, Utah 84114 and the Southeastern Utah Association of Governments, Post Office Box 686, 109 S. Carbon Avenue, Price, Utah 84501.

The notice of availability of the Draft Environmental Statement for the White Mesa Uranium Project and requests for comments from interested persons was published in the **Federal Register** on December 22, 1978 (43 FR 59935). The comments received from Federal agencies, State and local officials, and interested members of the public have been included as appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (Document no. NUREG–0556) may be purchased for $11.00 a printed copy and $3.00 for microfiche from the National Technical Information Service, Springfield, VA. 22161, on or about June 4, 1979.

Dated at Silver Spring, Maryland, this 11th day of May, 1979.

For the Nuclear Regulatory Commission.

Ross A. Scarano,

Section Leader, Uranium Recovery Licensing Branch, Division of Waste Management.

[FR Doc. 79–16296 Filed 5–24–79; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF ADMINISTRATION, EXECUTIVE OFFICE OF THE PRESIDENT

Advisory Committee on Personnel for the Executive Office of the President; Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (1976)) and Office of Management and Budget Circular No. A–63, revised March 1974, and after consultation with the General Services Administration, it has been determined that the establishment of the Advisory Committee on Personnel for the Executive Office of the President is in the public interest in connection with the performance of duties imposed on the Executive Office of the President by law.

The Committee will advise the Director of the Presidential Personnel Office, through the Director of the Office of Administration, on personnel matters pertinent to the Executive Office's responsibility for the selection of persons to fill appointive positions throughout the Executive Branch of the federal government.

The Committee will consist of 20 members, to assure a balanced representation from the private sector of professional personnel specialists.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act with the appropriate congressional committees and the Library of Congress.

Interested persons are invited to submit comments regarding the establishment of the Advisory Committee on Personnel for the Executive Office of the President. Comments should be addressed to the Director, Office of Administration, Executive Office of the President, Washington, D.C. 20500, telephone, 202–456–6690.

Dated: May 7, 1979.

Richard M. Hardin,

Director, Office of Administration.

[FR Doc. 79–16572 Filed 5–24–79; 8:45 am]

BILLING CODE 3195–01–M

PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND

Meeting

The President's Commission on the Accident at Three Mile Island announces the following amendments with regard to public meetings of the Commission which appeared in FR Doc. 79–15633 at page 28903 of the issue for Thursday, May 17, 1979.

Place: New Executive Office Building, Room 2008 Seventeenth and Pennsylvania Avenues, NW.

Time: May 30, 1979, 1 p.m.–6 p.m.; May 31, 1979, 9 a.m.–6 p.m. (as announced); June 1, 1979, 9 a.m.

Upon completion of the receiving of testimony and any other business on June 1, 1979, the Commission will go into closed session to discuss issuance of *subpoena* for subsequent meetings.

May 23, 1979.

Barbara Jorgenson,

Public Information Director.

[FR Doc. 79–16598 Filed 5–24–79; 8:45 am]

BILLING CODE 6820–AJ–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RFA—ERSA–79–1; Notice 1]

Guarantee of Trustee Certificates; Intention to Make Findings

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of intention to make findings under the Emergency Rail Services Act of 1970 ("Act") (45 U.S.C. 661 *et sec.*).

SUMMARY: The Trustee of the property ("Trustee") of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Milwaukee") has applied to the Secretary of Transportation ("Secretary") for a guarantee, to be extended under the authority of subsection 3(a) of the Act, of trustee certificates in the principal amount of $20 million. Pursuant to subsection 3(a), the Federal Railroad Administrator ("Administrator"), as delegate of the Secretary, after consultation with the Interstate Commerce Commission ("ICC"), is authorized to guarantee such certificates upon making six written findings. As required by subsection 3(a), the Administrator hereby gives notice of the Administrator's intention to make such findings and invites all interested persons, including Federal agencies, to submit written data, views or arguments concerning that intention.

DATE: The Comment period will close June 11, 1979.

ADDRESS: All written comments should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration ("FRA"), 400 7th Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: William E. Loftus, Director, Office of National Freight Assistance Programs, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590, 202–426–9657.

SUPPLEMENTARY INFORMATION: On December 19, 1977, the Milwaukee filed for reorganization under section 77 of the Bankruptcy Act. On May 22, 1979 the Trustee submitted an application to the FRA seeking a guarantee by the Administrator pursuant to the Act of trustee certificates in the principal amount of $20 million. The application states that the funds derived from the sale of the guaranteed certificates will be used solely for meeting payroll and other expenses to continue operation of the railroad in whatever form the Court orders. The Trustee alleges that if these expenses are not met, the continued provision of essential transportation services by the Milwaukee would be threatened.

Pursuant to subsection 3(a) of the Act, the Administrator, after consultation with the ICC, is authorized to guarantee trustee certificates of any railroad undergoing reorganization under section 77 of the bankruptcy Act upon making the following written findings:

(1) Cessation of essential transportation services by the Milwaukee would endanger the public welfare;

(2) Cessation of such services is imminent;

(3) There is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide such services than the issuance of such certificates;

(4) Such certificates cannot be sold without a guarantee;

(5) The Milwaukee can reasonably be expected to become self-sustaining; and

(6) The probable value of the assets of the Milwaukee in the event of liquidation provides reasonable protection to the United States.

Pursuant to 49 CFR 1.49(m), the Secretary has delegated the Secretary's authority under the Act to the Administrator of FRA. The Administrator is authorized to make the required findings not less than fifteen days after publication of this notice.

COMMENTS: Interested persons are invited to submit written data, views or arguments concerning the Administrator's intention to make the aforementioned findings. All written comments should indicate the docket number shown above.

INSPECTION: Copies of all written comments received will be available for examination by interested persons in Room 5101, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 5:00 p.m. on Mondays through Fridays with the exception of Federal holidays.

Dated: May 24, 1979.

John M. Sullivan,

Administrator, Federal Railroad Administration.

[FR Doc. 79–16723 Filed 5–24–79; 12:05 pm]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Customs Service

Certain Frozen Potato Products From Canada; Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Initiation of Countervailing Duty Investigations.

SUMMARY: A satisfactory petition has been received and a countervailing duty investigation has been started to determine if benefits are paid by the Government of Canada to manufacturers or exporters of certain frozen potato products which constitute the payment of a bounty or grant within the meaning of the U.S. countervailing duty law. A preliminary determination will be made not later than October 20, 1979, and a final determination not later than April 20, 1980.

EFFECTIVE DATE: May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5492).

SUPPLEMENTARY INFORMATION: A petition in satisfactory form was received on April 20, 1979, from the Frozen Potato Products Institute alleging that benefits conferred by the Government of Canada upon the manufacture, production or exportation of certain frozen potato products from Canada constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The frozen potato products specified in the petition include french fries, hash browned potatoes, potato puffs, baked potatoes, and whole blanched potatoes. This merchandise is classified under item number 138.5060, Tariff Schedules of the United States Annotated (TSUSA), if raw and reduced in size, or under item number 141.8125 TSUSA if cooked, whether or not reduced in size.

Programs listed in the petition under which bounties or grants are allegedly conferred, include the following:

1. *The Advance Payment for Crops Act.* It is alleged that under this program, administered by the Canadian Department of Agriculture, Canadian potato growers receive guaranteed interest-free loans. These loans allow growers to keep their produce off the market until prices have reached a remunerative level, and must be repaid only after the crops are actually sold.

2. *The Agricultural Stabilization Act.* Under this program the Canadian Department of Agriculture allegedly makes deficiency payments to potato growers. The amount of these payments varies, depending on economic conditions, and is equal to the difference between the government's price support level and the average selling price growers receive.

3. *Disaster Payments.* It is alleged that both the Canadian federal government and the British Columbia provincial government made payments in 1978 to potato growers who had produced large volumes of potatoes for a processor which went bankrupt and defaulted on its purchase contracts.

4. *Regional Development Incentives.* The Canadian Department of Regional Economic Expansion (DREE) allegedly makes grants to and guarantees loans for industries which build, expand, or modernize facilities in designated less-developed areas of Canada. The petitioner alleges that virtually all potato processors have received benefits under this program.

5. *Customs Drawbacks.* The petitioner alleges that the Canadian government rebates duties assessed on imported products (i.e., fresh potatoes) which are needed by Canadian manufacturers for processing purposes. The rebate of customs duties paid on imported raw materials consumed in the manufacture of goods for export is not considered to be countervailable by the Treasury Department. Therefore, the Canadian customs drawback program will not be investigated.

Pursuant to section 303(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of that statute within 6 months of receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant. A final determination must be issued within 12 months of the receipt of such a petition.

Therefore, a preliminary determination on this petition will be made no later than October 20, 1979, as to whether or not the alleged payments or bestowals conferred by the Government of Canada upon the manufacture, production or exportation of the merchandise described above constitute a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than April 20, 1980.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)), and section 159.47(c), Customs Regulations (19 CFR 159.47(c)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, Revision 15, March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,

General Counsel of the Treasury.

May 18, 1979.

[FR Doc. 79-16401 Filed 5-24-79; 8:45 am]

BILLING CODE 4810-22-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on June 11 and 12, 1979, in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitutionn Avenue NW., Washington, D.C. The meeting will begin at 10:00 a.m. on June 11 and 9:00 a.m. on June 12. The agenda will include the following topics:

Monday, June 11

Training,
Proposed "Taxpayer Bill of Rights Act of 1979",
Current Operation of Rulings and Technical Advice Procedures,
Proposed Court of Tax Appeals,
Processing Exempt Organizations Cases as Affected by Declaratory Judgement Procedure, and
Code Section 501(c)(3) and Sex Discrimination

Tuesday, June 12

Equal Employment Opportunity,
Unisex Actuarial Tables, and
Followup on Previous Discussions.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. After the Committee members finish discussing the items on the agenda, there may be time for statements from nonmembers. If you want to make a statement at the meeting, or if you would like the Committee to consider a written statement, please call or write to Lauralee A. Matthews, Assistant to the Commissioner, 1111 Constitution Avenue NW., Washington, D.C. 20224.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52120).

FOR FURTHER INFORMATION CONTACT:
Lauralee A. Matthews, Assistant to the Commissioner, 202-566-4390 (not toll free).

Jerome Kurtz,

Commissioner.

[FR Doc. 79-16678 Filed 5-24-79; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice pursuant to Public Law 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration, 810 Vermont Avenue N.W., Washington, D.C. 20420, June 11, 1979, at 10 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs in order to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam War.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may only direct questions in writing to the Chairman, Paul A. L. Haber, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Summary minutes of the meeting and rosters of the committee members may be obtained from the Vice-Chairman, Gerrit W. H. Schepers, M.D., Medical Service (111), Department of Medicine and Surgery, Veterans Administration, Washington, D.C. 20420 (Phone 202–389–2550).

Dated: May 21, 1979.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 79-16381 Filed 5-24-79; 8:45 am]

BILLING CODE 8320-01-M

Health Services Research and Development Merit Review Board; Meeting

The Veterans Administration gives notice pursuant to Public Law 92–463 of a meeting of the Health Services Research and Development Merit Review Board, chartered on September 5, 1978. This meeting will convene in Room 119 of the Veterans Administration Central Office Building, 810 Vermont Avenue, NW, Washington, DC, on June 13, 1979, beginning at 3 p.m. and on June 14–15, 1979, beginning at 8:30 a.m. The purpose of the meeting is to review health services research and development applications for scientific and technical merit and to make recommendations to the Director, Health Services Research and Development Service (HSR&DS) regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) at the start of the June 13th session in order to cover administrative matters and to discuss the general status of the program. During the closed sessions (beginning approximately one-half hour from the start of the June 13th session), the Board will be reviewing research and development applications relating to the delivery and organization of health services. This review involves the reference to and discussion, examination, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents that necessitate the consideration of personnel qualifications and performance and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further, decisions recommended by the Board are strictly advisory in nature; other factors are considered in final funding decisions. Premature disclosure of Board recommendations would be likely to significantly frustrate implementation of final proposed actions. Thus, the closing is in accordance with provisions set forth in section 552b, subsections (c)(6) and (c)(9)(B), Title 5, United States Code and the determination of the Administrator of Veterans Affairs pursuant to section 10(d) of Public Law 92–463.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Miss Linda Hudock, Staff Assistant for Merit Review (152B), Health Services Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, 20420 (phone: 202–389–5365) at least 5 days prior to the meeting.

Dated: May 21, 1979.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 79-16382 Filed 5-24-79; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 89]

Assignment of Hearings

May 22, 1979.

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 143328 (Sub-15F), Eugene Tripp Trucking, now assigned for hearing on July 10, 1979 (4 days), at San Francisco, CA, in a hearing room to be later designated.

No. 37101, *Pacific States Railcar Company* v. *The Atchison, Topeka And Sante Fe Railway Company, et al,* now assigned for hearing on July 16, 1979 (2 days), at San Francisco, CA, in a hearing room to be later designated.

MC 140389 (Sub-36F), Osborn Transportation, Inc., now assigned for hearing on July 18, 1979 (3 days), at San Francisco, CA, in a hearing room to be later designated.

MC 133655 (Sub-133F), Trans-National Truck, Inc., now assigned for hearing on July 9, 1979 (1 day), at New York, NY, in a hearing room to be later designated.

MC 128051 (Sub-3F), Makar Trucking, Inc., now assigned for hearing on July 10, 1979 (2 days), at New York, NY, in a hearing room to be later designated.

No. 37107, *William Considine* v. *New York, Keansburg, Long Branch, Bus Co., Inc.*, now assigned for hearing on July 12, 1979 (2 days), at New York, NY, in a hearing room to be later designated.

MC 124151 (Sub-8F), Vanguard Transportation, Incorporated, now assigned for hearing on July 10, 1979 (9 days), at New York, NY, in a hearing room to be later designated.

No. AB–102 (Sub-8F), Missouri-Kansas-Texas Railroad Company, Abandonment at Burkburnett, TX and Altus, OK in Wichita County, TX, and Cotton, Tillman, and Jackson Counties, OK, now assigned for hearing on June 25, 1979 (1 week), at Altus, Oklahoma, in a hearing room to be later designated.

MC 133689 (Sub-236F), Overland Express, Inc., now assigned for hearing on July 16, 1979 (2 days), at Chicago, IL, in a hearing room to be later designated.

MC 128270 (Sub-31F), Rediehs Interstate, Inc., now assigned for Prehearing Conference July 10, 1979 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 127840 (Sub-84F), Montgomery Tank Lines, Inc., now assigned for hearing on July 11, 1979 (3 days), at Chicago, IL, in a hearing room to be later designated.

MC 108053 (Sub-152F), Little Audrey's Transportation, Company, Inc., now assigned for hearing on July 18, 1979 (3 days), at Chicago, IL, in a hearing room to be later designated.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-16497 Filed 5-24-79; 8:45 am]

BILLING CODE 7035-01-M

[Amendment No. 5 to Exemption No. 149]

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

May 22, 1979.

To All Railroads:

Upon further consideration of Exemption No. 149 issued April 28, 1978.

It is ordered, That under authority vested in me by Car Service Rule 19, Exemption No. 149 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to *expire August 15, 1979.*

This amendment shall become effective May 15, 1979.

Issued at Washington, D.C., May 11, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-16496 Filed 5-24-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 27F)]

Seaboard Coast Line Railroad Co. Abandonment at Manchester and Fort Junction in Cumberland County, NC; Findings

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 11, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen* ——— I.C.C. ———, decided February 9, 1979, and further that SCL shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of the certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, the present and future public convenience and necessity permit the abandonment by the Seaboard Coast Line Railroad Company of a portion of a line of railroad known as the Fayetteville Subdivision, extending from railroad milepost AE-197.53 at Manchester, NC, to milepost AE-201.05, near Fort Junction, NC, a distance of 3.52 miles, in Cumberland County, NC. A certificate of public convenience and necessity permitting abandonment was issued to the Seaboard Coast Line Railroad Company. After the investigation was completed, the requirement of Section 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than 15 days after publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 45 days from the date of this publication.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-16496 Filed 5-24-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 103
Friday, May 25, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-222, Amdt. 4; May 22, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the May 24, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., May 24, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 4a. Docket 31571, Northwest Alaska Service Investigation, Request for Instructions. (OGC); 34a. Decision of U.S. District Court for the District of Colorado in *CAB* v. *Frontier Airlines, Inc.* (BCP).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: It is necessary to include Item 4a so that instructions may be issued to the staff with sufficient time to permit final action in this docket by June 23, 1979, the target date. This item was not ready in time for inclusion on the original agenda because briefing materials for the Oral Argument in this proceeding, to be held May 23, 1979, were being prepared. The time required for staff review and coordination of Item 34a prevented its completion before today. The notice of appeal, however, must be filed by June 12, 1979, and the letter must go out as soon as possible in order to permit time for Justice Department review. Accordingly, the following Members have voted that agency business requires the addition of Items 4a and 34a to the May 24, 1979 agenda and that no earlier announcement was possible:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1044-79 Filed 5-23-79; 3:11 pm]

BILLING CODE 6320-01-M

2

[M-222, Amdt., 3; May 22, 1979]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the May 24, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., May 24, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 2. Docket 33465, *Continental-Western Merger Case.* Continental-Western motion to terminate consulting agreement. (Memo No. 8825, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The staff will need more time than originally anticipated to make a recommendation to the Board on the disposition of the Joint Applicants' motion, because the staff believes they should further discuss certain issues raised by the motion with the consulting firm before advising the Board on the matter. Accordingly, the following Members have voted that agency business requires item 2 deleted from the May 24, 1979 agenda and that no earlier announcement of this deletion was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1043-79 Filed 5-23-79; 3:11 pm]

BILLING CODE 6320-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (Eastern Time), Tuesday, May 29, 1979.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the 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.Q02

MATTERS TO BE CONSIDERED:

Open to the Public

1. Final Designation of St. Petersburg (Fla.) Office of Human Relations and Jacksonville (Fla.) Community Relations Commission as 706 Agencies.
2. Proposed modification of Agency Improvement Contract with Illinois Fair Employment Practices Commission.
3. Freedom of Information Act Appeal No. 79-3-FOIA-81, concerning a request for files supporting the Commission's finding on a particular charge of discrimination.
4. Proposed revisions of regulations governing EEOC Employees' Responsibilities and Conduct.
5. Proposed contract for computer analysis and expert witness services from Charles R. Mann, Associates.
6. Report on Commission operations by the Executive Director.

Closed to the Public

1. Proposed denial of request for reconsideration of Civil Service Commission decision on a charge of reprisal.
2. Proposed decision in Charge TN03-1711.
3. Proposed contracts for establishment of five area bar litigation support centers.
4. Litigation Authorization; General Counsel Recommendation.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued May 22, 1979.

[S-1040-79 Filed 5-23-79; 11:25 am]

BILLING CODE 6570-06-M

4

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (44 FR 29819, May 22, 1979).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 23, 1979, 10 a.m.

CHANGE IN MEETING: The following item has been added:

Item No., Docket No. and Company

M-3—RM78-16, Procedure for Submission of Settlement Agreement.
CAP-9—ER79-210, Electric Energy, Inc.

Kenneth F. Plumb,
Secretary.

[S-1041-79 Filed 5-23-79; 11:34 am]

BILLING CODE 6740-02-M

5

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: May 22 and 29, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Tuesday, May 22, 9:30 a.m., Additional Item

Discussion of Protective Order for Three Mile Island Records (Approximately 15 minutes—Public meeting).

Tuesday, May 29, 2:30 p.m.

Discussion and Vote on S–3 (Approximately 1½ hours—Public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Roger M. Tweed,

Office of the Secretary.

May 22, 1979.

[S–1038–79 Filed 5–23–79; 10:18 am]

BILLING CODE 7590–01–M

6

POSTAL RATE COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, May 31, 1979.

PLACE: Conference Room, Room 500, 2000 L St. NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Office reorganization and personnel matters.

[Closed pursuant to 39 U.S.C. § 552b(c)(2)(6).]

CONTACT PERSON FOR MORE INFORMATION: Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, Telephone (202) 254–5614.

[S–1042–79 Filed 5–23–79; 2:24 pm]

BILLING CODE 7715–01–M

7

SECURITIES AND 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 May 28, 1979, in Room 825, 500 North Capitol Steet, Washington, D.C.

Closed meetings will be held on Tuesday, May 29, 1979, at 10 a.m. and on Wednesday, May 30, 1979, immediately following the 2:30 p.m. open meeting. Open meetings will be held on Tuesday, May 29, 1979, at 2 p.m. and on Wednesday, May 30, 1979, at 10 a.m. and 2:30 p.m.

The Commissioners, their legal assistants, the Secretary of the Commisison, and recording secrearies will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commision, 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)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 29, 1979, at 10 a.m., will be:

Formal orders of investigation.
Access to investigative files by Federal, State, or Self-Regulatory Authorities.
Litigation matters.
Order compelling testimony.
Other litigation matters.
Litigation and standby authority for subpoena enforcement action.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature and injunctive action.
Institution and settlement of administrative proceedings of a enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.

The subject matter of the closed meeting scheduled for Wednesday, May 30, 1979, immediately following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, May 30, 1979, at 10 a.m., will be:

1. Consideration of two releases adopting: (1) amendments to the uniform net capital rule (17 CFR 240.15c3–1) as it pertains to the minimum financial requirements for brokers or dealers that are also futures commission merchants; and (2) amending Part II of Form X–17A–5 (§ 249.617) to adopt the Schedule of Segregation Requirements and Funds on Deposit in Segregation, currently being used by the Commodity Futures Trading Commission for future commission merchants. For further information, please contact Gary Miller at (202) 376–8137.

2. Consideration of a proposed rule change of the National Associaton of Securities Dealers, Inc., to amend provisions of Schedule C of its By-Laws which sets forth requirements for the registration and qualification of principals of member broker-dealer firms. For further information, please contact Richard T. Chase at (202) 755–7620.

3. Consideration of whether to propose for comment Securities Exchange Act Rule 15Bc7–1 to give the Municipal Securities Rulemaking Board limited access to information contained in copies of reports of compliance examinations of municipal securities brokers and dealers. For further information, please contact Marcia L. MacHarg at (202) 755–7128.

4. Consideration of whether to exempt Rowe Price New Horizons Fund, Inc., a registered investment company, from the provisions of Section 15(f)(1)(A) of the Investment Company Act of 1940 to permit less than 75 percent of the members of the board of directors to be disinterested persons. For further information, please contact H. R. Hallock, Jr. at (202) 755–1648 or Sarah Ackerson at (202) 755–1792.

5. Consideration of whether the Commission should adopt an Amendment to Regulation A which would permit, in specific circumstances, the use of a preliminary offering circular between the date of filing of a Regulation A notification and the date on which the securities may be sold. For further information, please contact Spencer I. Browne at (202) 376–2976.

6. Consideration of whether to issue an order granting the application of Air California pursuant to Section 12(h) of the Securities Exchange Act of 1934 for exemption from the reporting provisions of Section 15(d) of that Act, and dealing with two requests for a hearing on such application. For further information, please contact William E. Toomey at (202) 755–1240, Bruce Mendelsohn at (202) 376–2381 or Paul Belvin at (202) 755–1750.

7. Consideration of whether to order a hearing on the proposal of Northern States Power Company ("Northern States"), an exempt holding company, to offer to exchange shares of its common stock for the outstanding shares of the common stock of Lake Superior District Power Company ("Lake Superior"), a non-associate public utility company. Northern States proposes to exchange 0.48 shares of its common stock for each share of Lake Superior common stock. For further information, please contact Grant G. Guthrie at (202) 523–5156 or Mary Ann Oliver at (202) 523–5685.

The subject matter of the open meeting scheduled for Wednesday, May 30, 1979, at 2:30 p.m., will be:

1. Oral argument on consolidated appeals by Paul F. Kendrick, president of a former member firm of the National Association of Securities Dealers ("NASD"), from NASD disciplinary action. The NASD censured Kendrick, fined him $5,000, and barred him from association with any member in any capacity. For further information, please contact Eugene B. Livaudais, III at (202) 376–3358.

FOR FURTHER INFORMATION, CONTACT: George Yearsich at (202) 755–1638.

May 22, 1979.

[S–1039–79 Filed 5–23–79; 10:59 am]

BILLING CODE 8010–01–M

8

SECURITIES AND EXCHANGE COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (to be published).

STATUS: Open meeting.
PLACE: Room 825, 500 North Capitol Street, Washington, D.C.
DATE PREVIOUSLY ANNOUNCED: May 22, 1979.
CHANGES IN MEETING: Omission in Notice.

The following item will be considered at an open meeting to be held on Tuesday, May 29, 1979, at 2:00 P.M.: The New York Stock Exchange, Inc. will present a report to the Commission on the steps the NYSE has taken to implement a national market system and to modernize its trading facilities.

Chairman Williams and Commissioners Loomis, Evans and Karmel determined that Commission business required the above change and that no earlier notice thereof was possible.

May 23, 1979.

federal register

Friday
May 25, 1979

Part II

Department of Health, Education, and Welfare

Office of Education

Education Appeal Board: Establishment and Procedures

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 100e

Education Appeal Board; Establishment and Procedures

AGENCY: Office of Education, HEW.

ACTION: Interim Final Regulations.

SUMMARY: These regulations, published in interim final form, establish the Education Appeal Board (the Board) in the Office of Education (OE) as mandated by Congress in the Education Amendments of 1978. The regulations also establish rules for the conduct of proceedings before the Board.

The Board will conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the U.S. Commissioner of Education (the Commissioner), and (3) any other proceedings designated by the Commissioner as being within the jurisdiction of the Board.

DATE: All written comments on the regulations must be received on or before July 24, 1979.

ADDRESS: Written comments should be sent to: Dr. David S. Pollen, U.S. Office of Education, 400 Maryland Avenue, S.W. (FOB–6, Room 4051), Washington, D.C. 20202.

Written comments received in response to this notice will be available for public inspection at this address on Monday through Friday of each week between 8:30 a.m. and 4 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Title I Audit Hearing Board, Telephone (202) 245–7835.

SUPPLEMENTARY INFORMATION:

A. Background

In 1972 the Commissioner established the Title I Audit Hearing Board through the publication of a notice in the **Federal Register**. The function of this board was to give State agencies an impartial administrative forum in which to appeal adverse audit findings made in the course of Federal audits of programs administered under Title I of the Elementary and Secondary Education Act of 1965 (ESEA).

Since 1972 the Board has operated as an impartial appeal mechanism by using hearing panels, the majority of whose members are non-governmental professionals who have an interest in administrative law and education. At present there are nine cases under active consideration by the Board, together with other cases awaiting proceedings. Seventeen cases have been disposed of through final decision or dismissal on the motion of the Deputy Commissioner for Elementary and Secondary Education.

In recent years it became apparent that grantees under OE State-administered programs other than Title I, ESEA were in need of a similar forum to hear their appeals from adverse audit findings. Recognizing this need, Congress, in the Education Amendments of 1978, added enforcement sections 451–6 to the General Education Provisions Act. These sections directed the Commissioner to establish an Education Appeal Board, the function of which is to conduct audit appeal hearings involving:

(1) Certain State-administered programs (see Appendix A), (2) programs conducted under the Bilingual Education Act, and (3) programs conducted under the Emergency School Aid Act. Congress also gave the Board authority to conduct withholding and termination hearings, cease and desist hearings, and other proceedings designated by the Commissioner. Termination hearings for OE discretionary grant programs previously were conducted by the Departmental Grant Appeals Board in the Department of Health, Education, and Welfare (see 45 CFR Part 16).

The Commissioner, with the approval of the Secretary of Health, Education, and Welfare, has designated the existing Title I Audit Hearing Board as the new Education Appeal Board. The Education Appeal Board will assume jurisdiction over the cases previously accepted for review by the Title I Audit Hearing Board.

B. Summary of Major Provisions

Subpart A states the purpose of the Education Appeal Board, describes the membership of the Board and its Hearing Panels, states who is eligible for review, and indicates that an aggrieved grantee should appeal to the Board prior to filing a lawsuit for relief.

Subpart B discusses a final audit determination, describes an application for review, and discusses the burden of proof.

Subpart C describes (a) a written notice of an intent to withhold or terminate funds and (b) an application for a withholding or termination hearing. Subpart C also outlines the procedure for suspending payments pending the outcome of a withholding or termination hearing.

Subpart D discusses a cease and desist complaint, hearing, and order.

Subpart E sets forth the Board's general rules of procedure, describes Panel proceedings, and outlines the presentation of a case.

Subpart F discusses the decisions of the Panel and the Commissioner in audit appeal, withholding, and termination hearings, and states that cease and desist orders are not subject to review by the Commissioner.

Appendix A lists State-administered programs within the audit appeal jurisdiction of the Board. The majority of the programs are within the audit appeal jurisdiction of the Board by virtue of section 452 of the General Education Provisions Act. Three of the programs are designated by the Commissioner under Section 451(a)(4) of the Act, by their inclusion in Appendix A, as being within the audit appeal jurisdiction of the Board. These programs are considered to be subject to all the provisions contained in section 452 of the Act.

Withholding, termination, and cease and desist proceedings initiated under these and other programs administered by authorized OE officials are also within the jurisdiction of the Board (see §§ 100e.2 (*Scope*) and 100e.3 (*Definitions*)).

Appendix B contains sections 451–6 of the General Education Provisions Act.

However, not all the provisions contained in sections 451–6 of the statute are implemented through these regulations. Those provisions relate to matters beyond the authority of the Board, including, for example, compromise of certain claims, use of recovered funds, and judicial review.

Major provisions of the proposed regulations include the following:

(a) § 100e.4 *Board Membership.* There are two categories of Board members. One category consists of those persons not employed by the Federal government except in their capacity as part-time members of the Education Appeal Board. The second category of Board members consists of full-time Federal government employees who contribute part of their time to the work of the Board and provide the Board with experience in the Federal grant-making and administrative process. To ensure that the Board remains impartial in its deliberations, the majority of members on each Panel will be non-governmental.

(b) § 100e.8 *Exhaustion of remedies.* Congress has provided for the establishment of the Education Appeal Board in an effort to achieve fair

resolution of certain disputes without costly and prolonged litigation. If an aggrieved party brings a lawsuit prior to making and completing an administrative appeal, the commissioner may move for dismissal of the lawsuit on the basis that the party has failed to exhaust administrative remedies.

(c) § 100e.11 *Written notice of a final audit determination.* Under the Education Amendments of 1978, the Board will have jurisdiction to review final audit determinations issued in connection with programs administered by State educational agencies, administered under the Bilingual Education Act, and administered under the Emergency School Aid Act.

The Board will not have jurisdiction to hear appeals from adverse final audit determinations involving discretionary grants from OE unless the grants were made under the Bilingual Education Act or the Emergency School Aid Act. However, certain recipients of other discretionary grants may appeal adverse audit findings to the Departmental grant Appeals Board in the Department of Health, Education, and Welfare in accordance with 45 CFR Part 16.

(d) § 100e.43 *Intervention.* The language of the proposed regulations defines a prospective intervenor as a person, group, or agency with an interest in and having relevant information about a given hearing. This is intended to limit intervention to those who will aid the Board in the disposition of a case.

(e) § 100e.61(a)(11) *Ending of appeals.* The Title I Audit Hearing Board found that parties in several instances were unduly slow in presenting their cases. To avoid excessive delays in the future, these regulations provide that a Hearing Panel may end an appeal and issue an initial decision against a party if that party does not meet the time limits set by the Panel or otherwise delays the appeal.

(f) § 100e.71 *Written submission of cases.* In an effort to expedite the processing and resolution of appeals, a Hearing Panel will normally require the parties to submit their cases in writing within time limits set by the Panel.

C. Effect of These Regulations

The regulations are being published in interim final form so that they may become effective at the earliest possible date. Since sections 451–6 of the General Education Provisions Act establishing the Board became effective March 1, 1979, and the regulations provide a necessary basis for the timely, systematic, and impartial processing of cases within the Board's jurisdiction, OE has determined that it would be contrary to the public interest to apply the rulemaking provisions contained in 5 U.S.C. 553. The regulations are also considered to relate to matters of agency procedure, making 5 U.S.C. 553 inapplicable to the regulations.

These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register**; the effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. For information concerning the effective date of these regulations, call or write the OE contact person named above.

When these regulations take effect they will supersede the Notice in the **Federal Register** establishing the Title I Audit Hearing Board (37 FR 23002, October 27, 1972, as amended by 41 FR 28568, July 12, 1976) and the General Provisions of the Title I Audit Hearing Board issued on March 1, 1976. Future proceedings in all cases pending before the Title I Audit Hearing Board will be governed by these regulations.

The jurisdiction of the Education Appeal Board will extend to final audit determination letters issued by authorized OE officials on or after March 1, 1979. The Board also will assume jurisdiction over appeals from final audit determination letters issued by authorized OE officials prior to March 1, 1979, in Title I programs. The Board, under limited circumstances, may assume jurisdiction over appeals from final audit determination letters issued by authorized officials prior to March 1, 1979, in other State-administered programs for which no right of appeal existed. In deciding whether to review an appeal in a State-administered program other than Title I, the Board will consider such factors as (1) the dollar amount involved in the audit appeal, (2) the precedential value of the case, and (3) the workload of the Board.

The Education Appeal Board will also have jurisdiction over withholding, termination, and cease and desist actions initiated by authorized OE officials on or after March 1, 1979. Termination hearings in OE discretionary grant programs are transferred from the jurisdiction of the Departmental Grant Appeals Board to the jurisdiction of the Education Appeal Board by these regulations, and will no longer be conducted by the Departmental Grant Appeals Board.

However, some determinations that affect OE programs remain within the jurisdiction of the Departmental Grant Appeals Board. For example, cost disallowances in OE discretionary grant programs—other than discretionary grant programs conducted under the Bilingual Education Act or the Emergency School Aid Act—are within the jurisdiction of the Departmental Grant Appeals Board. Disputes involving indirect cost rates or fringe benefits are also within the jurisdiction of the Departmental Grant Appeals Board rather than the Education Appeal Board (see 45 CFR 16.5(a)(5)).

Since these regulations are published in interim final form, the public will have an opportunity to submit comments on the regulations. Comments received within 60 days of the date of publication of these regulations will be considered in developing the regulations in final form.

D. Citation of Legal Authority

As required by section 431(a) of the General Education Provisions Act, as amended (20 U.S.C. 1232(a)), a citation of statutory authority for each substantive provision has been placed in parentheses immediately following the text of the provision. If all the provisions of a subpart are supported by the same citation, the citation is given at the end of the subpart.

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: April 26, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 14, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

PART 100e—EDUCATION APPEAL BOARD

Subpart A—General

Sec.

100e.1 Purpose.
100e.2 Scope.
100e.3 Definitions.
100e.4 Board Membership.
100e.5 Panels.
100e.6 Eligibility for review.
100e.7 Choice of administrative review.
100e.8 Exhaustion of remedies.
100e.9–100e.10 [Reserved]

Subpart B—Final Audit Determinations

Written Notice

100e.11 Written notice of a final audit determination.
100e.12 Review of the written notice.

Application for Review

100e.13 Filing an application for review.
100e.14 Acceptance of the application for review.
100e.15 Rejection of the application for review.

Burden of Proof

100e.16 Burden of proof.
100e.17–100e.20 [Reserved]

Subpart C—Withholding and Termination

Written Notice

100e.21 Written notice of an intent to withhold or terminate funds.

Application for a Withholding or Termination Hearing

100e.22 Filing an application for a withholding or termination hearing.
100e.23 Acceptance of the application.
100e.24 Rejection of the application.

Suspension of Payments

100e.25 Written notice of an intent to suspend funds.
100e.26 Request to show cause.
100e.27 Show cause hearing.
100e.28 Decision.
100e.29–100e.30 [Reserved]

Subpart D—Cease and Desist

Written Notice

100e.31 Written notice of a cease and desist complaint.

Hearing

100e.32 Right to appear at the cease and desist hearing.
100e.33 Opportunity to show cause.

Order

100e.34 Written report and order.
100e.35–100e.40 [Reserved]

Subpart E—Practice and Procedure

General Rules

100e.41 Applicability of this subpart.
100e.42 Applicability of other laws.
100e.43 Intervention.
100e.44 Representation by counsel.
100e.45 Filing of documents.
100e.46 Availability of decisions.
100e.47 Communications.
100e.48 Transcripts.
100e.49 Subpoenas.
100e.50 Exchange of information.
100e.51 Evidence.
100e.52 Panel decisions.
100e.53 Intermediate review.
100e.54–100e.60 [Reserved]

Panel Proceedings

100e.61 Authority and responsibilities of Panels.
100e.62 Conferences.
100e.63–100e.70 [Reserved]

Presentation of Case

100e.71 Written submissions normally required.
100e.72 Notice of an evidentiary hearing or oral proceeding.
100e.73 Conduct of an evidentiary hearing or oral proceeding.
100e.74–100e.80 [Reserved]

Subpart F—Decisions and Orders

Final Audit Determinations, Withholdings, and Terminations

100e.81 The Panel's decision.
100e.82 Opportunity to comment on the Panel's decision.
100e.83 The Commissioner's decision.
100e.84 Collection.

Cease and Desist

100e.85 The cease and desist report and order.
100e.86–100e.90 [Reserved]
Appendix A—State-administered Programs within the Audit Appeal Jurisdiction of the Education Appeal Board.
Appendix B—Text of the General Education Provisions Act, sections 451–456 (20 U.S.C. 1234).

Authority: Sec. 1232, Education Amendments of 1978 (20 U.S.C. 1234)

Education Appeal Board

Subpart A—General

§ 100e.1 Purpose.

The purpose of these regulations is to establish the Education Appeal Board in the Office of Education (OE) in accordance with section 451 of the General Education Provisions Act, and to set forth rules for the conduct of proceedings before the Board.

(20 U.S.C. 1234(a), (e))

§ 100e.2 Scope.

The Board has jurisdiction to—

(a) Review final audit determinations concerning programs that are—

(1) State-administered programs listed in Appendix A (see appendix A);

(2) Conducted under the Bilingual Education Act; or

(3) Conducted under the Emergency School Aid Act.

(b) Conduct withholding or termination hearings initiated by an authorized OE official in connection with an applicable program (see § 100e.3 (*Definitions*) for the definition of applicable program);

(c) Conduct cease and desist proceedings initiated by an authorized OE official in connection with an applicable program (see § 100e.3 (*Definitions*) for the definition of applicable program); and

(d) Conduct other proceedings as designated by the Commissioner of Education (the Commissioner) in the **Federal Register.**

(20 U.S.C. 1234(a))

§ 100e.3 Definitions.

"Appellant" means a State or local educational agency or other recipient that requests—

(a) A review of a final audit determination; or

(b) A withholding or termination hearing.

"Applicable program" means any program administered by an authorized OE official. This definition—

(a) Applies only in the context of withholding or termination hearings and cease and desist hearings;

(b) Includes programs that have been delegated to OE, such as the Emergency School Aid Act;

(c) Does not include the following student assistance programs authorized by Title IV and governed by section 497A of the Higher Education Act of 1965:

(1) National Direct Student Loan Programs.

(2) College Work-Study Programs.

(3) Supplemental Educational Opportunity Grant Programs.

(4) Guaranteed Student Loan Programs.

(5) Basic Educational Opportunity Grant Programs.

"Authorized OE official" means—

(a) The Commissioner; or

(b) A person employed by OE who has been designated to act under the Commissioner's authority.

"Board" means the Education Appeal Board of OE.

"Board Chairperson" means the Board member designated by the Secretary of the Department of Health, Education, and Welfare to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized OE official disallowing expenditures made by a recipient.

"Hearing" means any review proceeding conducted by the Board. A hearing may include a conference, a review of written submissions, an oral proceeding, or a full evidentiary hearing.

"Panel" means an Education Appeal Board Panel (see § 100e.5 (*Panels*)).

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized OE official who issued the final audit determination being appealed, the notice of an intent to withhold or terminate funds, or the cease and desist complaint; and

(c) Any person, group, or agency that files an acceptable application to intervene (see § 100e.43 (*Intervention*)).

"Recipient" means the named party or entity that receives Federal funds under an OE grant or cooperative agreement.

This definition does not extend to procurement contracts.

"Suspension" means temporarily stopping payment of Federal funds to a recipient and stopping the recipient's authority to charge costs to a program, pending the outcome of a withholding or termination hearing.

"Termination" means ending the payment of Federal funds to a recipient and ending the recipient's authority to charge costs to a program.

"Withholding" means stopping payment of Federal funds to a recipient and stopping the recipient's authority to charge costs to a program, for the period of time the recipient is in violation of a requirement.

§ 100e.4 Board membership.

The Board consists of 15 to 30 members. Not more than one-third of the Board members may be employees of the Department of Health, Education, and Welfare.

(20 U.S.C. 1234(c))

§ 100e.5 Panels

(a)(1) For each proceeding before the Board, the Board Chairperson selects a Panel, consisting of at least three members of the Board, and designates one of the Panel members as Panel Chairperson.

(2) The Board Chairperson may designate the entire Board to sit as a Panel for any case of class of cases.

(b) A majority of the members of a Panel must be members of the Board who, except for their service with the Board, are not employees of the Federal Government.

(c) No Board member who is a party to, or has or has had any responsibility for the particular matter assigned to a Panel, may serve on that Panel.

(20 U.S.C. 1234(d))

§ 100e.6 Eligibility for review.

(a) Review under these regulations is open to a recipient that receives a written notice of—

(1) A final audit determination;

(2) An intent to withhold or terminate funds;

(3) A cease and desist complaint; or

(4) Any other proceeding designated by the Commissioner.

(b) The recipient must have received the written notice from an authorized OE official.

(20 U.S.C. 1234(a))

§ 100e.7 Exhaustion of remedies.

If a recipient receives a written notice referred to in § 100e.6 *(Eligibility for review)* and brings a lawsuit to challenge that notice without first making and completing a timely and proper administrative appeal, the recipient has failed to exhaust administrative remedies and the Commissioner may move for dismissal of the lawsuit on that basis.

§§ 100e.8–100e.10 [Reserved]

Subpart B—Final Audit Determinations

Written Notice

§ 100e.11 Written notice of a final audit determination.

(a) An authorized OE official may issue written notice of a final audit determination to a recipient in connection with the following:

(1) State-administered programs listed in appendix A (see appendix A).

(2) Programs administered under the Bilingual Education Act.

(3) Programs administered under the Emergency School Aid Act.

(b) The written notice—

(1) contains a listing of the disallowed expenditures made by the recipient;

(2) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond—for example, by referring to the relevant parts of a separate document, such as an audit report;

(3) Advises the recipient that it must repay the disallowed expenditures to OE or within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination; and

(4) Is sent to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234a(a))

§ 100e.12 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination after an application for review is received (see § 100e.13 [*Filing an application for review*]) to insure that the written notice meets the requirements of § 100e.11(b) *(Written notice of a final audit determination).*

(b) If the Board Chairperson decides that the written notice does not meet the requirements of § 100e.11(b) *(Written notice of a final audit determination),* the Board Chairperson returns the determination to the official who issued it, so that the determination may be properly modified.

(c) If the official makes the appropriate modification and the recipient wishes to pursue its appeal to the Board, the recipient shall amend its application for review within 30 calendar days of the date it receives the modification.

(20 U.S.C. 1234a(b))

Application for Review

§ 100e.13 Filing an application for review.

(a) An appellant seeking review of a final audit determination by the Board shall file a written application for review with the Board Chairperson.

(b) In the application for review, the appellant shall attach a copy of the written determination, and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(c) The appellant shall file the application for review within 30 calendar days after the date it receives the written notice of the final audit determination, unless the Board Chairperson grants an extension of time for a good reason.

§ 100e.14 Acceptance of the application for review.

(a) If the Board Chairperson decides that an application for review satisfies the requirements of § 100e.13 *(Filing an application for review),* the Board Chairperson issues a notice of the acceptance of the application to the appellant and the authorized OE official who issued the final audit determination.

(b) The Board Chairperson publishes a notice of acceptance of the application in the **Federal Register** prior to the scheduling of initial proceedings.

(c) If an acceptable application is filed, the Board Chairperson refers the appeal to a Panel, arranges for the scheduling of initial proceedings, and forwards to the Panel and parties an initial hearing record that includes—

(1) The final audit determination;

(2) The application for review; and

(3) Other relevant documents, such as audit reports.

§ 100e.15 Rejection of the application for review.

(a) If the Board Chairperson determines that an application for review does not satisfy the requirements of § 100e.13 *(Filing an application for review),* the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application for review is rejected two times, OE takes appropriate administrative action to

collect the expenditures disallowed in the final audit determination.

(20 U.S.C. 1234a(b))

Burden of Proof

§ 100e.16 Burden of proof.

The appellant shall present its case first and has the burden of proving the allowability of the expenditures challenged in the final audit determination.

(20 U.S.C. 1234a(b))

§ 100e.17–100e.20 [Reserved]

Subpart C—Withholding and Termination

Written Notice

§ 100e.21 Written notice of an intent to withhold or terminate funds.

(a) An authorized OE official may issue a written notice of an intent to withhold or terminate funds to a recipient under an applicable program.

(b) The written notice—

(1) States the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) Cites the requirement that is the basis for the alleged failure to comply;

(3) Advises the recipient that it may request a hearing before the Board; and

(4) Is sent to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234b (a), (b))

Application for a Withholding or Termination Hearing

§ 100e.22 Filing an application for a withholding or termination hearing.

(a) An appellant seeking a withholding or termination hearing before the Board shall file a written application with the Board Chairperson within 30 calendar days after the date it receives the written notice.

(b) In the application for a withholding or termination hearing, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

§ 100e.23 Acceptance of the application.

(a) If an application is filed that meets the requirements of § 100e.22 (*Filing an application for a withholding or termination hearing*), the Board Chairperson issues a notice of the acceptance of the application to the appellant and the authorized OE official who issued the notice of the intent to withhold or terminate.

(b) The Board Chairperson publishes a notice of acceptance of the application in the **Federal Register** prior to the scheduling of initial proceedings.

(c) If an acceptable application is filed, the Board Chairperson refers the appeal to a Panel, arranges for the scheduling of a hearing, and forwards to the Panel and the parties an initial hearing record that includes—

(1) The written notice;

(2) The application for a hearing; and

(3) Other relevant documents.

§ 100e.24 Rejection of the application.

(a) If the Board Chairperson determines that an application for a withholding or termination hearing does not satisfy the requirements of § 100e.22 (*Filing an application for a withholding or termination hearing*), the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected two times, OE takes appropriate administrative action to withhold or terminate funds.

(20 U.S.C. 1234b(b))

Suspension of Payments

§ 100e.25 Written notice of an intent to suspend funds.

(a) An authorized OE official may issue to the recipient a written notice of an intent to suspend funds during the course of the withholding or termination hearing.

(b) The written notice—

(1) Indicates the reasons for the suspension;

(2) Advises the recipient that the suspension becomes effective 10 calendar days after the date the recipient receives the written notice, unless within those 10 calendar days the recipient requests an opportunity to show cause why payments should not be suspended; and

(3) Is sent by certified mail with return receipt requested.

§ 100e.26 Request to show cause.

A recipient seeking an opportunity to show cause why payments should not be suspended shall submit a written request for a show cause hearing to the authorized OE official who issued the written notice.

§ 100e.27 Show cause hearing.

(a) If a show cause hearing is requested, the authorized OE official—

(1) Notifies the recipient of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee does not have to be a member of the Board.

(b) At the show cause hearing, the designee considers such matters as—

(1) The necessity for the suspension of payments;

(2) Possible factual errors in the written notice of the intent to withhold or terminate;

(3) The nature of the violation charged in the written notice of the intent to withhold or terminate; and

(4) Hardship resulting from the suspension.

§ 100e.28 Decision.

(a) The designee who conducts the show cause hearing—

(1) Decides whether there should be a suspension during the course of the withholding or termination hearing; and

(2) Issues a written statement of findings.

(b) The designee's decision is not subject to review by the Commissioner.

(20 U.S.C. 1234(c))

§§ 100e.29–100e.30 [Reserved]

Subpart D—Cease and Desist

Written Notice

§ 100e.31 Written notice of a cease and desist complaint.

(a) An authorized OE official may issue a written notice of a cease and desist complaint to a recipient receiving funds under an applicable program. The cease and desist proceeding may be used as an alternative to a withholding or termination hearing.

(b) The written notice—

(1) States the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) Cites the requirement that is the basis for the alleged failure to comply;

(3) Contains a notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice; and

(4) Is sent to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234c(a))

Hearing

§ 100e.32 Right to appear at the cease and desist hearing.

The recipient has the right to appear at the cease and desist hearing, which is

held before a Panel of the Board on the date specified in the complaint.

§ 100e.33 Opportunity to show cause.

At the hearing the recipient shall have the opportunity to present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(20 U.S.C. 1234c(b))

Order

§ 100e.34 Written report and order.

If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

(1) Makes a written report stating its findings of fact; and

(2) Issues a cease and desist order.

(20 U.S.C. 1234c(c))

§§ 100e.35–100e.40 [Reserved]

Supart E—Practice and Procedure

General Rules

§ 100e.41 Applicability of this subpart.

This subpart applies only to proceedings before the Board.

§ 100e.42 Applicability of other laws.

(a) Sections 554, 556, and 557 of the Administrative Procedure Act, 5 U.S.C., apply to proceedings before the Board with respect to—

(1) The recipient of oral or written testimony;

(2) Notice of the issues to be considered;

(3) The right to counsel;

(4) Intervention of third parties;

(5) Transcripts of proceedings; and

(6) Other matters that are necessary to carry out the functions of the Board.

(b) Other provisions of the Administrative Procedure Act and the Federal Rules of Civil Procedure do not apply to proceedings before the Board.

§ 100e.43 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about the final audit determination, an intent to withhold or terminate funds, or a cease and desist complaint before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene shall contain—

(1) A statement of the applicant's interest; and

(2) A summary of the relevant information.

(c)(1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether to approve the application to intervene.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether to approve the application to intervene.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

§ 100e.44 Representation by counsel.

Parties may be represented by counsel.

§ 100e.45 Filing of documents.

(a) An applicant shall file with the Board Chairperson one copy of an application for review or to intervene.

(b) Once a Panel has been assigned, parties shall—

(1) File with the Board Chairperson five copies of all written motions, briefs—including cited materials that are not readily available—and other documents; and

(2) Provide a copy to each of the other parties to the proceedings.

(c) Parties have 25 calendar days from the date of receipt of any motion to file a response with the Board Chairperson, unless the Panel Chairperson grants an extension for a good reason.

(d) The date of filing is the date when the document is postmarked or hand-delivered to the Office of the Board Chairperson. If a scheduled filing date occurs on a Saturday, Sunday, or Federal holiday, the next business day is the date of filing.

§ 100e.46 Availability of decisions.

The Board Chairperson maintains the files of the Board and makes available to the public upon request all decisions of the Board.

§ 100e.47 Communications.

No party shall communicate with the Panel or Board Chairperson on matters under review, except minor procedural matters, unless all parties to the case are given—

(a) Timely and adequate notice of the communication; and

(b) Reasonable opportunity to respond.

§ 100e.48 Transcripts.

The Board Chairperson arranges for the preparation of transcripts of all proceedings and makes copies available to the Panel members and to the parties. The original transcript is made part of the record and retained in the office of the Board Chairperson.

§ 100e.49 Subpoenas.

(a) The Panel does not have authority to issue subpoenas.

(b) If requested by the Panel, OE provides available personnel from the Department of Health, Education, and Welfare who have knowledge about the matter under review, and the recipient shall provide available personnel who have knowledge about the matter under review, for oral or written examination.

§ 100e.50 Exchange of information.

There is no discovery as conducted under the Federal Rules of Civil Procedure, but the parties are encouraged to exchange relevant documents or information.

§ 100e.51 Evidence.

The Panel accepts any evidence that the Panel finds is relevant and material to the proceedings. Parties may object to evidence they consider to be irrelevant, immaterial, or unduly repetitious.

§ 100e.52 Panel decisions.

Decisions of the Panel are made by a majority of the Panel members.

§ 100e.53 Intermediate review.

The parties may not file comments with the Commissioner regarding matters under review or any rulings of a Panel until the Panel has reached its decision. (See § 100e.81 (*The Panel's decision*)).

(20 U.S.C. 1234(e))

§§ 100e.54–100e.60 [Reserved]

Panel Proceedings

§ 100e.61 Authority and responsibilities of Panels.

(a) The Panel may regulate the course of the proceedings and the conduct of the parties during the proceedings. The Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay and to maintain order, including the following:

(1) The Panel may hold conferences or other types of proceedings it feels appropriate to clarify, simplify, or define the issues, or to consider other matters that may aid in the disposition of an appeal.

(2) The Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(3) The Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(4) The Panel may direct the parties to exchange evidence and lists of witnesses and send copies to the Panel.

(5) The Panel may rule on motions and other issues at any stage of the proceedings.

(6) The Panel may establish rules for media coverage of the proceedings.

(7) The Panel may examine witnesses.

(8) The Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(9) The Panel may set the time limits for submission of written documents.

(10) The Panel limits the scope of any exchange of information (see § 100e.50 (*Exchange of information*)) to matters relevant to the issues in the appeal.

(11) The Panel may end an appeal and issue a decision against a party if that party does not meet the time limits set by the Panel or otherwise delays the appeal.

(b) The Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

§ 100e.62 Conferences.

(a) A party may request a conference with the Panel members and other parties except in the case of a show cause proceeding. The Panel Chairperson decides whether a conference is necessary. At a conference, the Panel and the parties may consider such subjects as—

(1) Narrowing and clarifying issues;

(2) Assisting the parties in reaching agreements and stipulations;

(3) Clarifying the positions of the parties;

(4) Presenting the direct case of the parties in writing, in whole or in part, or conducting an oral proceeding or evidentiary hearing;

(5) Setting the dates for the exchange of written documents, the receipt of comments from the parties on the need for an evidentiary hearing or oral argument, and further proceedings before the Panel; and

(6) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimates of time for each presentation.

(b) At a conference the parties shall be prepared to respond to the subjects listed in paragraph (a).

(c) Following a conference the Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(20 U.S.C. 1234(e))

§§ 100e.63–100e.70 [Reserved]

Presentation of Case

§ 100e.71 Written submissions normally required.

The parties shall present their positions through briefs and the submission of other documents, unless the Panel determines that an evidentiary hearing or oral argument is also needed to clarify the positions of the parties.

§ 100e.72 Notice of an evidentiary hearing or oral proceeding.

If the Panel decides that an evidentiary hearing or oral proceeding is necessary, the Panel Chairperson sends written notice of this decisison to all parties. The notice states the time and place of the proceeding and the issues to be considered.

§ 100e.73 Conduct of an evidentiary hearing or oral proceeding.

An evidentiary hearing or oral proceeding may be conducted by two Panel members.

(20 U.S.C. 1234(e))

§§ 100e.74–100e.80 [Reserved]

Subpart F—Decisions and Orders

Final Audit Determinations, Withholdings and Terminations

§ 100e.81 The Panel's decision.

The Panel issues a decision in the appeal from the final audit determination or the intent to withhold or terminate funds. The Board Chairperson submits the Panel's decision to the Commissioner and sends a copy to each party by certified mail with return receipt requested.

§ 100e.82 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision with the Commissioner within 25 calendar days of the date the party receives the Panel's decision. The Board Chairperson may extend the period for comments if a party gives a good reason for the extension.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may submit responsive comments and recommendations within 10 calendar days of the date the party receives the comments and recommendations.

§ 100e.83 The Commissioner's decision.

(a) The Panel's decision becomes the final decision of the Commissioner 60 calendar days after the date the recipient receives the Panel's decision, unless the Commissioner modifies or sets aside the Panel's decision as clearly erroneous, or the recipient files a petition for judicial review, within those 60 days. (See Appendix B, section 455 of the General Education Provisions Act for a discussion of judicial review.)

(b) If the Commissioner modifies or sets aside the Panel's decision within the 60 days, the Commissioner issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Commissioner's final decision 60 calendar days after it is issued.

(c) The Board Chairperson sends a copy of the Commissioner's final decision and statement of reasons, or a notice that the Panel's decision has become the Commissioner's final decision, to the Panel and to each of the parties.

(d) The final decision of the Commissioner is the final decision of the Department of Health, Education, and Welfare.

(20 U.S.C. 1234a(d), 1234b(d), 1234d)

§ 100e.84 Collection.

(a) If the final decision of the Commissioner sustains the final audit determination or the intent to withhold or terminate funds, OE takes immediate steps to collect the debt or withhold or terminate funds.

(b) If a refund is required, the appellant shall take the necessary steps to repay OE on a timely basis.

Cease and Desist

§ 100e.85 The cease and desist report and order.

(a) If the Panel issues a cease and desist report and order (described in § 100e.34 *(Written report and order)*), the Board Chairperson sends the report and order to the SEA or LEA by certified mail with return receipt requested.

(b) The order becomes final 60 calendar days after the date the order is received by the SEA or LEA, unless the SEA or LEA files a petition for judicial review within those 60 days. (See Appendix B, section 455 of the General Education Provisions Act for a discussion of judicial review.) The order is not subject to review by the Commissioner.

(20 U.S.C. 1234c(d), 1234d)

§§ 100e.86–100e 90 [Reserved]

Appendix A

State-Administered Programs within the Audit Appeal Jurisdiction of the Education Appeal Board: (a) Programs referred to in section 452 of the General Education Provisions Act (20 U.S.C. 1234a):

(1) Financial assistance to State and local educational agencies under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701).

(2) Financial assistance for school library resources, textbooks and other instructional materials under title II of the Elementary and Secondary Education Act of 1965 (as in effect September 30, 1978) (20 U.S.C. 821).

(3) State basic skills improvement programs under title II–B of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2901).

(4) Supplementary educational centers and services; guidance, counseling, and testing under title III of the Elementary and Secondary Education Act of 1965 (as in effect September 30, 1978) (20 U.S.C. 841).

(5) Instructional materials and school library resources; improvement in local educational practices; and guidance, counseling, and testing under title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 1801).

(6) Community schools programs under title VIII of the Elementary and Secondary Education Act of 1965 (except sections 809-813) (20 U.S.C. 3281).

(7) Gifted and talented children programs under title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3311).

(8) Assistance to States for education of handicapped children under part B of the Education of the Handicapped Act (20 U.S.C. 1411).

(9) State adult education programs under the Adult Education Act (except sections 309, 314, and 318) (20 U.S.C. 1201).

(10) Financial assistance for strengthening instruction in science, mathematics, modern foreign languages, and other critical subjects under title III–A of the National Defense Education Act of 1958 (except section 305) (20 U.S.C. 441).

(11) Programs under the Career Education Incentive Act (except sections 10, 11, and 12) (20 U.S.C. 2601).

(12) Programs under title II of the Indochina Refugee Children's Assistance Act (20 U.S.C. 1211b).

(13) Programs under title VI, part A of the Higher Education Act (20 U.S.C. 1121).

(14) Educational information centers programs under section 418 A and B of the Higher Education Act (20 U.S.C. 1070d–2).

(b) Programs designated by the Commissioner as being within the audit appeal jurisdiction of the Education Appeal Board:

(1) Vocational education programs under the Vocational Education Act of 1963: part A of title I (State vocational education programs) (20 U.S.C. 2301).

(2) Community service and continuing education programs under part A of title I of the Higher Education Act of 1965 (except sections 106, 110, and 111) (20 U.S.C. 1001).

(3) Programs under the Library Services and Construction Act (20 U.S.C. 351).

APPENDIX B.—GENERAL EDUCATION PROVISIONS ACT

"Part E—Enforcement

"Education Appeal Board

"Sec. 451. (a) The Commissioner shall establish in the Office of Education an Education Appeal Board (hereinafter in this part referred to as the 'Board') the functions of which shall be to conduct—

"(1) audit appeal hearings pursuant to section 452 of this Act,

"(2) withholding hearings pursuant to section 453 of this Act,

"(3) cease and desist hearings pursuant to section 454 of this Act, and

"(4) other proceedings designated by the Commissioner.

"(b) The members of the Board shall be designated by the Secretary, in consultation with the Assistant Secretary for Education and the Commissioner, and may include individuals who are officers or employees of the United States, as well as individuals who are not full-time employees of the Federal Government.

"(c) The Board shall be composed of not less than fifteen nor more than thirty members, of whom no more than one-third shall be officers or employees of the Department. The Secretary shall designate one of the members of the Board to be the Chairman.

"(d) for the purposes of conducting hearings as provided in subsection (a) the Chairman may appoint hearing panels of not less than three members of the Board, or the Chairman may designate the entire Board to sit as a panel for any case or class of cases. On any such panel—

"(1) the majority of members shall not be individuals in the full-time employment of the Federal Government,

"(2) the membership shall not include any individual who is a party to, or has any responsibility for, any particular matter assigned to that panel, and

"(3) the Chairman of the Board shall designate one member of each such panel to be the presiding officer.

"(e) The proceedings of the Board shall be conducted according to such rules as the Commissioner shall prescribe by regulation in conformance with the rules relating to hearings in title 5, United States Code, sections 554, 556, and 557 respecting—

"(1) the receipt of oral or written testimony,

"(2) notice of the issues to be considered,

"(3) the right to counsel,

"(4) intervention of third parties,

"(5) transcripts of proceedings, and

"(6) such other matters as may be necessary to carry out the functions of the Board.

"(f) If there has been established within the Department of Health, Education, and Welfare an appeal board which the Commissioner determines is capable of carrying out the functions of the Board established under this section, he may, with the approval of the Secretary, designate such Department appeal board to carry out the functions of this section.

"Audit determinations

"Sec. 452. (a) Whenever the Commissioner determines that an expenditure not allowable under a program listed in section 435(a) of this title, or conducted under title VI and title VII of the Elementary and Secondary Education Act of 1965 or under the Emergency School Aid Act, has been made by a State or by a local educational agency, or that a State or local educational agency has otherwise failed to discharge its obligation to account for funds under any such program, the Commissioner shall give such State or local educational agency written notice of a final audit determination, and he shall at the same time notify such State or agency of its right to have such determination reviewed by the Board.

"(b) A State or a local educational agency that has received written notice of a final audit determination and that desires to have such determination reviewed by the Board shall submit to the Board an application for review not later than thirty days after receipt of notification of the final audit determination. The application for review shall be in the form and contain the information specified by the Board. The Board shall return to the Commissioner for such action as he deems appropriate any final audit determination which, in the judgment of the Board, contains insufficient detail to identify with particularity those expenditures which are not allowable. Unless the Board determines that a final audit determination lacks sufficient detail, the burden shall be upon the State or local educational agency to demonstrate the allowability of expenditures disallowed in the final audit determination.

"(c) When a State or a local educational agency has submitted an application for review with respect to a final audit determination, no action shall be taken by the Commissioner to collect the amount determined to be owing until the Board has issued a final decision upholding the audit determination as to all or any part of such amount. The filing of such an application shall not affect the authority of the Commissioner to take any other adverse action against such State or agency under this part.

"(d) A decision of the Board with respect to an application for review under this section shall become final unless within sixty days following receipt by the State or by the local educational agency of written notice of the decision—

"(1) the Commissioner for good cause shown, modifies or sets aside the decision, in whole or in part, in which case the decision shall become final sixty days after such action by the Commissioner, or

"(2) the State or the local educational agency files a petition for judicial review as provided in section 455 of this Act.

"(e) A final audit determination by the Commissioner under subsection (a) with respect to which review has not been requested pursuant to subsection (b), or a

final decision of the Board under this section upholding a final audit determination against a State or a local educational agency shall establish the amount of the audit determination as a claim of the United States which the State or the local educational agency shall be required to pay to the United States and which may be collected by the Commissioner in accordance with the Federal Claims Collection Act of 1966.

"(f)(1) Notwithstanding any other provision of law, the Commissioner may, subject to the notice requirements of paragraph (2), compromise any claim established under this section for which the initial determination was found to be not in excess of $50,000, where the Commissioner determines that (A) the collection of any or all of the amount thereof would not be practical or in the public interest, and (B) the practice which resulted in the claim has been corrected and will not recur.

"(2) Not less than forty-five days prior to the exercise of the authority to compromise a claim pursuant to paragraph (1), the Commissioner shall publish in the Federal Register a notice of his intention to do so. Such notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

"(g) No State and no local educational agency shall be liable to refund any amount expended under an applicable program which is determined to be unauthorized by law if that expenditure was made more than five years before that State or local educational agency is given the notice required by subsection (a).

"(h) The Secretary shall employ, assign, or transfer sufficient professional personnel to ensure that all matters brought before the Board may be dealt with in a timely manner.

"Withholdings

"Sec. 453. (a) Whenever the Commissioner has reason to believe that any recipient of funds under any applicable program (other than a program to which regulations promulgated under section 497A of the Higher Education Act of 1965 apply), has failed to comply substantially with any requirement of law applicable to such funds, he shall notify such recipient in writing of his intention to withhold, in whole or in part, further payments under such program, including payments for State or local administrative costs, until he is satisfied that the recipient no longer fails to comply with such assurances or other terms.

"(b) The notification required under subsection (a) shall state (1) the facts upon which the Commissioner has based his belief and (2) a notice of opportunity for a hearing to be held on a date at least thirty days after the notification has been sent to the recipient. The hearing shall be held before the Board and shall be conducted in accordance with rules prescribed pursuant to section 451(e) of this Act.

"(c) Pending the outcome of any proceeding initiated under this section, the Commissioner may suspend payments to such a recipient, after such recipient has been given reasonable notice and opportunity to show cause why such action should not be taken.

"(d) The decision of the Board in any proceeding brought under this section shall become final unless within sixty days following receipt by the recipient of written notice of the decision—

"(1) the Commissioner for good cause shown, modifies, or sets aside the decision in whole or in part, in which case the decision as modified shall become final sixty days after such action by the Commissioner, or

"(2) the recipient files a petition for judicial review as provided in section 455 of this Act.

"Cease and desist orders

"Sec. 451. (a) Whenever the Commissioner has reason to believe that any State or any local educational agency that receives funds under any applicable program has failed to comply substantially with any requirement of law applicable to such funds, in lieu of proceeding under section 453 of this Act, the Commissioner may issue and cause to be served upon such State or upon such local educational agency a complaint (1) stating the charges upon which his belief is based, and (2) containing a notice of a hearing to be held before the Board on a date at least thirty days after the service of that complaint.

"(b) The State or the local educational agency upon which such a complaint has been served shall have the right to appear before the Board on the date specified and to show cause why an order should not be entered by the Board requiring such State or such local educational agency to cease and desist from the violation of law charged in the complaint.

"(c) The testimony in any hearing held under this section shall be reduced to writing and filed with the Board. If upon that hearing the Board shall be of the opinion that the State or the local educational agency is in violation of any requirement of law as charged in the complaint, it shall make a report in writing stating its findings of fact and shall issue and cause to be served upon the State or the local educational agency an order requiring the State or the local educational agency to cease and desist from the practice, policy, or procedure which resulted in such violation.

"(d) The report and order of the Board shall become final on the sixtieth day following the date upon which the order of the Board was served upon the State or the local educational agency unless before that day the State or local educational agency files a petition for judicial review as provided in section 455 of this Act.

"(e) A final order of the Board under this section may be enforced, as determined by the Commissioner, by—

"(1) the withholding of any portion of the amount payable, including amounts payable for administrative costs, under the affected program to the State or the local educational agency against which the final order has been issued, or

"(2) the Commissioner certifying the facts to the Attorney General whose duty it shall be to cause appropriate proceeding to be brought for the enforcement of the order.

"Judicial review

"Sec. 455. (a) Any recipient of funds under an applicable program that would be adversely affected by any action under section 452, 453, or 454 of this Act, and any State entitled to receive funds under a program listed in section 435(a) of this title whose application therefor has been disapproved by the Commissioner, shall be entitled to judicial review of such action in accordance with the provision of this section.

"(b) Any State, local educational agency, or other recipient entitled to judicial review under subsection (a) that desires such review of any action by the Commissioner or the Board qualifying for review under this section shall, within sixty days of that action, file with the United States Court of Appeals for the circuit in which that State, local educational agency, or other recipient is located, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which the action was based, as provided in section 2112 of title 28, United States Code.

"(c) The findings of fact by the Board, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Board to take further evidence, and the Board may thereupon make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(d) The court shall have jurisdication to affirm the action of the Board or the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1251 of title 28, United States Code.

"Use of recovered funds

"Sec. 456. (a) Whenever the Commissioner has recovered funds following a final audit determination with respect to any applicable program, he may consider those funds to be additional funds available for that program and may arrange to repay to the State or the local agency affected by that action not to exceed 75 percent of those funds upon his determination that—

"(1) the practices or procedures of the State or local agency that resulted in the audit determination have been corrected, and that the State or the local agency is in all other respects in compliance with the requirement of that program;

"(2) the State or the local agency has submitted to the Commissioner a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

"(3) the use of those funds in accordance with that plan would serve to achieve the

purposes of the program under which the funds were originally granted.

"(b) Any payments by the Commissioner under this section shall be subject to such other conditions as the Commissioner deems necessary to accomplish the purposes of the affected programs, including—

"(1) the submission of periodic reports on the use of funds provided under this section; and

"(2) consultation by the State or local agency with parents or representatives of the population that will benefit from the payments.

"(c) Notwithstanding any other provisions of law, the Commissioner may authorize amounts made available under this section to remain available for expenditure, subject to such conditions as he deems appropriate, for up to three fiscal years following the fiscal year in which the audit determination referred to in subsection (a) was made.

"(d) At least thirty days prior to entering into an arrangement under this section, the Commissioner shall publish in the **Federal Register** a notice of his intent to do so and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least thirty days to submit comments to the Commissioner regarding the proposed arrangement.".

[FR Doc. 79-15914 Filed 5-24-79; 8:45 am]

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Friday
May 25, 1979

Part III

Department of Health, Education, and Welfare

Office of Education

Women's Educational Equity Act Program Provisions

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 160f]

Women's Educational Equity Act Program

AGENCY: Office of Education, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commissioner of Education proposes to amend the regulations of the Women's Educational Equity Act (WEEA) Program to reflect the substantial changes in the reauthorization of the Act by the Education Amendments of 1978. These proposed rules apply to fiscal year 1980 and would affect the funding of projects beginning in 1980–81. The proposed regulations establish criteria, priorities, and requirements that govern the award of grants and contracts under the program.

The proposed regulations also reflect a long-range strategy to ensure the most effective use of the funds available to promote educational equity for women and to meet the requirements of Title IX of the Education Amendments of 1972.

DATES: Comments must be received on or before (60 days after publication in the **Federal Register**).

Public meetings will be held in each of the ten regions on June 20, 1979. The time for these meetings is—1:00 p.m.–5:00 p.m.; 7:00 p.m.–9:00 p.m.

ADDRESSES: Comments should be addressed to Dr. Mary Jane Smalley, Women's Program Staff, U.S. Office of Education, (Room 2147, FOB #6) Washington, D.C. 20202. The public meetings will be held at the following locations.

Region I—Boston—Lesley College, Welch Auditorium, 29 Everett Street, Cambridge, Massachusetts.
Region II—New York—The Great Hall, Cooper Union, 7th Street and 3rd Avenue, New York, New York.
Region III—Philadelphia—University Hilton Hotel, 34th Street and Civic Center Boulevard, Philadelphia, Pennsylvania.
Region IV—Atlanta—Atlanta American, Motor Hotel, Spring Street at Carnegie Way, Atlanta, Georgia.
Region V—Chicago—Northeastern Illinois University, Commuter Center, Room 217, 5500 North St. Louis Avenue, Chicago, Illinois.
Region VI—Dallas—El Centro College, Performance Hall (Use Market St., Entrance), Main and Lamar Streets, Dallas, Texas.
Region VII—Kansas City—Kansas City Missouri Board of Education Bldg., Auditorium, 1211 McGee, Kansas City, Missouri.
Region VIII—Denver—George Washington High School, 655 South Monaco, Denver, Colorado.
Region IX—San Francisco—Downtown Community College Center, San Francisco Community District, 800 Mission Street, San Francisco, California.
Region X—Seattle—The Auditorium of the Seattle Public Library, 3rd Floor, 1000 4th Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Jane Smalley, Women's Program Staff. Telephone: (202) 245–2181.

FOR INFORMATION ON REGIONAL HEARINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.
Region II, New York, Dr. William D. Green, (212) 264–4370.
Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001
Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.
Region V, Chicago, Dr. Juliette Noone Lester, (312) 353–5215.
Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.
Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.
Region VIII, Denver, Dr. John Runkel, (303) 837–3544.
Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.
Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

SUPPLEMENTARY INFORMATION:

Background

The Women's Educational Equity Act (WEEA) Program is a discretionary program in the Office of Education. It was reauthorized by the Education Amendments of 1978 (Pub. L. 95–561) as Title IX, Part C, of the Elementary and Secondary Education Act. Its purpose is to promote educational equity for women and to provide financial assistance to enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972. The authorization is $80 million.

The Act has two very different programs. The first supports demonstration, developmental, and dissemination activities of national, statewide, or general significance. This program continues the basic policy under the current Women's Educational Equity Act of 1974. It has focused on the development of materials and model programs that (a) address the most pressing needs in the achievement of educational equity for women, and (b) can be used widely throughout the country.

If the appropriation for the Act exceeds $15 million, a new and wholly different type of program is now also authorized. It provides grants to assist projects of local significance. These grants would be directed primarily to local educational agencies (LEAs), to enable them to establish and operate projects of equal opportunities for both sexes, including activities to achieve compliance with title IX.

The two programs together represent a comprehensive strategy to provide both national leadership and local support to bring about that genuine educational equity for both sexes that is the ultimate goal of the program.

The Act authorizes activities at all levels of education: preschool, elementary, and secondary education, higher education, and adult education. The Act provides likewise for an extremely broad range of program activities: the development, evaluation, and dissemination of curricula, textbooks, and other educational materials; training of educational personnel; research and development; guidance and counseling activities; educational activities for unemployed and underemployed adult women; and new and expanded educational programs for women in vocational education, career education, physical education, and educational administration.

The law specifies that public agencies, nonprofit private agencies, organizations, and institutions—including student and community groups—and individuals are eligible for grants and contracts.

During the past three years, the WEEA Program has awarded a total of 220 single or multi-year grants and 17 contracts for a total of $21,625,000. Included in this number are 68 small grants, which are specifically authorized in the Act to support innovative approaches to educational equity.

The WEEA Program has undertaken several major national initiatives through contracts. Three have focused on technical assistance for compliance with title IX through the development of training materials and workshops at the national, regional, State, and local levels. Two other contracts responded to repeated requests to receive assistance in planning and developing proposals to address equity issues. Technical assistance materials were designed for training workshops held across the country. These materials and additional materials on title IX will soon be

available to the public through the U.S. Government Printing Office.

A third major initiative responded to a national need to establish a network center that could organize the rapidly increasing volume of information about research, materials, films, programs, and groups that focus on women's equity and then could provide the public with ready access to the information.

Finally, there is a contract to develop radio and television spots and programs as part of a public information campaign to educate women and men about the issues and problems, as well as the available opportunities, in the achievement of educational equity for women.

Changes in the Law

The reauthorized Act contains many important changes, as well as the wholly new initiative to support local projects. The major new provisions are summarized in this preamble to help readers understand the new regulations.

A. *Purpose.* The purpose of the Act has been expanded to include specific reference to assistance for compliance with Title IX of Public Law 92-318 (Prohibition of Sex Discrimination).

B. *Assistance Grants of Local Significance.* The expanded purpose in the Act is reflected through grants of local significance. The purpose of this assistance is to help grantees establish and operate programs of equal opportunities for both sexes. This may include activities to achieve compliance with title IX.

These grants, which form a new and "second tier" of the program, would go into effect only if the appropriation for the Act exceeds $15 million. Seventy-five percent of the funds of the second tier are allocated to LEAs.

These grants serve a very different purpose from the demonstration, developmental, and dissemination projects of the "first tier" (up to $15 million). Instead of funding projects of national, statewide, or general significance, these grants would provide funds to establish and operate projects of local significance for one or two years.

The proposed regulations provide that applicants may request support for a variety of projects. Projects may include activities that are required for compliance and those that represent positive efforts to achieve equity in all aspects of education.

The basis for the applicant's choice is its comprehensive plan for a process to achieve compliance and equity. The activities proposed for support must be a logical and meaningful step in that process. A WEEA grant is not expected to take an agency all the way to its ultimate goal, but the results of the project should make a significant difference for the agency.

This new program is designed to provide both the means and motivation to progress in compliance and equity. Costs of compliance are permitted. For an agency under legal or administrative enforcement, one of these grants would naturally address the changes needed for compliance.

The strategy upon which the program rests, however, is to assist agencies to make needed changes before issues of equity reach the stage at which legal action is required. These Federal grants and the other technical assistance that would be available to a grantee would serve as incentives for change.

C. *Demonstration Projects of General Significance.* Although the new Act has made a number of significant changes, one basic policy continues. It was originally called "capacity building" and later "the development of model programs and products." This policy is now articulated in the law itself, which authorizes "demonstration, developmental, and dissemination activities of national, statewide, or general significance."

The new language retains the basic thrust but, by making specific reference to demonstration and dissemination, broadens the former emphasis on development. This broadened scope is reflected in the new priorities described in these proposed regulations.

D. *Priorities.* A major change in the Act is a requirement that the Commissioner establish priorities to ensure the most effective use of the funds available. Six priorities are identified and described in the proposed regulations. The priorities identified reflect a broad programmatic strategy and are not defined narrowly by a content area, a level of education, or a single population group. The priorities are:

(1) *Demonstrations of WEEA Materials and Programs.* Under this priority, a grantee provides a demonstration phase for a WEEA model program or for materials that have just been developed, tested, and approved for dissemination by the Commissioner. The grantee uses, adapts, and obtains the additional evaluation data necessary for wide usage. Applicants obtain information about the materials and programs available for demonstration and additional field testing from the WEEA dissemination contractor.

(2) *Dissemination centers.* Under this priority, grantees will supply active linkages between the developers and users of WEEA materials and programs through regional dissemination centers.

(3) *Model programs on sex discrimination and sex bias in elementary and secondary education.* Under this priority, a grantee may develop and test model programs for equal opportunities for both sexes, including activities to achieve compliance with title IX.

(4) *Groups to receive special emphasis.* Under this priority, two groups receive special emphasis. The first group is neediest girls and women, as defined by poverty and by current or past discrimination on the basis of race, national origin, or handicap. The second group is those organizations and individuals that influence educational policy and action. Grants would enable them to obtain information and develop strategies for the achievement of educational equity.

(5) *National WEEA Program for Change.* Under this priority, several national WEEA training centers will be developed to train a cadre of WEEA Equity Leaders. Individuals receiving training would come from participating school districts.

(6) *High Risk—High Potential.* Under this priority, the Commissioner grants funds for promising but untried approaches that address some of the most difficult problems in educational equity.

These six priorities represent a comprehensive plan to make significant progress towards educational equity for girls and women in the next five years.

E. *Small grants.* The Act has raised the ceiling on small grants to $25,000 from $15,000. The provisions of the former WEEA regulations concerning small grants remain, except that recipients may also use small grants for some of the six priority areas previously described. The Commissioner announces annually whether there will be any priorities and, if so, which ones and the amount of funds allocated.

Other Changes for Program Reform

Several changes in the regulations respond to problems identified by the public, the National Advisory Council on Women's Educational Programs (NACWEP), and the Office of Education.

Certain new procedures are proposed, based on several years of administrative experience. Many other changes that would have been made on the basis of administrative experience and public comment were included in the reauthorized Act and have already been described.

A. *Emphasis on education.* Because there are few or, in some cases, no other sources of funds to address the inequities of girls and women, the WEEA Program continues to receive inquiries and applications that deal with matters outside education. The proposed regulations are more explicit about the program's limitation to promote equity in education.

A major source of confusion to many applicants is that the development of educational materials is often the most appropriate method to address many problems outside education, such as problems facing women in politics, credit, health, or the legal or judicial systems. However the WEEA Program addresses inequities in education, not problems that can be alleviated or solved by using educational materials or programs.

B. *Evaluation criteria.* The criteria for reviewing applications for grants have been revised in a number of ways. They are simpler, shorter, and more explicit. More emphasis is placed on the degree to which the needs addressed by a proposed project are central to the purpose of the Act. More weight is given both to the quality of the management plan and to the relationship between the cost of the proposed project and its probable impact. Less weight is given to the criteria on previous experience in women's educational equity of the applicant and of the proposed staff. Whereas it was important to award substantial points to these factors in 1975, when the program was first initiated, it is now difficult for new groups to compete against established groups.

There is a major change in the requirements for the development of an evaluation plan at the application stage. An applicant no longer has to present in its application a fully developed plan for evaluation. Only general information is required and judged.

If the application is recommended for funding, the applicant must develop and submit during negotiations a plan to meet the rigorous evaluation standards of the WEEA Program prior to receipt of an award. This change removes a difficult burden for many WEEA constituents, yet it assures the same or perhaps higher quality evaluations for the program.

C. *Award Decisions.* One factor was added to those that affect decisions on awards. The Commissioner will consider the need to avoid the duplication of projects that are like those that have already been developed, tested, and approved for dissemination by WEEA.

The language of a second factor on the variety sought in grantees has been expanded to make specific reference to women's organizations, including those that have a substantial membership of minority or handicapped women.

D. *Geographic Distribution.* There is a change in the procedure to ensure appropriate geographic distribution. In previous regulations, the Commissioner added up to twenty additional points to the score of an application in order to have a more appropriate geographic distribution. These proposed regulations would extend this quantifiable method to the program of assistance grants of local significance. The establishment and operation of projects with direct services makes the geographic distribution of awards very important, and the most quantifiable method is appropriate.

However, for demonstration projects of general significance, the actual geographic location of a project may have little importance if the grantee is a national organization or consortium or if the model program is being tested in several sites. In making award decisions for these projects, the Commissioner takes geographic distribution into account as but one of several factors.

The changes resulting from the new Act and the following changes that result from new Departmental procedures should together contribute substantially to the improvement of program operations and public understanding of the program.

Changes Due to Edgar

The proposed regulations do not contain certain types of requirements. Those requirements will be covered in the Education Division's General Administrative Regulations (EDGAR), which will replace the General Provisions for Office of Education Program Regulations and are now published as a notice of proposed rulemaking (NPRM).

The follwing items applicable to this program will now be among those covered generally in EDGAR:

How to apply for a grant.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The procedures the Office of Education uses to get compliance.

Some of the provisions of the current WEEA regulations do not appear in these new proposed regulations because they more appropriately belong in a notice of closing date or in a program information packet that will be sent to a potential applicant, grantee, or contractor.

Some other provisions that have previously appeared in the WEEA regulations, such as specific information about priorities, the contents of an application, and the rates for stipends and other payments, now appear in an Appendix to these regulations.

Public Participation

The Office of Education has had extensive consultations with organizations and individuals that represent the variety of its constituents. Throughout the consultations, which began in July, the members and staff of the National Advisory Council on Women's Educational Programs have been closely involved. Their representatives have attended all of the sessions held in Washington. The Council devoted considerable time to regulatory issues at its two recent meetings and gave detailed consideration to a draft version of these regulations at its December 1 meeting. In order to share the partial draft of proposed regulations with the Council, the Office of Education placed a notice in the **Federal Register** to make the draft available to anyone who wished a copy. There were almost one hundred requests.

The Office of Educaion (OE) held a public meeting on October 19 in Washington to discuss issues in the Act. The Staff of OE also met three times in July and August with the National Coalition of Girls and Women in Education and once in July with the Washington Area Higher Education Representatives.

Three topical meetings were held in August and September: one on title IX with experts from the State, local, and Federal levels, as well as researchers and leaders of advocacy groups; a second, on the status of programming in women's educational equity, for representatives of foundations and major women's organizations, evaluators, and activists; and a third, on program priorities, for representatives of minority women's organizations.

OE has had intensive discussions about the future directions of the program most recently with the current WEEA project directors and in June through a survey of four State education departments (California, New York, Pennsylvania, and North Carolina).

In presentations by the staff of OE to a variety of groups, such as school administrators in Alabama and the coalition of professional women's associations in Washington, the

provisions of the new Act have been presented and comments solicited.

Also, at meetings of title IX coordinators and school administrators, staff contacts in the Regional Offices of the Department of HEW or in sex desegregation projects have solicited comments on implementing the new Act.

The extent and quality of the public participation in advance of these proposed regulations have contributed substantially to the development of priorities for demonstration projects and to both the overall approach and specific details on costs and activities for the grants of local significance.

Citation of Legal Authority

As required by sec. 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation of statutory or other legal authority for each section of the regulations has been placed in parentheses on the line following the text of that section.

Invitation to Comment

Interested persons are invited to submit written comments, suggestions, and recommendations to be considered prior to the issuance of final regulations.

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. If you are interested in making oral comments at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to make oral comments will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

Comments, suggestions, or recommendations may be sent to the address given at the beginning of this notice. All comments received on or before July 24, 1979 will be considered. They will be available for public inspection in Room 2147, Federal Office Building Six, 400 Maryland Avenue, S.W., Washington, D.C. 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except on Federal holidays.

Under the authority contained in Title IX, Part C, of the the Elementary and Secondary Education Act, as amended by the Education Amendments of 1978 (Pub. L. 95–561), the Commissioner proposes to amend the regulations in 45 CFR Part 160f.

(Catalog of Federal Domestic Assistance No. 13.565, Women's Educational Equity Act Program)

Dated: March 13, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 4, 1979.

Joseph A. Califano, Jr.

Secretary of Health, Education, and Welfare

Part 160f of Title 45 of the Code of Federal Regulations is amended to read as follows:

PART 160f—WOMEN'S EDUCATIONAL EQUITY ACT

Subpart A—General

Sec.

160f.1 Women's Educational Equity Act Program.
160f.2 Eligible applicants and offerors.
160f.3 Regulations that apply to the Women's Educational Equity Act Program.
160f.4 Definitions.

Demonstration Projects of General Significance

Subpart B—What Kinds of Projects Does the Office of Education Fund Under This Program?

160f.10 Demonstration projects.
160f.11 General significance.
160f.12 Equity in education.
160f.13 Equity for all women: Diverse approaches.
160f.14 Participation by men: Nondiscrimination.
160f.15 General grants.
160f.16 Small grants.
160f.17 Contracts.

Subpart C—How To Apply for a Grant

160f.20 How to use regulations and apply for a grant.
160f.21 State review.
160f.22 Open meeting certification.
160f.23 Preapplications.

Subpart D—How Is a Grant or Contract Made?

160f.30 Award decisions for demonstration projects.
160f.31 Evaluation criteria for demonstration projects.
160f.32 Program priorities—General.
160f.33 Priority for demonstrations of WEEA materials and programs.
160f.34 Priority for dissemination centers.
160f.35 Priority for model projects on sex discrimination and sex bias in elementary and secondary education.
160f.36 Priority for groups to receive special emphasis.
160f.37 Priority for a national WEEA program for change.
160f.38 Priority for high risk—high potential.

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

160f.40 Evaluation.
160f.41 Dissemination.
160f.42 Participation by men: Nondiscrimination.
160f.43 Eligible costs.
160f.44 Payments for short-term training or participation in testing of materials.
160f.45 Long-term training.
160f.46 Indirect costs.

Assistance Grants of Local Significance

Subpart B—What Kinds of Projects Does the Office of Education Fund Under This Program?

160f.50 Assistance.
160f.51 Local significance.
160f.52 Goals.
160f.53 Incentives.
160f.54 Central placement in grantee's agency.
160f.55 Most effective use of funds.
160f.56 Equity in education.
160f.57 Equity for all women: Diverse approaches.
160f.58 Duration of grants.
160f.59 Authorized activities for grants of local significance.

Subpart C—How To Apply for a Grant?

160f.60 Specific implementation of this program.
160f.61 How to use regulations and apply for funds.

Subpart D—How Is a Grant Made?

160f.70 Award decisions for grants of local significance.
160f.71 Evaluation criteria for grants of local significance.
160f.72 Categories for competition.

Subpart E—What Conditions Must Be Met by a Grantee?

f.80 Evaluation.
f.81 Cost sharing.
f.82 Eligible costs.

Appendix: I. Application contents—Evaluation Criteria; II. Priorities; III. Rates for payment.

Authority: Title IX, Part C, of the Elementary and Secondary Education Act, as amended by the Education Amendments of 1978, Pub. L. 95–561, 92 Stat. 2298–2301 (20 U.S.C. 3341–3348).

Subpart A—General

§ 160f.1 Women's Educational Equity Act program.

The Women's Educational Equity Act (WEEA) Program promotes educational equity for women in the United States and provides financial assistance to enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972. (20 U.S.C. 3341(b))

§ 160f.2 Eligible applicants and offerors.

Public agencies, nonprofit private agencies, organizations, and institutions—including student and community groups—and individuals are eligible to receive grants and contracts. (20 U.S.C. 3342(a))

§ 160f.3 Regulations that apply to the Women's Educational Equity Act program.

(a) *Regulations.* The following regulations apply to the Women's Educational Equity Act Program:

(1) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Programs) and part 100c (Definitions); and

(2) The regulations in this part 160f.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in part 100c:

Applicant
Application
Budget
Commissioner
Contract
Dependent
Equipment
Facilities
Grant
Grantee
Local educational agency
Materials
Minor remodeling
Nonprofit
Private
Public
State Educational agency

(20 U.S.C. 1221e-3(a)(1))

§ 160f.4 Definitions.

"Act" means the Women's Educational Equity Act of 1978.

"Council" means the National Advisory Council on Women's Educational Programs established under sec. 936 of the Act.

"Educational equity for women" means—

(a) The elimination in educational institutions, programs, and curricula of discrimination on the basis of sex and of those elements of sex role stereotyping and sex role socialization that prevent full and fair participation by women in educational programs and in American society generally; and

(b) The responsiveness of educational institutions, programs, curricula, policy makers, administrators, instructors, counselors, and other personnel to the special educational needs, interests, and concerns of women that arise from inequitable educational policies and practices.

(c)(1) Educational equity for women involves the elimination of stereotyping by sex, so that both men and women can choose freely among and benefit from opportunities in educational institutions and programs with limitations determined only by each individual's interests, aptitudes, and abilities.

(2) Educational equity for women does not imply the development of new stereotypes for men and women.

"Sex bias" means an attitude that supports structuring the educational development of boys and girls differently on any basis other than physiological differences.

"Sex discrimination" means denial of opportunity, privilege, role, or reward on the basis of sex.

"Sex role stereotyping" means attitudes and actions that reflect assumptions that because females or males share a common gender, they also share common abilities, interests, values, and roles.

"Title IX" means Title IX of the Education Amendments of 1972 (Pub. L. 92-318).

(20 U.S.C. 3341-3348)

Demonstration Projects of General Significance

Subpart B—What Kinds of Projects Does the Office of Education Fund Under This Program?

§ 160f.10 Demonstration projects.

(a) A grant or contract supports demonstration, developmental, and dissemination activities in education.

(b) A grant or contract may not provide services or benefits to a particular organization or agency through general support funds or to an individual through a scholarship or other financial aid. (20 U.S.C. 3342(a))

§ 160f.11 General significance.

A project must have significance that is national or statewide in its impact or that is recognized to be essential to the achievement of educational equity for women. (20 U.S.C. 3342(a))

§ 160f.12 Equity in education.

A project must advance equity for women in education and may address issues of women's rights only within education. (20 U.S.C. 3341(b))

§ 160f.13 Equity for all women: Diverse approaches.

(a) In the development, operation, and assessment of a project, a grantee or contractor must demonstrate its awareness that there are diverse approaches to the achievement of educational equity for women among special population groups, based on race, ethnic origin, handicap, age, socioeconomic status, or residence.

(b) In order to address the particular needs of women and girls from these special population groups, a project may focus on only one group or several groups.

(20 U.S.C. 3341(b))

§ 160f.14 Participation by men: Nondiscrimination.

In a project designed to meet the needs of women, a grantee or contractor may not discriminate against men in employment or in the admission of persons to training, field testing, or other activities.

(20 U.S.C. 3343(b))

§ 160f.15 General grants.

(a) *General.* The Commissioner awards grants for demonstration, developmental, or dissemination activities—at all levels of education—designed to carry out the purpose of educational equity for women.

(20 U.S.C. 3342(a))

(b) *Priorities.* (1) The Commissioner establishes priorities for general grants to ensure that available funds go to projects that are likely to achieve the purpose of the Act most effectively. The priorities appear in §§ 160f.33-38 of these regulations.

(2) An applicant may propose projects that are not within the priorities but are within the scope of the Act, such as the six authorized activities listed in sec. 932 (Grant and Contract Authority).

(20 U.S.C. 3345)

§ 160f.16 Small grants.

(a) *General.* The Commissioner awards small grants, not to exceed $25,000 each, to support innovative approaches to educational equity for women.

(b) *Innovative approaches.* These approaches need not always be wholly original but may include practices that—

(1) Are similar to present practices but are not widely known or used;

(2) Expand on present practices;

(3) Are new to a certain group of people; or

(4) Have been developed and tested under previous WEEA grants and would benefit from additional testing in other locations.

(c) *Priorities.* The Commissioner does not establish separate priorities for small grants but on an annual basis may select one or more of the priorities established for general grants. The yearly Notice of Closing Date in the **Federal Register** announces the priorities, if any, as well as the percentage of the total funds for small grants allocated to any priority area.

(20 U.S.C. 3345)

§ 160f.17 Contracts.

As appropriate, the Commissioner may award contracts on the basis of separate solicitations.

(20 U.S.C. 3342(a))

Subpart C—How To Apply for a Grant

§ 160f.20 How to use regulations and apply for a grant.

(a) The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

§ 160f.21 State review.

An applicant that is a local educational agency (LEA) shall submit a copy of its preapplication—if required—and application in accordance with §§ 100a.255–260 (EDGAR). This process provides the State with an opportunity to comment if it wishes.

(20 U.S.C. 3343(a))

§ 160f.22 Open meeting certification.

An applicant that is an LEA shall give the public an opportunity to comment on its application in accordance with §§ 100a.238–241 (EDGAR).

(20 U.S.C. 3386)

§ 160f.23 Preapplications.

If the Commissioner requires the preapplication process, an applicant shall follow the procedures in §§ 100a.230–234 (EDGAR). The Commissioner makes the decisions on an annual basis, and the announcement will appear in the Notice of Closing Date in the **Federal Register.**

(20 U.S.C. 3343(a))

Subpart D—How Is a Grant or Contract Made?

§ 160f.30 Award decisions for demonstration projects.

(a) *Contracts.* The following governs the selection of contractors:

(1) The specific evaluation criteria included in each Request for Proposals (RFP) solicitation.

(2) The procedures for selection required by the regulations for Procurement Contracts, 41 CFR Chapters 1 and 3, and by Departmental or agency policy.

(b) *Grants.* In making grants, the Commissioner considers—

(1) The evaluation criteria that appear in § 160f.31;

(2) Support for a variety of projects that collectively, to the extent possible, provide the broad coverage described by the Act and meet the diversity of needs in promoting educational equity for women. The broad coverage includes—

(i) All levels of education, including preschool, elementary and secondary, higher education, and adult education;

(ii) A variety of strategies for addressing needs; and

(iii) A variety of delivery systems, such as community and women's organizations, including those that have a substantial membership of minority or handicapped women, as well as traditional educational institutions;

(3) Avoidance of duplication of projects that have already been funded and judged acceptable for dissemination by the Commissioner; and

(4) Geographic distribution of projects throughout the Nation.

(20 U.S.C. 3346(c))

§ 160f.31 Evaluation criteria for demonstration projects.

The Commissioner rates each application on the basis of the degree to which it responds to each of the following weighted factors. The maximum possible score for the total criteria is 110 points. The evaluation criteria in §§ 100a.400–407 (EDGAR) do not apply.

Note: The Appendix to these regulations contains important information that applicants need in order to address the criteria.

(a) *Need.* (1) The proposed project focuses on needs that are central to the purpose of the Act. (8 points)

(2) The needs addressed are well documented, and the applicant shows awareness of similar projects in the subject area and how this application makes a distinct contribution. (5 points)

(3) The proposed project is likely to meet the needs. (8 points)

(b) *Impact.* (1) The model program, product, or results of the proposed project has national, statewide, or general significance. (5 points)

(2) These is a knowledgeable, feasible plan for dissemination, so that the model program, product, or results can be used by others. (5 points)

(3) The applicant demonstrates commitment either through in-kind or direct financial contributions or through procedures to use in its continuing activities all or parts of the program, product, or results developed under the grant. (5 points)

(c) *Plan of operation.* (1) The quality of the objectives of the project and of both the strategy and the activities proposed to implement the project. (8 points)

(2) The applicant plans to develop the project in cooperation with representative groups relevant to the project's success. These groups may include potential participants, representatives of the community, students, key administrators, or teachers. (5 points)

(3) The applicant demonstrates its understanding of the diverse approaches to educational equity for women in the planning, operation, and assessment of the project. (8 points)

(4) The quality of the management plan, including objectives, operational activities, resources, products, evaluation, schedules, and the amount of time to be spent on the project by the proposed staff members. (8 points)

(5) The quality of the general plan for evaluation. (3 points)

(6) The budget and narrative show that proposed costs are reasonable in relation to the scope of the needs in educational equity for women and in relation to the project's potential impact. (8 points)

(d) *Applicant and staff qualifications.* (1) The applcant's commitment to educational equity for women including women from minority groups. (8 points)

(2) The qualifications and capability of the project director to conduct the project successfully. (8 points)

(3) The qualifications and capability of the staff to implement the project successfully. (8 points)

(e) *Priority.* For projects submitted in a designated priority—

(1) The importance within the priority of the needs addressed; (5 points) and

(2) The importance within the priority of the potential results of the project. (5 points)

(20 U.S.C. 3345)

§ 160f.32 Program priorities—General.

(a) Sections 160f.33–38 describe the program priorities that the Commissioner establishes under sec. 935 (Criteria and Priorities) of the Act.

(b) The Commissioner each year changes the number of priorities and the amounts allocated to each according to the total funds available, the number of continuation awards in a priority area, and changing needs. Each year in the Notice of Closing Date in the **Federal Register,** the Commissioner notifies applicants of the selected priorities and of the approximate amount of grant funds allocated to each priority.

(c)(1) An applicant may submit an application under any priority of its choice but shall identify the priority area. The Commissioner does not select the priority for applicants.

(2) If an applicant either fails to identify or has incorrectly identified the priority, the Commissioner does not

consider the application in a priority area. The Commissioner rates the application with other applications outside the priorities.

(20 U.S.C. 3345)

§ 160f.33 Priority for demonstrations of WEEA materials and programs.

The Commissioner gives priority to applications that propose to provide additional field testing for materials and programs that have been developed and approved for dissemination under the WEEA. Adaptation and testing of these materials and programs must be designed to obtain the additional data and to provide the additional practical experience necessary for wide usage.

(20 U.S.C. 3345)

§ 160f.34 Priority for dissemination centers.

(a) The Commissioner gives priority to applications to develop and demonstrate regional centers for dissemination that provide communication through specialized personnel to reach organizations and individuals who want WEEA materials, to demonstrate the materials and programs, and to provide information, access, and support.

(b) A grantee shall provide three major program components in order to achieve the overall purpose of the priority:

(1) It serves as an active intermediary between developers and users for the WEEA materials and programs approved for dissemination. The grantee may also provide general information about WEEA materials and programs still in development and about the resources of the WEEA contracts.

(2) It serves as a network builder, especially in geographical areas where there is little activity and support for educational equity for women. To do so, a grantee provides to local groups, not only the information and access, but also the techniques to obtain information and identify other persons working for equity and thereby to generate and build networks.

(3) It serves as a catalyst to provide support to local community organizations to develop incentives for change at local levels. These organizations may work with local school districts, postsecondary educational institutions, Comprehensive Employment and Training Act (CETA) prime sponsors, or community-based providers of education for preschool through adult levels.

(c) The Commissioner has not predetermined certain States as parts of established regions. An applicant may propose any regional arrangement but shall justify its selection.

(20 U.S.C. 3345)

§ 160f.35 Priority for model projects on sex discrimination and sex bias in elementary and secondary education.

(a) The Commissioner gives priority to applications that focus on the development of model programs and materials to provide equal opportunities for both sexes—including activities to achieve compliance with title IX—so that these models will be available later to LEAs and other eligible applicants that apply for assistance grants of local significance.

(b) A grantee shall give substantial attention throughout the development and testing of materials and model programs to the problems that LEAs and other potential users might have when implementing the models. A grantee shall develop materials and models for users with both little and much sophistication in these issues. In areas of great complexity, a grantee may propose to develop models for only one type of user.

(c) In the materials and model programs a grantee shall indicate if the policies or practices that are being discussed are covered by title IX or by other laws that prohibit sex discrimination, so that the teachers, administrators, or parents who are using the materials know if certain changes are required by law.

(20 U.S.C. 3345)

§ 160f.36 Priority for groups to receive special emphasis.

(a) *Neediest girls and women.* The Commissioner gives priority to demonstration, developmental, and dissemination projects that focus on educational equity for women and girls with the greatest needs. These needs shall be determined by poverty and by current or past discrimination on the basis of race, national origin, or handicap.

(b) *Leaders in educational policy and programs.* The Commissioner gives priority to projects that focus on the need to increase understanding and implementation of educational equity for women and of title IX among those organizations and individuals that affect educational policy and action.

(1) A project may focus on those organizations or individuals that have direct influence in the educational system, such as professional associations or State-level administrators of Federal programs.

(2) A project may focus on organizations that influence policy and practices in education—primarily in career and vocational education—because of their influence on employment practices, opportunities, and priorities.

(20 U.S.C. 3345)

§ 160f.37 Priority for a national WEEA program for change.

(a) The Commissioner gives priority to applications to develop training centers to prepare leaders who can develop, establish, and operate programs for equity in local school districts. These centers comprise the National WEEA Program for change.

(b) In the overall design for the national program, each center has three purposes:

(1) To develop for potential leaders in educational equity for women a training program at the graduate level that can be used or adapted by other institutions and organizations.

(2) To provide training for individuals from LEAs that want to establish and operate programs of equal opportunities for both sexes, including activities to achieve compliance with title IX.

(3) To develop a cadre of WEEA Equity Leaders.

(c) The Commissioner may make one or several awards for National WEEA Training Centers or none at all depending on the merit of the applications.

(20 U.S.C. 3345)

§ 160f.38 Priority for high risk—high potential.

(a) The Commissioner gives priority to applications that address very difficult problems in achieving educational equity for women, for which there are few, if any, solutions or models currently available.

(b) A grantee may develop and demonstrate untried approaches that have the potential for substantial success but also have few gurantees. Projects are restricted to those areas in which the WEEA Program might find solutions of great significance that may provide direction for future demonstration, developmental, and dissemination activities.

(c) The factor of risk shall be in the nature of the problem and of the approach. It may not be in the qualifications of the applicant or staff or in the quality of the application.

(20 U.S.C. 3345)

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

§ 160f.40 Evaluation.

(a) In addition to the requirements in § 100a.509(f) (EDGAR), a grantee or contractor shall collect whatever information about the project is requested by the Council to fulfill the Council's mandate under sec. 937 (Report) of the Act.

(b) Before the Commissioner makes an award, an applicant whose application is recommended for negotiations shall develop, submit, and receive approval of a detail rigorous evaluation plan, unless the application already contained a detailed plan that the Commissioner approves without changes.

(20 U.S.C. 3347)

§ 160f.41 Dissemination.

(a) The Commissioner reserves the option to publish and disseminate the results of the demonstration and developmental activities of a grant. If the Commissioner exercises the option, the Commissioner may authorize a dissemination contractor to conduct the dissemination activities.

(b) If the Commissioner does not exercise this option, the grantee may publish and disseminate the results.

(20 U.S.C. 4432)

§ 160f.42 Participation by men: Nondiscrimination.

(a) A grantee or contractor may not discriminate against men and shall base the selection of a person to participate in training, field testing, or other activities on criteria that measure the extent to which the person—

(1) Will benefit from the activities; and

(2) Can contribute to the project's purposes.

(b) In any public announcement about the project, a grantee or contractor shall include the nondiscrimination provisions relating to employment and participation in project activities.

(20 U.S.C. 3345(b))

§ 160f.43. Eligible costs.

(a) Sections 160f.43–46 describe the special provision on eligible costs applicable to this program.

(b)(1) Funds may be used to pay for costs that are directly related to educational equity for women. Examples of these costs are planning, development, field testing, evaluation, materials, recruitment, counseling, and special services, such as providing information on day care, transportation, financial aid, and part-time opportunities.

(2) Funds are not available under this program to pay the costs of general education, career programs, or employment training.

(20 U.S.C. 3342(a))

§ 160f.44 Payments for short-term training or participation in the testing of materials and programs.

(a)(1) A grant may provide for payments to persons in short-term training or to persons whose participation in the project is necessary for field testing if these persons are not otherwise paid for their time while participating.

(2) An applicant must request these payments and shall justify to the Commissioner that the payments to enable the specific persons to participate are necessary to achieve the objectives of the project.

(3) Payments may be made to non-educational personnel, such as parents, students, and school bus drivers, as well as to educational personnel, such as teachers, administrators, and councelors.

(b) *Participant allowances.* (1) The Commissioner may allow the cost of travel to the location of training and field testing activities if it is specifically justified.

(2) The Commissioner may allow the cost of day care for children of participants in training and field testing activities if it is specifically justified.

(3) A grantee may not use funds under this program for dependency allowances to participants in training and field testing activities.

(20 U.S.C. 3342(a))

§ 160f.45 Long-term training.

A grant for a training project that provides participants with full-time, post-baccalaureate training with a duration of at least one academic year may include provision for payment to—

(a) The grantee of tuition and fees;

(b) Participants of stipends, travel, day care, and other costs.

(20 U.S.C. 3342(a))

§ 160f.46 Indirect costs.

The provisions governing indirect costs appear in § 100a.530, (EDGAR), except that individuals may not receive indirect costs.

(20 U.S.C. 1221e–3(a)(1))

Assistance Grants of Local Significance

Subpart B—What Kinds of Projects Does the Office of Education Fund Under This Program?

§ 160f.50 Assistance.

A grant privides funds to pay a portion of the costs of establishing and operating a women's educational equity project for a period of one or two years.

(20 U.S.C. 3342(a))

§ 160f.51 Local significance.

(a) A project responds to whatever the LEA or other eligible applicant identifies as having local significance. A project shall meet local needs and priorities and may use local approaches.

(b) A grantee has substantial flexibility in designing and operating a project.

(1) A grantee may use materials and model programs already developed by the WEEA.

(2) It may also develop new approaches.

(3) It man alter strategies, as needed, to meet the objectives approved in the grant.

(20 U.S.C. 3342(a))

§ 160f.52 Goals.

(a) The goal of projects is to provide equal opportunities for both sexes, and may include activities that achieve compliance with title IX.

(1) An applicant may choose to focus a project solely on one or more issues of compliance with title IX.

(2) When an agency is involved in legal or administrative enforcement, it shall address only compliance issues.

(2) U.S.C. 3342(a); H. Rept. No. 95–1137, 95th Cong., 2nd Sess. 76–78 (1978); S. Rept. No. 95–856, 95th Cong., 2nd Sess. 85–86 (1978))

§ 160f.53 Incentives.

(a) The Commissioner makes grants to provide both motivation and means for compliance with title IX or the achievement of educational equity for women or both.

(1) *Prevention.* The strategy of the program specifically seeks to prevent the necessity of broad, legal action by assisting with a change of local practices before issues of equity require legal action. This neither percludes nor mandates funding if there is legal action.

(2) *Assistance.* The purpose of a grant is for the Federal Government, through financial and technical assistance, to help make it possible for a grantee to conduct activities of greatest local

significance in reaching the goals of the program.

(20 U.S.C. 3342(a); H. Rept. No 95–1137, 95th Cong., 2nd Sess. 76–78 (1978); S. Rept. No. 95–856, 95th Cong., 2nd Sess. 85–86 (1978))

§ 160f.54 Central placement in grantee's agency.

(a) Both the grant activities and the management of those activities shall be an integral part of the grantee's agency or organization. The project may not be treated as a separate, federally-funded effort that operates for one or two years without access to the permanent policies, practices, and personnel of the agency or organization.

(b)(1) If the grantee is not an educational agency or organization, its activities shall also focus on the permanent policies, practices, and personnel of one or more educational agencies or organizations, though the grantee's operations are not an integral part of the agency or organization.

(2) The grantee may do this through a variety of activities, which may be alternatives to those of educational agencies and organizations.

(20 U.S.C. 3342(a))

§ 160f.55 Most effective use of funds.

(a) A grant supports only those activities that will assure the most effective use of these funds in the agency or organization. The Commissioner assesses the most effective use of funds in the criteria for evaluation of applications.

(b) Whatever the status of the agency's or organization's progress towards compliance or equity or both, those activities proposed for assistance shall be a logical and meaningful part of a comprehensively planned process for the achievement of both compliance and educational equity for women. The grant must contribute in a critical way to the process. The Commissioner does not require that the assistance provided enable the agency to reach its ultimate goal.

(20 U.S.C. 3345)

§ 160f.56 Equity in education.

A project must advance equity for women in education and may address issues of women's rights only within education.

(20 U.S.C. 3341(b))

§ 160f.57 Equity for all women: Diverse approaches.

A project must support the achievement of equity for all women. In the development, operation, and assessment of a project, a grantee or contractor must demonstrate understanding that there are diverse approaches to the achievement of educational equity for women among special population groups, based on race, ethnic origin, handicap, age, socioeconomic status, or residence.

(20 U.S.C. 3341(b))

§ 160f.58 Duration of grants.

The Commissioner provides Federal assistance for a period up to two years. A previously funded recipient may reapply for assistance after a one-year interval.

(20 U.S.C. 3342(a))

§ 160f.59 Authorized activities for grants of local significance.

(a) A grantee may propose one or more of the following activities to carry out the goals of the program:

(1) Planning, evaluation, and dissemination.

(2) Intensive institutional self-study to identify sex discrimination and inequitable educational opportunities for both sexes in all aspects of the policies, governance, employment, curriculum, and practices of the educational agency and to develop and implement remedies.

(3) The development and implementation of programs to encourage student, parent, and community understanding of and support for educational equity for women.

(4) Providing access to the best available information on title IX and other educational equity materials, including visits to model programs and attendance at special workshops.

(5) The systematic identification of sex bias and sex role stereotyping in textbooks and other curricular materials and of sex discrimination in counseling materials and procedures, and the development of methods to change books, materials, and procedures and to counter their effects on students.

(6) In-service training for educational personnel to provide understanding of the requirements of title IX and the goals of educational equity for women and to develop methods to meet those requirements and goals. Training may be provided for administrators, teachers, aides, counselors, coaches, librarians, media personnel, supervisors, curriculum specialsists, and others.

(7) Programs for specific educational levels, such as preschool or junior high.

(8) Programs for specific content areas, such as physical education, sports, and vocational education.

(9) Programs to address the special educational needs of girls and women who suffer double or multiple discrimination in educational agencies because of their status as members of racial or ethnic minorities, or members of bilingual, handicapped, or older groups.

(10) Subject to the limitation in § 160f.82 *(Eligible costs)*, minor remodeling of facilities or the purchase of equipment or both when it is a part of a training program for related personnel or for other activities described in (a)(1) through (a)(9) of this section.

(11) The support of advisory committees, task forces, and personnel to direct, coordinate, or review any of these activities.

(b) The Commissioner may consider other activities if they are justified on the basis of § 160f.51 *(Local significance)* and if the costs are permitted under § 160f.82 *(Eligible costs)*.

(20 U.S.C. 3342(a))

Subpart C—How To Apply for a Grant

§ 160f.60 Specific implementation of this program.

(a) The Commissioner may provide a grant of local significance only if and to the extent that the appropriation of funds under the Act exceeds $15 million.

(b) An applicant may submit an application for a grant only if the Notice of Closing Date in the **Federal Register** specifically solicits applications for a grant of local significance.

(20 U.S.C. 3341(b))

§ 160f.61 How to use regulations and apply for funds.

An applicant shall refer to subpart C of the regulations for Demonstration Projects of General Significance.

(20 U.S.C. 1221e–3(a)(1))

Subpart D—How Is a Grant Made?

§ 160f.70 Award decisions for grants of local significance.

(a) *Evaluation criteria.* The Commissioner ranks the applications on the basis of the evaluation criteria in § 160f.71 and uses the categories in § 160f.72.

(b) *Allocation of funds.* (1) The Commissioner uses 75 percent of the funds available for grants of local significance for awards to LEA.

(2) The Commissioner uses the remaining 25 percent for awards to post-secondary institutions, SEAs, and all other eligible applicants, including community and student groups.

(20 U.S.C. 3342(a))

(c) *Geographic distribution.* The Commissioner may add up to a maximum of 5 points (or 5 percent of the total) to the score of an applicant to

achieve appropriate geographic distribution of awards.

(20 U.S.C. 3346(c))

§ 160f.71 Evaluation criteria for grants of local significance.

The Commissioner rates each application on the basis of the degree to which it responds to each of the following weighted factors. The maximum possible score for the total criteria is 100 points. The evaluation criteria in §§ 100a.400–407 (EDGAR) do not apply.

(a) *Need.* (1) The applicant's understanding of compliance and equity issues and the assessment of its needs and problems. (10 points)

(2) The proposed activities are a logical and meaningful part of a comprehensive plan to achieve compliance or equity or both. (10 points)

(b) *Likelihood of achieving results.* (1) The ability of the applicant to effect needed changes in the agency or organization as shown by the following factors:

(i) *Commitment.* The applicant's commitment to the project and to the goals of the Act. (5 points)

(ii) *Past efforts.* The applicant's past activities to achieve compliance or educational equity, or both. (5 points)

(iii) *Contribution.* The applicant's allocation of direct funds or in-kind contributions in addition to the requirements for cost sharing. (5 points)

(iv) *Context.* Evidence that the project will operate in the mainstream of the agency or organization and that the project's leadership will have influence and access to decision makers. (5 points)

(v) *Diverse Approaches.*The applicant reflects its awareness of the diversity of approahes appropriate to the achievement of educational equity for women for all individuals and groups in the planning, operation, and assessment of the project. (5 points)

(vi) *Involvement.* Parents, members of the community, students, or educational institutions have been or will be involved in the project. (5 points)

(c) *Plan of operation.* (1) The proposed project responds to the needs and corrects the problems identified. (5 points)

(2) The quality of the implementing activities proposed to achieve the objectives of the project. (5 points)

(3) The quality of the management plan, including objectives, operational activities, resources, evaluation, schedules, and the amount of time to be spent on the project by the proposed staff members. (8 points)

(4) The quality of the evaluation plan, which includes an objective, quantifiable method to determine if the project achieves its objectives. (3 points)

(5) The quality of the dissemination plan. (2 points)

(6) The adequacy of the budget, which includes an itemized statement of costs that justifies each line item and an effective plan for financial management. (3 points)

(7) The budget and narrative show that proposed costs are reasonable in relation to the objectives, the size of the population to which benefits are directed, and the potential impact of the project. (8 points)

(d) *Staff qualifications.* (1) The qualifications and capability of the project director to conduct the project successfully. (8 points)

(2) The qualifications and capability of the staff to implement the project successfully.

(20 U.S.C. 3345)

§ 160f.75 Categories for competition.

(a) *Local educational agencies.* (1) Within the funds allocated to LEAs, there are three separate categories for competition, so that applications compete against similar applications. These categories are—

(i) Compliance activities only;

(ii) Equity activities only; and

(iii) A combination of compliance and equity activities.

(2) An applicant may compete under any category but must select and identify the category for competition.

(3) The commissioner notifies applicants in the annual Notice of Closing Date of the estimated number and size of grants in each category.

(b) *Other applicants.* (1) Within the funds allocated to applicants other than LEAs, there are three separate categories, so that applicants compete against like applicants. These categories are—

(i) Postsecondary institutions;

(ii) SEAs; and

(iii) All other applicants, including student and community groups.

(2) The Commissioner notifies applicants in the annual Notice of Closing Date of the estimated number and size of grants in each applicant category.

(20 U.S.C. 3342(a))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 160f.80 Evaluation.

In addition to the requirements in § 100a.591(a) (EDGAR), a grantee shall collect whatever information on the project is requested by the Council to fulfill the Council's mandate under sec. 937 (Report) of the Act.

(20 U.S.C. 3347)

§ 160f.81 Cost sharing.

(a) A grantee shall pay a portion of the costs of a project.

(1) A grantee shall contribute 20 percent of the total costs during the first year of the project.

(2) A grantee shall increase its contribution to 40 percent of the total cost during the second year of the project.

(b) The grantee shall follow the regulations on cost sharing in part 74, subpart G.

(20 U.S.C. 3342(a))

§ 160f.82 Eligible costs.

(a) A grantee may not purchase textbooks with these grant funds.

(b) A grantee may not use these grant funds for construction.

(c) A grantee may not use a grant to defray those costs of a grant, such as the salary of a title IX coordinator, pregnancy leave, legal costs resulting from enforcement proceedings or suits brought by individuals or groups, and the costs of data collection for civil rights purposes, whether done by computer or by hand.

(d) Because of the limited funds available under this program, certain costs that are allowable are restricted as follows:

(1) The cost of minor remodeling may not exceed $20,000;

(2) The cost of nonexpendable equipment may not exceed $12,000; and

(3) The cost of expendable equipment may not exceed $8,000.

(4) The costs of remodeling and equipment shall be a part of activities described in § 160f.59 *(Authorized activities for assistance grants).*

(e) In addition to these maximum amounts in (d), the Commissioner also considers—

(1) The relative proportion of any of these costs to the total budget requested; and

(2) The relationship of the amount requested for any of these items to the total amount for any of these items in the budget of the applicant agency or organization.

(f) A grantee may reimburse individuals who participate in activities authorized by the grant.

(20 U.S.C. 3342(a))

Appendix

I. *Application contents: Evaluation criteria.* In addition to the directions found in §§ 100a.207–209 (EDGAR) for the preparation

of applications, the Women's Educational Equity Act (WEEA) Program provides the following guidance to assist applicants in addressing five of the evaluation criteria in § 160f.31 for Demonstration Projects of General Significance. If the applicant fails to provide the following information or assurances, it may be unable to earn points assigned to the pertinent evaluation criteria. It may therefore damage its competitive chance for funding. If the applicant is selected for funding, but the Commissioner finds any of these items unsatisfactory, the Commissioner negotiates the item before awarding a grant.

1. *Equity for all women: Diverse approaches.*

In addressing criterion § 160f.31(c)(3) on diverse approaches, the applicant should provide the following information and assurances.

(a) If the application focuses on one or more of the special population groups listed in § 160f.13 (*Equity for all women: Diverse approaches*)—

The application should reflect the needs, values, and priorities of the population group(s);

The applicant should assure that the materials, strategy, and goals of the proposed project are relevant to the cultural and other values of the group(s); and

Representatives of the identified population group(s) should hold senior positions on the staff of the project and on any proposed advisory committees.

(b) If the application focuses on the general population to provide equity for all women—

The application should document any needs of girls and women from special population groups in addition to those of the general population;

The application should include specific objectives, operational plans, and activities to meet these needs;

Representatives of special population groups should participate in the development of materials and programs as staff members, consultants, or advisory committee members, or all of these; and

The applicant should propose to test the materials and programs under development in the project in settings that include population groups sufficiently diverse to provide the developers with significant insights into differences.

2. *Plan of Operation.*

With regard to criterion § 160f.31(c)(5) of evaluation, the Commissioner expects a general plan rather than a detailed plan for evaluation in an application. The general plan should include:

What will be evaluated? For example, validity of materials the program's process, attitudes of teachers, career aspirations of children.

How will the evaluation be done? For example, the probable methodology.

Who will do the evaluation? For example, a contractor (whether already selected or Not), staff of applicant, consultant.

What kind of evidence of effectiveness can be obtained? For example, evaluations of participants, endorsements of an advisory panel, data of statistical significance on national standardized tests or on new tests.

What is the estimated budgetary cost of implementing the evaluation?

If an application is approved for negotiation, the Commissioner requires the development and submission of a detailed evaluation plan by the applicant. Standards will be rigorous. The Office of Education will offer limited technical assistance. The applicant shall bear the cost of developing the detailed plan which must be approved before the grant is awarded. The cost of implementing the approved detailed evaluation plan shall be included in the final budget for the grant.

An applicant with expertise in evaluation is free to propose a detailed evaluation plan in its application. An applicant does not receive additional points under the evaluation criteria. If the application is selected, however, the applicant may save time and effort during negotiations.

3. *Budget.*

In addressing criterion § 160f.31(c)(6) on the budget, the applicant should include an estimate on the overall cost of a detailed, rigorous evaluation plan, even though specific budget items for evaluation may not be known.

4. *Applicant and Staff Qualifications.*

(a) In addressing criterion § 160f.31(d)(1) on commitment, the applicant may show evidence of commitment to educational equity for women—including women from minority groups—in a variety of ways, such as its staffing pattern, recent hiring and promotions, representation of women among faculty or employees who already have tenure (or permanent status) or who have the possibility of tenure (or permanent status), recruitment methods and results, educational affirmative action programs, or special services to provide educational equity for women.

(b) In addressing criteria § 160f.31 (d)(2) and (d)(3) on the staff, if the applicant cannot propose specific individuals for the position of director or for senior staff positions, its application should include detailed job descriptions, a recruitment plan, and criteria for selection.

(c) In addressing criteria § 160f.31 (d)(2) and (d)(3) on the staff, an applicant should consider "qualifications" and "capability" broadly to mean not only formal educational training, but, also, equivalent experience in designing or managing similar projects, as well as contributions through personal experiences.

II. *Priorities.* In addition to the general requirements of the six priorities in §§ 160f.33–38, this appendix has specific requirements and defines more precisely the nature of each priority and the information needed in the applications.

1. *Demonstrations of WEEA materials and programs.*

(a) A grantee may use, adapt, or provide further field testing for one WEEA model program or set of materials or for several together, depending on the scope of the models chosen as well as feasibility and cost effectiveness.

(b) The applicant shall choose the materials and model program for further field testing according to a plan that reflects one or a combination of the following factors:

(1) Level of education, such as preschool or undergraduate education.

(2) Type of audience, such as counselors, teachers, students, parents, or librarians.

(3) Special population groups, such as minority or rural girls and women.

(4) Content area, such as math or physical education.

(5) Purpose, such as awareness, preservice education, or compliance with title IX.

(c) A grantee shall evaluate the materials and programs as a follow-up to the initial development and testing, so that the results can be submitted to the Joint Dissemination Review Panel (JDRP) of the Education Division.

(d) The Commissioner may approve more than one application to test a single model or set of materials under both of the following conditions—

(1) If the importance of the model warrants the extensive field testing; and

(2) If the multiple applications propose plans that vary by geographic location, type of populations affected, or other factors that will produce valuable experience and data.

(e) The Commissioner approves an application from the organization or individual that originally developed and tested the materials or model program to do more field testing only if the circumstances of the additional testing will yield unique experience and data. This situation would be an exception to the overall purpose of the priority: to determine if and how organizations—other than the developer—can use the materials or program in sites other than the original development site.

(f) The Commissioner expects that most grants in this priority will not be large in amount or long in duration.

2. *Dissemination centers.*

The priority for dissemination projects at regional centers constitutes a second level of dissemination activity beyond that of the WEEA dissemination contractor, which screens for quality, arranges publication, and provides general marketing.

(a) A grantee carries out the purpose of the regional centers in any or all of three ways. It shall—

(1) Bring materials, programs, national resources, and local persons to the regional center;

(2) Take materials, programs, national resource persons, and center personnel to local areas; or

(3) Send local leaders to national workshops and training sites for training and the development of linkages.

(b) The Commissioner selects only those proposed centers that demonstrate at the application stage substantial promise that the applicant is able to design and implement a regional center. Except for noncompeting continuation grants, the Commissioner decides each year whether to make one or several awards or none at all under this priority.

(1) The application for a center shall include a rationale for its location and its

qualifications to serve a regional area. The rationale might be, for example, institutional and personal contacts, previous experience of the applicant organization or proposed staff, or both contact and experience.

(2) The application shall include a description of the number and types of users upon which the center will focus and explain its methods for identifying and reaching users and its criteria for selecting them.

(3) The application shall include a description of the activities the applicant will conduct at the center and the rationale for their selection.

(4) The application shall include a description of the applicant's approach to cooperation with the WEEA contractors whose work relates to that of the centers.

(c) The Commissioner does not limit applicants to long-established organizations or existing training centers. A grantee may phase in the various types of activities over time. The Commissioner reviews only the substantial promise of quality performance from a highly qualified applicant and staff.

(d) The Commissioner expects that the size of the grants will vary, depending on the size of the region and the number of groups and networks already formed, and would last two to four years.

3. *Model projects for sex discrimination and sex bias in elementary and secondary education.*

(a) The Commissioner seeks a variety of models to meet the needs in this priority:

(1) A project may include a focus on one or several groups of people, such as counselors, teachers, students, parents, or curriculum specialists.

(2) A project may focus on one content area, such as physical education, vocational education, or counseling, or may focus on several content areas in a more comprehensive way.

(3) A project may focus on general aspects of issues relating to equity and compliance, such as policies, public relations, publications, or data analysis by sex on participation in classes, in extracurricular activities, in awards, in academic requirements, in test results, or in salaries.

(b) The Commissioner expects a wide range in both the size of grants and their duration.

4. *Special emphasis groups.*

(a) *Neediest girls and women.* A variety of projects may address the problems in this area:

(1) The content of projects may include—

(i) Information on stereotyping, access to educational opportunities, or knowledge and skills to overcome the barriers to equitable education;

(ii) Information and support to identify other girls and women with similar needs, so that together they can increase their access to educational equity;

(iii) The development of educational materials for preventive or remedial use;

(iv) Special educational opportunities to address documented needs; or

(v) Research or data analysis.

(2) A project may be remedial or preventive.

(3) An applicant may give special attention to the educational needs of women and girls who are unemployed, illiterate, or incarcerated.

(4) The Commissioner expects a wide range in the size and duration of grants.

(b) *Organizations and personnel that provide leadership in educational policy and action.*

(1) A project has three objectives:

(i) To reach potential participants.

(ii) To convince them—through data, research, and an analysis both of benefits and the potential of adverse action—of the need for educational equity and compliance.

(iii) To change policies and programs if necessary.

(2) A project may use a variety of strategies to provide information and skills, including short-term workshops and training.

(3)(i) An applicant may focus on a variety of professional associations that are influential in education, such as the National Council on Accreditation for Teacher Education (NCATE), which has responsibilities for accreditation of teachers, the American Association of Colleges of Teacher Education (AACTE), which has responsibilities for teacher education, or the Association for Supervision and Curriculum Development (ASCD), which has responsibilities for curriculum development.

(ii) An applicant may focus on individuals at the State level who have responsibility for Federal programs such as compensatory education, adult education, special education, counseling, or reading. Those areas in which the authorizing legislation expressly requires emphasis on sex equity, such as vocational education and career education, may also be included but receive less emphasis.

(4) An applicant may focus on organizations outside the educational system that influence educational policy, such as labor unions, the chamber of commerce and other organizations of employers, or civil rights groups.

(5) The Commissioner expects that most grants will be relatively small and last one year.

5. *National WEEA Program for Change.*

(a) A grantee shall develop a model training program that meets the needs of the participants. The design for the program shall address both the environment in which the training occurs and the content of the training.

(1) The grantee does not have to be an institution of higher education, but shall arrange graduate credit for participants and, if possible, a graduate degree.

(2) The training may be for one academic year, one or two summers, or a combination.

(3) The director of a National WEEA Training Center shall have access to decision making authorities within his or her own organization or institution.

(4) If the grantee organization or institution has programs in public policy, management, educational administration, counseling, or curriculum, it shall make resources available to the National WEEA Training Center and assure that there is consistency among these programs at the institution concerning the goals of educational equity for women.

(5) If the grantee is not an LEA, it shall include opportunities for training experiences in a local school district.

(6) In addition to special information and skills that participating school districts and prospective participants identify, the content of the training shall include—

(i) Creating and managing change;

(ii) Community relations;

(iii) Management of conflict;

(iv) Leadership skills;

(v) Counseling; and

(vi) Concepts, resources, and strategies to achieve educational equity for women and compliance with title IX.

(7) A National WEEA Training Center shall be in an institution or organization that visibly supports and serves as a model for educational equity for women, including—

(i) Institutional compliance with title IX;

(ii) Past and continuing efforts toward equity; and

(iii) Role models for women among the faculty and administration.

(b) A National WEEA Training Center shall establish specifications for participating school districts and criteria for the selection of participants.

(1) The school district that nominates a participant shall agree that the participant, after training, will establish and operate a program of equal oportunities for both sexes, including activities to achieve compliance with title IX. This agreement is applicable whether or not the LEA subsequently receives a grant for a local project from the WEEA.

(2) The criteria for selection of participants shall include the following factors:

(i) A person who is personally and professionally committed to educational equity for women and can communicate the concepts effectively to all aspects of the community.

(ii) A person who has an investment in the school district, such as residence, tenure, or other community ties.

(iii) A person who can work well with all of the groups that affect educational equity, such as school board members, administrators, teachers, parents, students, cafeteria workers, school bus drivers, the media, or other personnel in the schools.

(3) A grantee may select from a national competition a few individuals who are not sponsored by school districts. Not more than one-fifth of the participants may be without sponsors.

(c) The Commissioner expects that most of the grants will be large in size and last two to four years.

6. *High risk—high potential.*

(a) A grantee may address a variety of difficult and unyielding problems in the achievement of educational equity. Issues may include, for example—

(1) Types of institutions—such as graduate or professional education—or the educational programs of community organizations;

(2) Types of barriers, such as racial discrimination, cultrual socialization, or peer pressure;

(3) Special content areas, such as sports, vocational education, or physical education;

(4) Special conditions of some girls and women, such as multiple generations on welfare or those who suffer physical isolation as a result of geography or handicap.

(5) Certain issues of applied research, such as the implications for educational equity of a study of the future (forecasting), labor trends, or the family.

(b) An applicant shall demonstrate broad knowledge of the nature of the problem, previous efforts, and the potential impact of the solution.

(c) Some of the general areas that may be addressed under this priority could be addressed under other priorities. An applicant shall choose in light of its analysis of past efforts and the nature of its approach—in which priority category it wishes to compete.

(d) The Commissioner expects that most grants will be relatively small in size and last one or two years.

III. *Rates for payments.*

1. *Short-term training or field testing.*

The following rates apply for participants in short-term training or in the field testing activities authorized in § 160f.44 (*Payments . . .*) and § 160f.82 (*Eligible costs*):

(a)(1) *Non-educational personnel.* Payments to non-educational personnel may be made at rates that are not lower than the current Federal minimum wage rate nor higher than the rate for educational personnel.

(2) *Educationl personnel.* Payments to educational personnel, except those covered by subparagraph (3), may be at the rate of $30 for each full day of participation, up to $150 a week. For partial days involving fewer than 5 hours of attendance, payments may be at the rate of $6 per hour, subject to the weekly limit of $150.

(3) *Collective bargaining agreement.* If participating educational personnel receive pay under a collective bargaining agreement in which the minimum hourly rate for an individual is more than $6 per hour, the individual may be compensated at the minimum hourly rate provided under the collective bargaining agreement.

(b) *Reimbursement for substitutes.* If a grantee pays teachers or other educational personnel for their time in training or field testing activities and must hire substitutes for those participants, the grantee may use funds to reimburse the costs of hiring these substitutes.

2. *Long-term training.*

(a) A stipend for a full-time individual at the predoctoral graduate level may not exceed $3,900 for a twelve-month year or $2,925 for a nine-month year. However, for programs requiring related professional work experience or for postdoctoral studies, the Commissioner may authorize higher stipends.

(b) A project that lasts one academic year or more does not automatically qualify its participants for these stipends. If participants are testing a model program, they may receive payments according to the provisions of the previous section on field testing.

(c) To qualify for long-term training stipends, an applicant must request them and provide sufficient information and justification to the Commissioner.

(d) The applicant shall satisfy the Commissioner that stipends contribute substantially to—

(1) The project's objective to develop, test, and prepare a model training program for later dissemination; and

(2) A project objective that relates directly to the recruitment, training, and placement into leadership roles of the participants who will receive the stipends.

[FR Doc. 79-15808 Filed 5-24-79; 8:45 am]

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federal register

Friday
May 25, 1979

Part IV

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Government Contract Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original general wage determination decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arizona:	
AZ79–5100	Feb. 9, 1979.
Delaware:	
DE78–3080	Nov. 3, 1978.
District of Columbia:	
DC78–3098	Dec. 15, 1978.
Maryland:	
DC78–8098	Dec. 15, 1978.
Nebraska:	
NE79–4028	Feb. 16, 1979.
Oregon:	
OR79–5103	Feb. 23, 1979.
Pennsylvania:	
PA78–3016	Apr. 14, 1978.
PA78–3015; PA78–3044; PA78–3045	May 12, 1978.
PA78–3064; PA78–3065; PA78–3066;	
PA78–3067	Sept. 22, 1978.
PA78–3068; PA78–3070	Sept. 29, 1978.
PA78–3069	Oct. 6, 1978.
PA78–3099	Dec. 15, 1978.
PA79–3001	Feb. 2, 1979.
PA79–3004; PA79–3005	Mar. 16, 1979.
PA79–3007	Apr. 6, 1979.
PA79–3008	Apr. 27, 1979.
Tennessee:	
TN78–1097	Nov. 24, 1978
Virginia:	
DC78–3098	Dec. 15, 1978.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida:	
FL76–1098(FL79–1087)	Sept. 3, 1976.
Idaho:	
ID78–5120(ID79–5112)	Sept. 8, 1978.
Mississippi:	
MS77–1078(MS79–1086)	June 17, 1977.
Wisconsin:	
WI78–2104(WI79–2055)	Oct. 20, 1978.

Cancellation of General Wage Determination Decisions—None

Signed at Washington, D.C. this 18th Day of May 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION #AZ79-5100 - Mod. #3
(44 FR 8482 - February 9, 1979)
Statewide Arizona

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers:					
Phoenix Area:					
Bricklayers; Manhole Builders; Stonemasons:					
Zone A: 0-35 road miles from City Hall in Phoenix	$11.77	.65	.90		.09
Zone B: 35-50 road miles from City Hall in Phoenix	12.71	.65	.90		.09
Zone C: 50-75 road miles from City Hall in Phoenix	13.30	.65	.90		.09
Zone D: 75-100 road miles from City Hall in Phoenix	13.89	.65	.90		.09
Zone E: 100-200 road miles from City Hall in Phoenix	14.36	.65	.90		.09
Zone F: 200 road miles and over from City Hall in Phoenix	15.30	.65	.90		.09
Drywall:					
Apache County (south part), Coconino County (south part), Gila, Graham County (north part), Greenlee County (north part), Maricopa County (north two-thirds), Navajo County (south part), Pinal County (north part), Yavapai County (south of Wikieup-Woodruff Line):					
Drywall Tapers and Texturers:					
Zone A: 0-40 road miles from Courthouse in Phoenix; also Luke and Williams Air Force Bases	11.21	.59	.50		.12

DECISION #AZ79-5100 (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Drywall (Cont'd):					
Apache County (south part), Coconino County (south part), Gila, Graham County (north part), Greenlee County (north part), Maricopa County (north two-thirds), Navajo County (south part), Pinal County (north part), Yavapai County (south of Wikieup-Woodruff Line) (Cont'd):	-				
Drywall Tapers and Texturers (Cont'd):	-				
Zone B: 41-60 road miles from Courthouse in Phoenix	$12.21	.59	.50		.12
Zone C: 61 road miles and over from Courthouse in Phoenix	13.46	.59	.50		.12
Electricians:					
Globe-Miami Area:					
Zone A: The area within 16 road miles beginning where the Southern Pacific Railroad intersects Hwy. 60-70 at Kaiser Crossing:					
Electricians	13.93	.60	11%		1%
Cable Splicers	14.18	.60	11%		1%
Zone B: 16-28 road miles from above-mentioned base point:					
Electricians	14.67	.60	11%		1%
Cable Splicers	14.92	.60	11%		1%
Zone C: 28-46 road miles from above-mentioned base point:					
Electricians	15.30	.60	11%		1%
Cable Splicers	15.55	.60	11%		1%

MODIFICATIONS P. 3

DECISION #AZ79-5100 (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians (Cont'd):					
Globe-Miami Area (Cont'd):					
Zone D: 46 road miles and over from above-mentioned base point:					
Electricians	$16.05	.60	11%		1%
Cable Splicers	16.30	.60	11%		1%
Marble Workers:					
Phoenix Area	10.79	.65	.90		.19
Painters:					
Apache County (south half), Coconino County (south half), Gila, Graham County north half), Greenlee County (north half), Maricopa County (northern two-thirds), Navajo County (south half), Pinal County (north half), Yavapai County (south of Wikieup-Wood-ruff Line):					
Zone A: 0-40 road miles from Courthouse in Phoenix, Mesa and including Luke and Williams Air Force Bases:					
Brush and Roller; Sandblaster (Nozzleman); Sandblaster (pot tender)	11.00	.60	.40		.08
Spray	11.25	.60	.40		.08
Creosote Applier	11.33	.60	.40		.08
Swing Stage:					
Brush, Sandblaster	11.40	.60	.40		.08
Spray	11.65	.60	.40		.08
Steeplejack	11.86	.60	.40		.08
Steel and bridge, brush; Steel Sandblaster	11.93	.60	.40		.08
Steel and bridge, spray	12.13	.60	.40		.08

MODIFICATIONS P. 4

DECISION #AZ79-5100 (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters (Cont'd):					
Apache County (south half), etc. (Cont'd):					
Zone B: 41-60 road miles from Courthouse in Phoenix:					
Brush and Roller; Sandblaster (Nozzleman); Sandblaster (pot tender)	$12.00	.60	.40		.08
Spray	12.25	.60	.40		.08
Creosote Applier	12.33	.60	.40		.08
Swing Stage:					
Brush, Sandblaster	12.40	.60	.40		.08
Spray	12.65	.60	.40		.08
Steeplejack	12.86	.60	.40		.08
Steel and bridge, brush; Steel Sandblaster	12.93	.60	.40		.08
Steel and bridge, spray	13.13	.60	.40		.08
Zone C: 60 road miles and over from Courthouse in Phoenix:					
Brush and Roller; Sandblaster (Nozzleman); Sandblaster (pot tender)	13.25	.60	.40		.08
Spray	13.50	.60	.40		.08
Creosote Applier	13.58	.60	.40		.08
Swing Stage:					
Brush, Sandblaster	13.65	.60	.40		.08
Spray	13.90	.60	.40		.08
Steeplejack	14.11	.60	.40		.08
Steel and bridge, brush; Steel Sandblaster	14.18	.60	.40		.08
Steel and bridge, spray	14.38	.60	.40		.08

DECISION #AZ79-5100 (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Painters (Cont'd):					
Flagstaff Area:					
Zone A: From Flagstaff Courthouse to 20 miles:					
Brush; Soft Floor Layer	$11.60	.90	.60		.20
Brush, steel and bridge	12.10	.90	.60		.20
Spray	12.05	.90	.60		.20
Spray, steel and bridge	12.60	.90	.60		.20
Zone B: 20-35 miles from Courthouse in Flagstaff:					
Brush; Soft Floor Layer	12.35	.90	.60		.20
Brush, steel and bridge	12.85	.90	.60		.20
Spray	12.80	.90	.60		.20
Spray, steel and bridge	13.35	.90	.60		.20
Zone C: 35-80 miles from Courthouse in Flagstaff:					
Brush; Soft Floor Layer	13.35	.90	.60		.20
Brush, steel and bridge	13.85	.90	.60		.20
Spray	13.80	.90	.60		.20
Spray, steel and bridge	14.35	.90	.60		.20
Zone D: 80 miles and over from Courthouse in Flagstaff:					
Brush; Soft Floor Layer	13.60	.90	.60		.20
Brush, steel and bridge	14.10	.90	.60		.20
Spray	14.05	.90	.60		.20
Spray, steel and bridge	14.60	.90	.60		.20
Plasterers' Tenders	9.51	.92	.98		.10
Add:					
Lathers:					
North of a line crossing the state drawn through Ajo, Randolph and Springerville; except as follows: northeast of a line drawn from Springerville to a point 4 miles northeast of Keams Canyon	11.89	.75			.06
Mason Tender	9.05	.92	.98		.04
DECISION NO. DE78-3080 - Mod. #4 (42 FR 51567 - November 3, 1978) State of Delaware					
Add:					
Carpenters - Highway Construction:					
Sussex County	11.19		1.00		.01
Change:					
Carpenters - Building & Heavy:					
Sussex County	11.19		1.00		.01
Millwrights:					
Sussex County	11.29		1.00		.01

DECISION #DC78-3098 - Mod. # 4 (43 FR 58723 - December 15, 1978) District of Columbia; Maryland - Montgomery & Prince George's Counties, and D. C. Training School; Virginia - Independent City of Alexandria & Arlington	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Change:					
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES:					
All Counties					
BUILDING CONSTRUCTION:					
Excluding Alexandria, Virginia					
Bricklayers	$12.50	1.10	.85		.10
PAVING AND INCIDENTIAL GRADING: (District of Columbia Only) except paving project where the grading is incidential to the paving:					
Bricklayers	12.50	1.10	.85		.10
WATER AND SEWER LINES: (District of Columbia and Montgomery County Only)					
Bricklayers	12.50	1.10	.85		.10
BUILDING CONSTRUCTION:					
Laborers (Excluding, Heavy Construction)					
Common laborers, landscapers	8.96	.75	.52		.05
Acetylene burners used on wrecking	9.50	.75	.52		.05
Air tool op, scaffold builders, paving breakers, towmasters, buggy mobiles, spasers, mortar men and scootcretes	9.12	.75	.52		.05
Pipelayers	9.12	.75	.52		.05
Powdermen	10.215	.75	.52		.05
Powersaw, well points	9.23	.75	.52		.05
Plasterer Tenders	9.50	.75	.52		.05
LABORERS (HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES):					
GROUP I	$9.06	.65	.52		.05
GROUP II	9.22	.65	.52		.05
GROUP III	9.28	.65	.52		.05
GROUP IV	9.33	.65	.52		.05
GROUP V	9.54	.65	.52		.05
GROUP VI	9.76	.65	.52		.05
GROUP VII	9.895	.65	.52		.05
GROUP VIII	10.315	.65	.52		.05
LABORERS (HEAVY CONSTRUCTION):					
GROUP I	9.355	.65	.52		.05
GROUP II	9.675	.65	.52		.05
GROUP III	10.375	.65	.52		.05
GROUP IV	10.645	.65	.52		.05

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #NE79-4028 - Mod. #2 (44 FR 10234 - February 16,1979) Lancaster County, Nebraska					
Change:					
Laborers:					
Common laborers	$8.265	.55	.30		
Machine and air tool operators; mason tenders	8.415	.55	.30		
Plasterers tenders	8.49	.55	.30		
DECISION NO. OR79-5103 - Mod #3 (44 FR 10951-February 23, 1979) Statewide Oregon					
CHANGE: Decision No. OR79-5103 Mod #3 in 44 FR 26410 dated May 4, 1979, to read "Mod #2"					
DECISION #PA78-3015 - Mod. # 9 (43 FR 20697 - May 12, 1978) Greene, Somerset & Potter Counties, Pennsylvania					
Change:					
Glaziers					
Zone 3	$10.19	.40	.60		.01
Sheet metal workers	11.52	.70	.76		.02

DECISION #PA78-3016 - Mod. #7
(43 FR 16106 - April 14, 1978)
Lehigh County, Pennsylvania

MODIFICATIONS P. 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Cement Masons	12.27	1.00	.41		
Carpenters	11.30	.64	.72		.05
Electricians	11.75	.70	3%+.80		.02
Laborers:					
Laborers & window cleaners	8.09	.62	.59		
Operator of jackhammer, paving breaking and other pneumatic and mechanical tools coming under the jurisdiction of laborers, laying of all clay terra cotta, ironston, vitrified concrete or non metallic pipe and the making of joints for same and conferdams (below 10')	8.34	.62	.59		
Wagondrills and men handling burning torches in the wrecking of buildings	8.84	.62	.59		
Plaster and mason ternders, scaffold builders and handling of all material to be used by plasterers an masons, brick and block loaded on pallets, cement finisher tenders, gunniting and moldeo-D and sandblaster helpers, power buggies all floor hardner and "cure" application shall be work of the mason tender,all pumps such as the concrete, plaster mortar and water, installing rafractory materials in connection with the boiler work	8.49	.62	.59		
Barko Tamper Operator	9.11	.62	.59		
Marble Setters	9.65	1.00	1.15		
Millwrights	11.70	.64	.72		.05
Plasterers	11.12	1.00	.41		.01
Plumbers	12.87	.81	1.30		.14
Power Equipment Operators:					
GROUP 1	12.86	7%	10.3%	a	1.8%
GROUP 2	12.57	7%	10.3%	a	1.8%
GROUP 3	11.70	7%	10.3%	a	1.8%
GROUP 4	10.93	7%	10.3%	a	1.8%
GROUP 5	10.46	7%	10.3%	a	1.8%
GROUP 6	9.55	7%	10.3%	a	1.8%
GROUP 7	13.11	7%	10.3%	a	1.8%
GROUP 7-A	13.36	7%	10.3%	a	1.8%
GROUP 7-B	13.60	7%	10.3%	a	1.8%

DECISION #PA78-3044 - Mod. #8
(43 FR 20711 - May 12, 1978)
Luzerne County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons:					
Remainder of County	11.40	.60	.75		
Carpenters:					
Black Creek, Butler, Dennison, Foster, Hazle, Hollenback Nescopeck, Sugarloaf, and Lower part of Salem Twps	10.92	.55	.65		.05
Remainder of County	11.39	.55	.65		.05
Laborers:					
Hazleton:					
Laborers	7.64	.55	.80		
Masontenders including scaffold builders	8.04	.55	.80		
Pneumatic, electric and mechanical tool operators 2' pumps-non metallic pipelaying and making joint clay, terra cotta, ironstone vitrified concrete, handling of burning torches, asphalt or other hot materials, cement finishers and blasters' helpers, power buggies, walk along hoist	7.74	.55	.80		
Plasterers' tenders, blasters, and wagon drill operators	7.89	.55	.80		
Remainder of County:					
Unskilled laborers	9.52	.55	.80		
Semi skilled laborers, pneumatic and other mechanical tool operators, 2" pump or under, handling and mixing of all material used by masons from stock pile to mason; non-metallic pipelayer and making of joints, clay, terra cotta, ironstone, vitrified concrete, handling of burning torches, asphalt or other hot material, cement finishers and blasters' helpers	9.72	.55	.80		
Plasterers' tenders, blaster, wagon drill operators	9.84	.55	.59		

DECISION #PA78-3044 - Mod. #8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers: (Cont'D)					
Mason tenders and scaffold builders	9.92	.55	.80		
Millwrights	12.57	.55	.65		.05
Painters:					
Remainder of County:					
Brush	9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
Hazardous	11.21	.75	.50		.10
Plasterers					
Hazleton	10.50				
Power Equipment Operators:					
GROUP 1	12.81	7%	10.3%	a	1.8%
GROUP 2	12.52	7%	10.3%	a	1.8%
GROUP 3	11.64	7%	10.3%	a	1.8%
GROUP 4	10.87	7%	10.3%	a	1.8%
GROUP 5	10.39	7%	10.3%	a	1.8%
GROUP 6	9.47	7%	10.3%	a	1.8%
GROUP 7	13.06	7%	10.3%	a	1.8%
GROUP 7-A	13.31	7%	10.3%	a	1.8%
GROUP 7-B	13.56	7%	10.3%	a	1.8%
Roofers composition and kettlemen	10.65	.90	.85		
Sheet Metal Workers	11.52	.70	.76		.02
Soft Floor Layers	9.60	.55	.65		.05

MODIFICATIONS P. 11

DECISION #PA78-3045 - Mod. #8
(43 FR 20714 - May 12, 1978)
Lackawanna, Susquehanna, Wayne, and Wyoming Counties, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers & Stonemasons:					
Scranton in Lackawanna County	11.35	.90	1.00		.01
Carpenters:					
Lackawanna, Susquehanna and Wayne Counties	11.14	.67	.50		.05
Wyoming County:					
East of Susquehanna River	11.14	.67	.50		.05
West of Susquehanna River	11.39	.55	.65		
ELectricians:					
West of Susquehanna River	11.89	.65	3%+.95		.03
Lathers	11.54		.10		.01
Line Construction					
Lineman, dynamite man	11.61	.50	3%		3/8%
Winch truck drivers	8.16	.50	3%		3/8%
Groundman	7.80	.50	3%		3/8%
Marble Setters	10.20		1.30		
Millwrights:					
Lackawanna, Susquehanna and Wayne Counties	11.72	.67	.50		.05
Wyoming County					
East of Susquehanna River	11.65	.67	.50		.05
Laborers:					
Lackawanna, Wayne, Susquehanna and Northern part of Wyoming County:					
Unskilled and Window Cleaners	9.30	.57	1.00		
Semi skilled laborers; Jackhammer operators, (each man when two required for operation of jackhammer); Vibrator and buster men; wagon drill and all men handling dynamite; gas buggies; 2" pumps and concrete mixers (up to 2 bags) and all pneumatic tools	9.45	.57	1.00		
Plaster tenders and mason tenders and handling of all material to be used; Masons and Scaffold builders,	9.70	.57	1.00		

MODIFICATIONS P. 12

DECISION #PA78-3045

Laborers: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Non-mettallic pipe layers and making of joints, clay, terra cotta, ironstone, vitrified concrete handling of burning torches; Asphalt or other material	9.45	.57	1.00		
Southern part of Wyoming County:					
Unskilled	9.52	.55	.80		
Semi skilled laborers; Pnuumatic and other mechanical tool operator; 2" pump or under; handling and mixing of all material used by masons from stock pile to mason; non-metallic pipelayer and making of joints clay, terra cotta, ironstone, vitrified concrete; handling of burning torches; Asphalt or other hot material; cement finishers and blasters helpers	9.72	.55	.80		
Plasterers tenders; blaster; wagon drill operators	9.84	.55	.80		
Mason tenders and scaffold builders	9.92	.55	.80		
Power Equipment Operators:					
GROUP 1	12.81	7%	10.3%	a	1.8%
GROUP 2	12.52	7%	10.3%	a	1.8%
GROUP 3	11.64	7%	10.3%	a	1.8%
GROUP 4	10.87	7%	10.3%	a	1.8%
GROUP 5	10.39	7%	10.3%	a	1.8%
GROUP 6	9.47	7%	10.3%	a	1.8%
GROUP 7	13.06	7%	10.3%	a	1.8%
GROUP 7-A	13.31	7%	10.3%	a	1.8%
GROUP 7-B	13.56	7%	10.3%	a	1.8%
Roofers:					
Composition and Kettleman	11.07	.88			
Soft Floor Layers					
Lackawanna, Susquehanna and Wayne Cos.	11.14	.67	.50		.05
Wyoming County	9.60	.55	.65		.05
Sheet Metal Workers	11.52	.70	.76		.02
Truck Drivers:					
Class 1	9.52				
Class 2	9.59				
Class 3	10.08				

DECISION NO. PA78-3064 - Mod. #5
(43 FR 43224-September 22, 1978)
Schuylkill County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers and Stonemasons	$10.20	.70	$1.25		
Carpenters	10.92	.55	.65		.05
Laborers:					
Unskilled laborers and window cleaners	7.30	.45	.25		
Operator of jackhammer, paving breaking and other pneumatic, electric and mechanical tools, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for same, wagon drill operators, cofferdams (below 10'), tunnel free air handling and using cutting or burning torches in the wrecking of buildings, blasters, plasterer tenders, mason tenders, scaffold builders and removal and power buggies	7.40	.45	.25		
Painters:					
Townships of North Union, East Union, Union, Mahanoy, West Mahanoy, West Mahanoy, Butler, Kline, Delano, Ryan, Rush, Rahn, West Penn and City of Tamaqua					
Brush	9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
Hazardous	11.21	.75	.50		.10
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	$13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Sheet Metal Workers	11.52	.70	.76		.02
Soft Floor Layers	9.60	.55	.65		.05
Tile Setters	9.20	.70	1.25		
Roofers:					
Composition					
Remainder of County	10.65	.90	.85		

DECISION #PA78-3065 - Mod. #4
(43 FR 43226 - September 22, 1978)
Sullivan County, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters:					
Remainder of County	10.92	.55	.65		.05
Laborers:					
Unskilled & window washers	9.52	.45	.80		
Mason tenders incl. scaffold builders	9.92	.45	.80		
Semi-skilled, pneumatic, electrical & mechanical tool ops., under the jurisdiction of the laborers - 2" pumps-non-metallic pipelaying & making of joints clay, terra cotta, ironstone, vitrified concrete, handling of burning torches, asphalt or other hot materials, cement finishers & blaster helpers, power buggies, walk along hoist	9.72	.45	.80		
Plasterers tenders, blasters & wagon drill operators	9.84	.45	.80		
Painters:					
Brush	9.95	.75	.40		.10
Tapers	10.21	.75	.40		.10
Hazardous	11.21	.75	.40		.10
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Millwrights	12.57	.55	.65		.05
Roofers	10.65	.90	.85		
Sheet Metal Workers	11.52	.70	.76		.02
Soft Floor Layers	9.60	.55	.65		.05

DECISION #PA78-3066 - Mod #6
(43 FR 43228 - September 22, 1978)
Columbia, Montour, and Snyder Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons	10.50	.55	.65		
Carpenters	10.92	.55	.65		.05
Glaziers					
Zone II	10.19	.40	.60		.01
Laborers					
Zone 1					
Class I	7.64	.55	.80		
Class II	7.74	.55	.80		
Class III	8.04	.55	.80		
Class IV	7.89	.55	.80		
Zone 2					
Class I	7.70	.40	.55		
Class II	7.85	.40	.55		
Zone 3					
Class I	8.15	.45	.55		
Class II	8.62	.45	.55		
Class III	7.55	.45	.55		

ZONE I General Laborers: Air, fuel and electric tool operators and all other pneumatic and mechanical tools, including blow-pipe and vacuum cleaners. Cassion workers (top men), Pipelayers for all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe & the making of joints for same. Power-buggy, precast slab placers & signal men, Blaster helper, Excavation of all foundation, digging oof trenches, piers and manholes. Wrecking and moving of all structures. Underpinning & shoring. Stripping, dismantling, oiling & moving of concrete forms, loading, and carrying of reinforcing steel, handling & distribution of lumber, and all other building materials to stock piles, unloading, carrying, distribution, and laying of precast concrete slabs and planks for flooring & roofing, general cleanup & removal of refuge, debris, and all scrap material(s), vibrator operator (concrete placing - whose power is supplied by compressed air, electric, gasoline & any other means):

ZONE 2 Semi-Skilled: Cassion worker (bottom men), blasters, wagon air track and diamond point drill operators, burning torches, green cutting machine (nozzle men), and steam jenny. Plaster & cement mason tenders, machine mixers, plaster pump and scaffold builders (excluding masonry scaffolding). Sand blasting (nozzle mnn):

ZONE 3 Nursery Workers, window washers, floor scrubbers, Tenders of propane gas burners, salamander(s), smudge pots,

DECISION #PA78-3066 - Mod. #8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cement Masons					
Zone 1	10.95				.01
Millwrights	12.57	.55	.65		.05
Painters					
Brush	9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
Hazardous	11.21	.75	.50		.10
Plumbers & Steamfitters	11.55	.85	.90		.12
Roofers					
Zone I	10.65	.90	.85		
ZOne II	10.75	.80	.55		
Sheet Metal Workers	11.52	.70	.76		.02
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Soft Floor Layers	9.60	.55	.65		.05

DECISION #PA78-3067 - Mod. #5
(43 FR 43232 - September 22, 1978)
Adams & York Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons	10.15	.60	.45		
Carpenters:					
Adams County	10.92	.55	.65		.05
York County	10.44	.75	.70		.03
Cement Masons:					
Adams County	10.79	.70	.70		
Ironworkers	12.105	1.14	1.35		.03
Laborers:					
General Laborers	7.20	.50	.62		
Operator of Jackhammer	7.40	.50	.62		
Wagon Drill	7.50	.50	.62		
Handling of all materials	7.35	.50	.62		
Laborers assisting tile	7.25	.50	.62		
Handling & Using dynamiter	7.53	.50	.62		
Caisson Work (Top Men)	7.45	.50	.62		
Caisson Work (Bottom Men)	7.65	.50	.62		
Mixer Man	7.60	.50	.62		
Mable, Tile & Terrazzo Workers	8.95	.45	.45		
Millwrights:					
Adams County	12.57	.55	.65		.05
Painters:					
Brush	8.25	.35	.15		
Steel & Spray	8.80	.35	.15		
Plasterers					
Adams County	9.85	.70	.70		.01
Plumbers	11.55	.85	.90		.12
Soft Floor Layers:					
Adams County	9.60	.55	.65		.05
Steamfitters	11.55	.85	.90		.12
Power Equipment Operators					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%

DECISION NO. PA78-3068 - Mod. #5
(43 FR 45160-September 29, 1978)
Lebanon County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers and Stonemasons	$10.57	.60	.57		.02
Carpenters	10.92	.55	.65		.05
Cement Masons:					
East of Route 501	10.29		1.65		
West of Route 501	11.04	.65	.50		
Ironworkers	12.105	1.14	1.35		.03
Lathers	11.28		.25		.01
Laborers:					
General Laborers	7.25	.45	.45		
Operator of jackhammer, paving braking and other pneumatic, electrical and mechanical tools, laying of all clay, terra cotta, ironstone vitrified concrete or non-metallic pipe and the making of joints for same, wagon drill operator, cofferdam (below 10'), tunnel free air, handling and using cutting or burning torches in the wrecking of buildings, blasters, plaster tenders, mason tenders scaffold builders and removal of power buggies	7.35	.45	.45		

MODIFICATIONS P. 19

DECISION NO. PA78-3068 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Millwrights	$12.57	.55	.65		.05
Plasterers:					
East of Route 501	10.31		1.65		.01
West of Route 501	9.85	.70	.70		.01
Plumbers and Steamfitters:					
East of Route 501	12.87	.81	1.30		.14
West of Route 501	11.55	.85	.90		.12
Painters:					
West of Route 72:					
Brush	9.62	.35	.33		.02
Structural Steel	10.07	.35	.33		.02
Spray	10.37	.35	.33		.02
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Roofers:					
Anniville, Cold Springs, East Hanover, North Anniville, North Cornwall, North Londonderry, South Anniville, South Londonderry, Union, West Cornwall Townships:					
Composition	10.76	.80	.55		
Soft Floor Layers	9.60	.55	.65		.05

MODIFICATIONS P. 20

DECISION NO. PA78-3069 - Mod. #5
(43 FR 46475 - October 6, 1978)
Berks County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	$10.48	.77	.65		
Cement Masons	10.29		1.65		
Electricians:					
Herford, Longswamp, and Washington Townships, portion of Maxatawney Township, East of Sacony Creek, Marion, Lulpehocken and Bethel Twps.	11.75	.70	3%+.80		.02
Laborers:					
General Laborers	8.00	.45	.45		
Operators of jackhammer, paving breaking and other penumatic, electrical and mechanical tools comming under the jurisdiction of laborer, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for same, wagon drill operators and concrete power buggies	8.23	.45	.45		
Cofferdam, (below 10'), tunnel free air muckers	8.28	.45	.45		
Handling and using cutting or burning torches in the wrecking of buildings, plasterer tenders, scaffold builders and removal for plasterers	8.39	.45	.45		
Mason tenders, scaffold builders, removal of mason and power buggies	8.43	.45	.45		
Blasters	8.45	.45	.45		
Lathers	11.28		.25		.01
Millwrights	11.00	.77	.65		
Plasterers	10.31		1.65		.01
Plumbers	12.87	.81	1.30		.14
Soft Floor Layers	10.48	.77	.65		
Power Equipment Operators:					
Group 1	$12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%

DECISION #PA78-3070 - Mod. #5
(43 FR 45162 - September 29, 1978)
Lancaster County, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	10.92	.55	.65		.05
Glaziers	9.19	.40	.40		.01
Electricians:					
Remainder of County	10.60	.45	3%	1/8%	
Laborers:					
General Laborers	7.20	.50	.62		
Operator of Jackhammer	7.40	.50	.62		
Wagon Drill	7.50	.50	.62		
Handling of all materials	7.35	.50	.62		
Laborers assisting tile	7.25	.50	.62		
Handling & using dynamite	7.53	.50	.62		
Caisson Work (Top Men)	7.45	.50	.62		
Caisson Work (Bottom Men)	7.65	.50	.62		
Mixer Man	7.60	.50	.62		
Marble Setters	8.95	.45	.45		
Millwrights	12.57	.55	.65		.05
Ironworkers	12.105	1.14	1.35		.03
Painters					
Elizabeth Dowetal Township					
Brush	9.62	.35	.33		.02
Steel	10.07	.35	.33		.02
Spray	10.37	.35	.33		.02
Plumbers	11.55	.85	.90		.12
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Steamfitters	11.55	.85	.90		.12
Terrazzo Workers	8.95	.45	.45		
Tile Setters	8.95	.45	.45		

DECISION #PA78-3099 - Mod. # 5
(43 FR 58729 - December 15, 1978)
Bradford, Tioga, Union Counties, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers & Stonemasons	$10.05	.80	.75		.015
Carpenters	10.92	.55	.65		.05
Glaziers					
Zone II	10.19	.40	.60		.01
Ironworkers:					
Structural, Ornamental & Reinforcing (Zone I)	12.105	1.14	1.35		.03
Laborers					
Class I	7.70	.40	.55		
Class II	7.85	.40	.55		
Millwrights	12.57	.55	.65		.05
Roofers:					
Composition & Kettleman	10.65	.90	.85		
Painters					
Brush	9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
Hazardous	11.21	.75	.50		.10
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Soft Floor Layers	9.60	.55	.65		.05
Sheet metal workers	11.52	.70	.76		.02

MODIFICATIONS P. 23

DECISION #PA79-3001 - Mod. #1
(44 FR 6886 - February 2, 1979)
Northampton County, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayer & Stonemasons	11.19	.60	.66		.01
Cement Masons	10.79	.60	.66		.01
Electricians:					
Allen, Hanover, Lehigh, Bath, Freemansburg, Hellertown and Bethlehem	11.75	.70	3%+.80		.02
Carpenters	11.30	.64	.72		.05
Laborers:					
Laborers & window cleaners	8.09	.62	.59		
Operator of jackhammer, paving breaking and other pneumatic and mechanical tools coming under the jurisdiction of laborers, laying of all clay terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for same and conferdams (below 10')	8.34	.62	.59		
Wagon drills and men handling burning torches in the wrecking of buildings	8.84	.62	.59		
Plaster and mason tenders, scaffold builders and handling of all material to be used by plasterers and masons, brick and block loaded on pallets, cement finisher tenders, gunniting and moldeo-D and sandblaster helpers, power buggies, all floor hardner and "cure" application shall be work of the mason tender, all pumps such as the concrete, plaste mortar and water, installng rafractory materials in connection with the boiler work	8.49	.62	.59		
Barko Tamper Operator	9.11	.62	.59		
Millwrights	11.70	.64	.72		.05
Plasterers	10.68	.60	.66		.01

MODIFICATIONS P. 24

DECISION #PA79-3001 - Mod. #1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers	12.87	.81	1.30		.14
Terrazzo Workers	10.09	.60	.66		.01
Power Equipment Operator:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Truck Drivers:					
Class I					
Helper, Stake Body Truck (single axle), Dumpster	9.52				
Class II					
Dump Trucks, Tandem & Batch Truck, Semi- Trailers, Agitator Mixer Trucks, Ready Mix and Dumpcrete Type Vehicles Asphalt Distributors, Farm Tractor when used for transportation, Stake Body Truck (Tandem)	9.59				
CLass III					
Euclid Type, Off-Highway Equipment - Back or Belly Dump Truck and Double Hitched Equipment, Straddle (Ross) Carrier, Low-Bed Trailers	10.08				

DECISION #PA79-3004 - Mod. #2 MODIFICATIONS P. 25
(44 FR 16319 - March 16, 1979)
Northumberland County, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers & Stonemasons	10.50	.55	.65		
Carpenters	10.92	.55	.65		.05
Cement Masons	10.95				.01
Glaziers	10.19	.40	.60		.01
Ironworkers	12.105	1.14	1.35		.03
Laborers:					
North of Susquehanna River	7.70	.45	.55		
South of Susquehanna River	8.15	.45	.55		
Millwrights	12.57	.55	.65		.05
Plumbers	11.55	.85	.90		.12
Steamfitters	11.55	.85	.90		.12
Soft Floor Layers	9.60	.55	.65		.05
Sheet Metal Workers	11.52	.70	.76		.02
Roofers:					
Coal, East Cameron, Jackson, Jordan, Little Mahony, Lower Augusta, Upper Mahony, Point Rockfeller, Shamokin, Upper Mahony, Washington, West Cameron, Zerbe Composition	10.76	.80	.55		
Rehainder of County: Composition	10.65	.90	.85		
Painters:					
Brush	9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
Hazardous	11.21	.75	.50		.10
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%

MODIFICATIONS P. 26

DECISION #PA79-3005 - Mod. #2
(44 FR 16320 - March 16, 1979)
Lycoming County, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers & Stonemasons	10.05	.80	.75		.015
Carpenters	10.92	.55	.65		.05
Ironworkers	12.105	1.14	1.35		.03
Lathers	11.53		.20		.01
Laborers:					
Unskilled laborers, scaffold builders, wrecking, window cleaners & demolition	7.70	.40	.55		
Masons tenders, opertors of jackhammers, paving breakers vibrators & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drill operators, excavationg for caisson, under pinning &pier holes (below 12'), non-metallic pipe layers, plasterer tenders, mortar men (mixed by hand), handling & using cutting or burning torches in the wrecking of building	7.85	.40	.55		
Millwrights	12.57	.55	.65		.05
Painters:					
Brush	9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
Hazardous	11.21	.75	.50		.10
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	118%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Roofers, Kettlemen	10.65	.90	.85		.02
Soft FLoor Layers	9.60	.55	.65		.05

Decision #PA79-3007 - Mod. # 2
(44 FR 20932 - April 6, 1979)
Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pa.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons					
Zone 3	$10.05	.80	.75		.015
Zone 2	10.50	.55	.65		
Cement Masons					
Zone 3	10.79	.70	.70		
Glaziers					
Zone 2	10.19	.40	.60		.01
Ironworkers					
Zone 2	12.105	1.14	1.35		.03
Painters					
Zone 1					
Brush	9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
Hazardous	11.21	.75	.50		.10
Plumbers & Steamfitters					
Zone 3	11.55	.85	.90		.12
Roofers					
Zone 2					
Composition & Kettleman	10.65	.90	.85		
Zone 4					
Composition Roofers	10.76	.80	.55		
Sheet metal workers					
Zone 1	11.52	.70	.76		.02

DECISION #PA79-3008 - Mod. #1
(44 FR 25124 - April 27, 1979)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	11.21	.87	.90		.01
Bricklayers & Block Layers	10.57	.60	.57		.02
Cement Masons	10.79	.70	.70		
Glaziers	10.19	.40	.60		.01
Ironworkers					
Structural	12.105	1.14	1.35		.03
Ornamental	12.105	1.14	1.35		.03
Reinforcing	12.105	1.14	1.35		.03
Carpenters	10.92	.55	.65		.05
Laborers:					
Group 1	8.15	.45	.55		
Group 2	8.62	.45	.55		
Group 3	7.55	.45	.55		

Group 1 General Laborers: Air, fuel and electric tool operators and all other pneumatic and mechanical tools, including blow-pipe and vacuum cleaners. Cassion workers (top men), Pipelayers for all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe & the making of joints for same. Power-buggy, precast slab placers & signal men, Blaster helper, Excavation of all foundation, digging of trenches, piers and manholes. Wrecking and moving of all structures. Underpinning & shoring. Stripping, dismantling, oiling & moving of concrete forms, loading, and carrying of reinforcing steel, handling & distribution of lumber, and all other building materials to stock piles, unloading, carrying, distribution, and laying of precast concrete slabs and planks for flooring & roofing, general cleanup & removal of refuge, debris, and all scrap material(s), vibrator operator (concrete placing - whose power is supplied by compressed air, electric, gasoline & any other means):

Group 2 Semi-Skilled: Cassion worker (bottom men), blasters, wagon air track and diamond point drill operators, burning torches, green cutting machine (nozzle men), and steam jenny. Plaster & cement mason tenders, machine mixers, plaster pump and scaffold builders (excluding masonry scaffolding). Sand blasting (nozzle mnn):

Group 3 Nursery Workers, window washers, floor scrubbers, Tenders of propane gas burners, salamander(s), smudge pots

DECISION #PA79-3008 - Mod. #1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lathers	10.71	.40	.25		.01
Millwrights	12.57	.55	.65		.05
Painters:					
Brush	9.62	.35	.33		.02
Structural Steel	10.07	.35	.33		.02
Spray	10.37	.35	.33		.02
Tank, Bridge, Stacks	10.87	.35	.33		.02
Plumbers	11.55	.85	.90		.12
Power Equipment Operators:					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%
Plasterers	9.85	.70	.70		.01
Roofers:					
Composition	10.76	.80	.55		
Soft FLoor Layers	9.60	.55	.65		.05
Stonemasons	10.57	.60	.57		.02
Steamfitters	11.55	.85	.90		.12

DECISION #TN78-1097 - Mod. #1
(43 FR 55217 - November 24, 1978)
Anderson, Grainger, Hamblen, Jefferson, Knox, & Roane Counties Tennessee

CHANGE:

Carpenters & Soft floor layers	$ 5.44

ADD:

Sheet rock finishers	5.71
Sheet rock hangers	5.45

SUPERSEDEAS DECISION

STATE: Florida
COUNTIES: See below*
DECISION NUMBER: FL79-1087
DATE: Date of Publication
Supersedes Decision No: FL76-1098 dated September 3, 1976 in 41 FR 37469.
DESCRIPTION OF WORK: Residential Construction Projects includes single family homes and garden type apartments up to and including four stories.

*Clay, Duval, Flagler, Nassau, Putnam, and St. Johns Counties, Florida

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	6.23				
Bricklayers/Blocklayers	7.00				
Carpenters	5.53				
Drywall finishers	10.00				
Drywall hanger	7.00				
Electricians	8.00				
Laborers:					
Laborers	3.50				
Pipelayers	5.59				
Lathers	7.50				
Plasterers	7.00				
Plumbers	8.75				
Roofers	5.19				
Sheet metal workers	5.66				
Tile setters	8.00				
POWER EQUIPMENT OPERATORS:					
Backhoe	5.55				
Bulldozer	4.00				
Grader	5.50				
Loader	4.75				
Roller	4.50				

SUPERSEDEAS DECISION

STATE: Idaho
COUNTIES: Statewide
DECISION NUMBER: ID79-5112
DATE: Date of Publication
Supersedes Decision No. ID78-5120 dated September 8, 1978, in 43 FR 40176
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and garden type apartments up to and including 4 stories), heavy and highway construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north half), Kootenai, Latah, Lewis, Nez Perce and Shoshone Cos.	$ 13.54	.51	$ 1.20		
Remaining Counties and Idaho County (south half)	12.11	.77	1.37		
BOILERMAKERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	12.76	1.075	1.00	1.00	.03
Remaining Counties	12.56	1.075	1.00	1.00	.03
BRICKLAYERS; Stonemasons:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington Counties	12.15	.75	1.10		
Bannock, Bear Lake, Bingham County (south half), Caribou, Franklin, Oneida & Power Cos.	11.05	.50	.50		
Benewah, Bonner, Boundary, Kootenai and Shoshone Counties	13.00		1.00		
Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties	11.45	.55	.65		
Clearwater, Idaho, Latah, Lewis, and Nez Perce Counties	11.94	.80	.70		.05
Bingham County (north of City of Blackfoot), Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton Counties	11.15	.55	.45		
CARPENTERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the northern boundary of Township #29 north), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Carpenters Piledrivermen; Sawfilers; Stationary power woodworking tool operator; Floor Layer; Floor Finisher; Floor Sander	11.59	.78	.85		.075
	11.74	.78	.85		.075

DECISION NO. ID79-5112

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Carpenters (burned, charred, creosoted or similarly treated material); Boom Man	$ 11.84	.78	.85		.075
Millwrights and Machine Erectors	12.09	.78	.85		.075
Piledriver (creosoted material)	11.99	.78	.85		.075
Remaining Counties and Idaho County (south of the northern boundary of Township #29 North):					
*Zone 1:					
Carpenters; Floor Layers; Shinglers; Drywall Applicator and Installer	10.15	.75	.70	.65	.10
Saw Filer; Piledrivermen; Bridgeman and Wharf Builders	10.32	.75	.70	.65	.10
Millwrights; Machine Erectors; Piledriverman's boom man	10.44	.75	.70	.65	.10
*Zone 2:					
Carpenters; Floor Layers; Shinglers; Drywall Applicator and Installer	11.40	.75	.70	.65	.10
Saw Filer; Piledriverman; Bridge and Wharf Builders	11.57	.75	.70	.65	.10
Millwrights; Machine Erectors; Piledrivermen's boom man	11.69	.75	.70	.65	.10

*For definition of Zones, see POWER EQUIPMENT OPERATORS - AREA 2.

CEMENT MASONS

Benewah, Bonner, Boundary, Clearwater, Idaho County (north of 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
Cement Masons	$10.93	$11.58	$11.83	$12.28	$12.73
Gunnite; Power Machine; Power Troweling Machine; Power Magnesite or other material with oxichloride base	11.08	11.73	11.98	12.43	12.88
Power Tools	11.38	12.03	12.28	12.73	13.18

FRINGE BENEFITS:

Health & Welfare	$ .75
Pensions	1.00
Apprenticeship Training	.05

Zone Pay

Zone 1: Area within a 15 mile radius from the center of the Cities listed below.

Zone 2: Area within 15 - 30 miles radius from the center of the Cities listed below.

Zone 3: Area withon 30 - 45 miles radius from the center of the Cities listed below.

Zone 4: Area within 45 - 90 miles radius from the center of the Cities listed below.

Zone 5: Area over 90 miles radius from the center of the Cities listed below.

Spokane Coeur d'Alene Lewiston

DECISION NO. ID79-5112

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS: (Cont'd)					
Remaining Counties and Idaho County (south of 46th Parallel)					
*Zone 1:					
Cement Masons	$ 9.67	.84	.55	.80	.15
Power trowel; Power grinder; Gunnite and composition floor layer	9.87	.84	.55	.80	.15
*Zone 2:					
Cement Masons	10.92	.84	.55	.80	.15
Power trowel; Power grinder; Gunnite and composition floor layer	11.12	.84	.55	.80	.15
*For Definition of Zones See POWER EQUIPMENT OPERATORS - AREA 2.					
ELECTRICIANS:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington Cos.:					
Electricians	12.00	.75	3%+.75		1%
Cable Splicers	13.20	.75	3%+.75		1%
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Electricians	14.62	.83	3%+.40		.02
Cable Splicers	15.02	.83	3%+.40		.02
Remaining Counties:					
Electricians; Technicians	11.70	.75	3%+.75		1%
Cable Splicers	12.87	.75	3%+.75		1%
ELEVATOR CONSTRUCTORS:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Elevator Constructors	13.95	.895	.69	a	.03
Elevator Constructors' Helpers	9.765	.895	.69	a	.03
Elevator Constructors' Helpers (Prob.)	6.975				

DECISION NO. ID79-5112

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS: (Cont'd)					
Remaining Counties, except Adams, Lemhi, Valley and Washington Counties:					
Elevator Constructors	$ 11.02	.895	.69	a	.03
Elevator Constructors' Helpers	7.71	.895	.69	a	.03
Elevator Constructors' Helpers (Prob.)	5.51				
GLAZIERS:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Gooding County (western part of County from a line running north and south through the eastern limits of the City Bliss), Idaho County (southern part of County from a line running east and west through the north limits of Elk City), Owyhee, Payette, Valley and Washington Counties	10.79	.35	.30		.11
Benewah, Clearwater, Idaho Co. (north of 46th Parallel), Latah, Lewis and Nez Perce Counties	10.33	.40	.45	b	
Bonner, Boundary, Kootenai and Shoshone Counties	11.13	.42	.30	4%	.02
Remaining Counties	8.23	.42	.10	b	
IRONWORKERS:					
Ornamental; Reinforcing; Structural:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	12.60	.93	1.45		.10
Those portions of Adams, Idaho, Valley and Washington Counties located south of the 46th Parallel and north of the Weiser-Gibbonsville Line	12.60	.93	1.45		.10
Remaining Counties and those portions of Adams, Idaho, Valley and Washington Counties located south of the Weiser-Gibbonsville Line	11.44	.70	1.25		.02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	$ 10.55	.75	$ 1.00		
MARBLE SETTERS:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, and Washington Counties	12.15	.75	1.10		
Bannock, Bear Lake, Bingham County (south half), Caribou, Franklin, Oneida and Power Counties	10.25	.50	.50		
Benewah, Bonner, Boundary, Kootenai and Shoshone Counties	13.00		1.00		
Clearwater, Idaho, Latah, Lewis and Nez Perce Counties	11.94	.80	.70		.05
Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties	11.45	.55	.65		
Bingham County (north of City of Blackfoot), Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton Counties	8.92	.55	.45		
PAINTERS:					
Ada, Adams, Boise, Canyon, Elmore (except Mt. Home AFB), Gem, Gooding (western third of County including City of Bliss), Idaho County (south of the 46th Parallel), Owyhee, Payette, Valley and Washington Counties:					
Painters and Tapers	9.54	.56	.40		
Elmore (Mt. Home AFB):					
Painters and Tapers	10.54	.56	.40		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding (except the City of Bliss and western third of County), Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton and Twin Falls Counties:					
Brush; Roller, Perfataper	$ 9.36	.47	.50		.005
Structural Steel; Swing Stage; Spray	9.81	.47	.50		.005
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Brush	11.22	.40	.90		.02
Spray; Steel; Steam Cleaning; Rollers (over 9" or 10" handle); Finish Drywall taper	11.47	.40	.90		.02
Swing Stage; Over 30 ft. high Bitumastic; Sand Blast; Bridge Towers; Stacks; Steeples; Tanks on Legs	11.57	.40	.90		.02
	11.62	.40	.90		.02
PLASTERERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	10.73	.75	1.00		
Remaining Counties	8.83	.74	.45	.70	
PLASTERERS' TENDERS:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	10.00	.82	.90		.05
PLUMBERS:					
Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Nez Perce and Shoshone Counties	13.94	.85	1.26	1.25	.12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS: (Cont'd)					
Remaining Counties and Idaho County (south of the 46th Parallel)	$ 12.32	.79	$ 1.10		.10
ROOFERS:					
Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Idaho County (south of the 46th Parallel), Lemhi, Owyhee, Payette, Valley and Washington Counties:					
Roofers; Kettlemen	9.95	.65	.30	.50	
Roofers working with coal tar and pitch products	11.95	.65	.30	.50	
Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power and Teton Counties	9.95	.65	.40		
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	10.39	.65	1.00		.02
SHEET METAL WORKERS:					
Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power and Teton Counties	11.77	.87	.57		.09
Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	13.88	3%+.68	1.14		.14
Remaining Counties	11.98	.68	.52		.18
SOFT FLOOR LAYERS:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Gooding County (western third of County including City of Bliss), Idaho County (south of the 46th Parallel), Owyhee, Payette, Valley and Washington Counties	7.76	.49	.10		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS: (Cont'd)					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	$ 10.52	.40	.60		
SPRINKLER FITTERS	11.83	.75	1.05		.08
TERRAZZO WORKERS & TILE SETTERS:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington Counties	11.90	.75	1.10		
Bannock, Bear Lake, Bingham County (south half), Caribou, Franklin, Oneida and Power Cos.	10.25	.50	.50		
Benewah, Bonner, Boundary, Kootenai and Shoshone Counties	13.00		1.00		
Clearwater, Idaho, Latah, Lewis and Nez Perce Counties	11.45	.80	.70		
Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties	11.45	.55	.65		
Bingham County (north of City of Blackfoot), Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, and Teton Counties	8.92	.55	.45		

WELDERS: Receive the rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

a. Employer credits 8% basic hourly rate of employee with over 5 years' service, 6% basic hourly rate for 6 months' to 5 years' service, to Vacation Plan. Six Paid Holidays: A through F.

b. All employees who have been employed for a period of one year shall have 2 weeks' vacation with pay. Also 7 Paid Holidays: A, B, C, E, F, plus Veterans' Day and the Day after Thanksgiving

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION WORKERS: (AREA 1):					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Cable Splicers; Leadman Pole Sprayer	$ 14.41	.45	3%+ 1.10	.10	1/2%
Lineman; Pole Sprayer; Heavy Line Equipment Man; Certified Lineman Welder	13.01	.45	3%+ 1.10	.10	1/2%
Tree Trimmer	11.75	.45	3%+ 1.10	.10	1/2%
Line Equipment Man	11.21	.45	3%+ .70	.10	1/2%
Head Groundman (chipper); Head Groundman; Powderman; Jackhammer Man	9.80	.45	3%+ .70	.10	1/2%
Groundman; Tree Trimmer Helper	9.21	.45	3%+ .70	.10	1/2%

ZONE PAY:

Each classification will receive the base rate plus zone A - $1.25, Zone B - $2.00, Zone C - $2.75, Zone D - $4.00.

BASE ZONE - 0 to 3 miles from geographical center of towns listed below.
ZONE A - 3 to 20 miles radius from geographical center of towns listed below
ZONE B - 20 to 35 miles radius from geographical center of towns listed below
ZONE C - 35 to 50 miles radius from geographical center of towns listed below
ZONE D - in excess of 50 miles from geographical center to towns listed below

Spokane	Coeur d'Alene	Kellog
Orofino	Sand Point	Lewiston

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION WORKERS: (Cont'd) (AREA 2)					
Remaining Counties:					
Lineman	$ 11.65	.45	3%+.35		1/2%
Line Equipment Mechanic:					
Base Shop	10.30	.45	3%+.35		1/2%
Right-of-way	11.02	.45	3%+.35		1/2%
Line Equipment Serviceman	10.30	.45	3%+.35		1/2%
Line Equipment Operator	10.47	.45	3%+.35		1/2%
Groundman	8.59	.45	3%+.35		1/2%
Cable Splicer	12.85	.45	3%+.35		1/2%
LABORERS: (AREA 1) Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Building Construction:					
Group 1	9.45	.82	.90		.05
Group 2	9.70	.82	.90		.05
Group 3	9.95	.82	.90		.05
Group 4	10.20	.82	.90		.05
Group 5-A	10.15	.82	.90		.05
Group 5-B	10.20	.82	.90		.05
Group 5-C	10.60	.82	.90		.05
Group 5-D	10.65	.82	.90		.05

LABORERS (AREA 1)
Benewah, Bonner, Boundary, Clearwater, Idaho County (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

Heavy and Highway Construction

Group No.	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	$9.45	$10.10	$10.35	$10.80	$11.25
2	9.70	10.35	10.60	11.05	11.50
3	9.95	10.60	10.85	11.30	11.75
4	10.20	10.85	11.10	11.55	12.00
5-A	10.15	10.80	11.05	11.50	11.95
5-B	10.20	10.85	11.10	11.55	12.00
5-C	10.60	11.25	11.50	11.95	12.40
5-D	10.65	11.30	11.55	12.00	12.45

FRINGE BENEFITS:

Health & Welfare	$.82
Pensions	.90
Apprenticeship Training	.05

Definition of Zones:

Zone 1: Area within a 15 mile radius from the center of the Cities listed below

Zone 2: Area within 15-30 miles radius from the center of the Cities listed below

Zone 3: Area within 30-45 miles radius from the center of the Cities listed below

Zone 4: Area within 45-90 miles radius from the center of the Cities listed below

Zone 5: Area over 90 miles radius from the center of the Cities listed below

Spokane Coeur d'Alene Lewiston

DECISION NO. ID79-5112

LABORERS (AREA 1)
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties

Building, Heavy and Highway Construction

Group 1: Brush Hog Feeder; Concrete Crewman; Concrete Signalman; Crusher Feeder; Demolition; Dumpman; Fence Erector; Flagman; General Laborer; Grout Machine Header Tender; Nipper; Riprap Man; Scaffold Erector, wood or steel; Scaleman; Stake Jumper; Structural Mover; Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Track Laborer (RR); Truck Loader; Well-point Man; Window Cleaner

Group 2: Asphalt Raker; Asphalt Roller, walking; Carpenter Tender; Cement Finisher Tender; Cement Handler; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman, non-mechanical; Form Cleaning Machine, feeder, stacker; Form Setter, paving; Grade Checker using level; Jackhammer Operator; Nozzleman (squeeze and flo-crete nozzle); Nozzleman, water, air or steam; Pavement Breaker; Pipelayer, corrugated metal Culvert; Pipelayer, multi-section; Pot Tender; Power Buggy Operator; Power Tool Operator, gas, electric, penumatic; Railroad equipment, power driven except dual mobile power spiker or puller; Railroad power spiker or puller, dual mobile; Rodder and Spreader; Sandblast Tailhoseman; Tamper; Trencher; Shawnee; Tugger Operator; Vibrator, under 4 inches; Wagon Drills; Water Pipe Liner; Wheelbarrow, power driven

Group 3: Air Track Drill; Brush Machine; Caisson worker, free air; Chain Saw Operator and faller; Concrete Stack; Gunite; High Scaler; Hod Carrier; Laser Beam Operator; Monitor Operator, Air Track or similar mounting; Mortar Mixer; Nozzleman (jet blasting nozzleman, over 1200 lbs., jet blast machine power-propelled, sandblast nozzle); Pipelayer (working topman, caulker, collarman, jointer, mortarman, rigger, jacker, shorer, valve or meter installer); Pipewrapper; Vibrator, 4 inches and over

Group 4: Drills with dual masts; Powderman; Welder, electric, manual or automatic

TUNNEL AND SHAFT, Free Air

Group 5:
- Class A: Bull Gang; Pump Crete Crewman, including distributing Pipe, Assembling and dismantle and Nipper; Concrete crewman; Dumpman
- Class B: Brakeman; Finisher; Vibrator; Form Setter
- Class C: Miner and Nozzleman for concrete and Laser Beam Operator on tunnels
- Class D: Raise and Shaft Miner; Laser Beam Operator on raises and Shafts

DECISION NO. ID78-5120

LABORERS: (AREA 2)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Remaining Counties and Idaho County (south of the 46th Parallel)						
Group 1	$ 8.11	$ 9.36	.80	$ 1.17	.40	.10
Group 2	8.21	9.46	.80	1.17	.40	.10
Group 3	8.31	9.56	.80	1.17	.40	.10
Group 4	8.41	9.66	.80	1.17	.40	.10
Group 5	8.46	9.71	.80	1.17	.40	.10
Group 6	8.71	9.96	.80	1.17	.40	.10
Group 7	8.96	10.21	.80	1.17	.40	.10
Underground Work:						
Group 8	8.26	9.51	.80	1.17	.40	.10
Group 9	8.41	9.66	.80	1.17	.40	.10
Group 10	8.71	9.96	.80	1.17	.40	.10

ZONE PAY:

ZONE 1: Area located within 20 miles on either side of Interstate 80 North, from the Oregon-Idaho State Line on the west to the intersection of Interstate 80 North and Interstate 15 West in Cassia County; then following Interstate 15 West to Pocatello; then following Interstate 15 North to Idaho Falls; then following State Highway 191 north to the intersection with Moody Road (approximately 2 miles north of the City of Rexburg); then following Interstate 15 south through the City of Pocatello to a point approximately 1 mile south of the City of Downey, which point is located by extending the northerly boundary of Franklin County to the west.

ZONE 2: Remaining area of that portion of the State of Idaho south of Parallel 46 (Washington-Oregon State Line extended eastward toward Montana) that is not included in ZONE 1.

LABORERS (AREA 2)
Remaining Counties and Idaho County (South of the 46th Parallel)

Group 1: General Laborers; Sloper, clearing and grading; Form Stripper; Concrete Crew; Concrete Curing Crew; Carpenter Tender; Asphalt Laborer; Hopper Tender; Heater Tender; Stake Jumper; Choker Setter; Spreader and Weighman; Power Wheelbarrow; Scouring Concrete; Rip Rap Man (hand placed); Fence Erector and Installer - manual or mechanical (includes the installation and erection of fences, guard rails, median rails, reference posts, guide posts and right-of-way markers); Crusher Helper; Cribbing and Shoring (in open ditches); Machinery and Parts Cleaner; Leverman - manual or mechanical; Demolition - Salvage; Landscaper; Tool Room Man; Janitor

Group 2: Chuck Tender; Driller Helper; Air Tampers; Gunite Nozzleman Tender; Pipewrapper; Tar Pot Tender; Concrete Sawyer; Signalman, handling cement; Dumpman; Steam Nozzleman; Air and Water Nozzleman (Green Cutter, concrete); Vibrator (less than 4"); Pumpcrete and Grout Pump Crew; Hydraulic Monitor

Group 3: Pipelayer, including sewer, drainage, sprinkler systems and water lines; Free Air Caisson; Jackhammer; Paving Breaker; Powderman Helper; Asphalt Raker; Gasoline powered Tamper; Electric Ballast Tamper; Sand Blasting; Form Setter - airport paving; Gunman (gunite); Manhole Setter; Hand guided machines, such as Roto Tillers, Trenchers, Post Hole Diggers, Walking Garden Tractors, etc.; Form Setter (highway - curb and gutter); Vibrator (4" and over); Timber Faller and Bucker; Metal Pan Installer

Group 4: Hod Carrier; Mason Tender; Plaster Tender; Mason Tender (concrete); Terrazzo-Tile Tender

Group 5: Highscaler; Wagon Drill; Grade Checker; Gunite Nozzleman

Group 6: Diamond Drills; Drillers on Drills with manufacturers' rating 3"

Group 7: Powderman

UNDERGROUND WORK

Group 8: Reboundman; Chucktender; Nipper; Dumpman; Vibrator (less than 4"); Brakeman; Mucker; Bullgang

Group 9: Form Setter and Mover

Group 10: Miners; Machinemen; timbermen; Steelmen; Drill Doctors; Spaders; and Tuggers; Spilling and/or Caisson Workers; Vibrator (over 4")

POWER EQUIPMENT OPERATORS (AREA 1)
Benewah, Bonner, Boundary, Clearwater, Idaho County (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

Group No.	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	$9.80	$10.45	$10.90	$11.15	$11.60
2	10.10	10.75	11.00	11.45	11.90
3	10.65	11.30	11.55	12.00	12.45
4	10.80	11.45	11.70	12.15	12.60
5	10.95	11.60	11.85	12.30	12.75
6	11.20	11.85	12.10	12.55	13.00
7	11.45	12.10	12.35	12.80	13.25

FRINGE BENEFITS:

Health and Welfare	$1.10
Pensions	1.30
Apprenticeship Training	.03

ZONE PAY

Zone 1: Area within a 15 mile radius from the center of the Cities listed below

Zone 2: Area within 15-30 miles radius from the center of the Cities listed wbelow

Zone 3: Area within 30-45 miles radius from the center of the Cities listed below

Zone 4: Area within 45-90 miles radius from the center of the Cities listed below

Zone 5: Area over 90 miles radius from the center of the Cities listed below

Spokane Coeur d'Alene Lewiston

DECISION NO. ID79-5112

POWER EQUIPMENT OPERATORS - (Area 1)
Benewah, Bonner, Boundary, Clearwater, Idaho County (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

Group 1: Bit Grinders; Bolt Threading Machine; Compressors, under 2,000 cu. ft. per minute gas, diesel or electric power; Crusher Feeder (mechanical); Deckhand; Drillers' Helper; Fireman and Heater Tender; Grade Checker; Helper (mechanic or welder, H.D.): Oiler; Oiler and Cable Tender; Mucking Maching Machine; Pumpman; Rollers, all types on subgrade (farm type, Case, John Deere and similar - or compacting or vibrator) except when pulled by Dozer with operable blade; Steam Cleaner; Welding Machine

Group 2: A-Frame Truck (single-drum); Assistant Refrigeration Plant (under 1,000 tons); Assistant Plant Operator; Fireman or Pugmixer (asphalt); Bagley or stationary Scraper; Batch Plant and Wet Mix Operator, single unit (Concrete); Belt Finishing Machine; Bending Machine (pipeline); Blower Operator (cement); Cement Hog; Compressor (2,000 cu. ft. or over, 2 or more - gas, diesel or electric power); Concrete Saw (multiple cut); Distributor Leverman; Elevator Hoisting Materials; Dope Pots (power agitated); Fork Lift or Lumber Stacker, Hydra-lift and similar; Gin Trucks (pipeline); Hoist, single drum; Loader (Bucket Elevators and Conveyors); Longitudinal Float; Mixer (portable-concrete); Pavement Breaker (Hydra-hammer and similar); Post Hole Auger or Punch; Power Broom; Railroad Ballast Regulation Operator (self-propelled); Railroad Power Tamper Operator, (self-propelled); Railroad Power Tamper Jack Operator (self-propelled); Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Ross and similar on construction job site); Tractor (farm type R/T with attachments except Backhoe); Tugger Operator; Ditch Witch or similar

Group 3: A-Frame Truck (2 or more drums); Assistant Refrigeration Plant and Chiller Operator (over 1,000 tons); Backfillers (Cleveland and similar); Belt-crete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Blade Operator (motor patrol and attachments); Boat Operators; Boom Cats (side); Boring Machine (earth); Boring Machine (rock under 8" bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without crane); Cleaning and Doping Machine Pipeline); Concrete Pumps (squeeze-crete, flow-crete, pumpcrete, Whitman and similar); Drills (Churn, Core, Calyx, or Diamond); Elevating Belt-type Loader (Euclid, Barber Greene or similar); Elevatong Grader-type Loader (Dumor, Admas, or similar); Equipment Serviceman, Greaser and Oiler; Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Hoist (2 or more drums or tower hoist); Loaders (overhead and front-end under 4 yds., R/T); Locomotive Engineer; Mixermobile; Mucking Machine; Power or Curb Extruder (asphalt and concrete); Pump (Grout or Jet); Rollerman (finishing pavement); Rubber-tired Scraper (one motor with one scraper, under 40 yds.); Screed Operator; Soil Stabilizer (P & H or similar); Spreader Machine; Tractor (crawler including Dozer, Scraper, Drills, Booms, Rollers, etc.); Traverse Finishing Machine; Trenching machines (under 7 ft. depth capacity); Turnhead Operator; Vacuum Drill (reverse circulation drill, under 8")

DECISION NO. ID79-5112

POWER EQUIPMENT OPERATORS (AREA 1) (Cont'd)
Benewah, Bonner, Boundary, Clearwater, Idaho County (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

Group 4: Asphalt Plant Operator; Crusher; Grizzle and Screening Plant Operator; H.D. Mechanic; H.D. Welder; Refrigeration Plant Engineer (under 1,000 tons); Rubber-tired Scraper, Multi-engine power, with one scraper (Euclid, TS-24 and similar); Rubber-tired Scraper, one motor with one scraper (40 yards and over); Surface Heater and Planer Machine; Turnhead (with re-screening)

Group 5: Automatic Subgrader (ditches and trimmers) (Autograde, ABC, R.A. Hansen and similar on grade wire); Backhoe (under 3 yards); Batch and Wet Mix Operator - multiple units (2 and including 4); Chipper (with crane); Clamshell Operator (under 3 yds.); Concrete Slip Form Paver; Cranes all (under 65 tons); Derricks and Stifflegs (under 65 tons); Draglines (under 3 yds.); Drilling Equipment (8" bit and over) (Robbin's Reverse Circulation and similar); Loader Operator (Front End and Overhead 4 yds. to 8 yds.); Piledriving Engineers; Paver (dual drum); Quad-track or similar equipment; Railroad Track Liner Operator (self-propelled); Rubber-tired Scrapers, multi-engine, power with one scraper (Euclid, TS-24 and similar); Push Pull or Help Mate in use; Rubber-tired Scrapers, multiple engines with two scrapers; Shovels (under 3 yds.); Refrigeration Plant Engineer (1,000 tons and over); Signalmen (Whirleys, Highline Hammerheads or similar); Trenching Machines (7 ft. depth and over); Multiple Dozer units with single blade

Group 6: Backhoes (3 yds. and over); Batch Plant (over 4 units); Cableway Controller - Dispatcher; Cableway Operator; Clamshell Operator (3 yds. and over); Cranes, all - 65 tons and over; Derricks and Stifflegs (65 tons and over); Draglines (3 yds. and over); Elevating Belt (Holland type); Loader (360 degrees revolving Koehring Scooper or similar); Loaders (overhead and front-end over 8 yds. to 12 yds.); Rubber-tired Scrapers (multiple engine with three or more scrapers); Shovels (3 yds. and over); Tower Crane; Whirleys and Hammerheads (all)

Group 7: Helicopter Pilot; Loaders (overhead and front-end - over 12 yards)

POWER EQUIPMENT OPERATORS (AREA 2)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Remaining Counties and Idaho County (south of the 46th Parallel)						
Group 1	$ 9.56	$10.81	$ 1.00	$ 1.00		.10
Group 2	9.72	10.97	1.00	1.00		.10
Group 3	10.09	11.34	1.00	1.00		.10
Group 4	10.40	11.65	1.00	1.00		.10
Group 5	10.57	11.82	1.00	1.00		.10
Group 6	10.75	12.00	1.00	1.00		.10
Group 7	11.11	12.36	1.00	1.00		.10
Group 8	11.34	12.59	1.00	1.00		.10
Group 9	11.57	12.82	1.00	1.00		.10
Group 10	11.81	13.06	1.00	1.00		.10

Definitions of Zones:

Zone 1: Area located within 20 miles on either side of Interstate 80 North, from the Oregon-Idaho State Line on the west to the intersection of Interstate 80 North and Interstate 15 west in Cassia County; then following Interstate 15 west to Pocatello; then following Interstate 15 North to Idaho Falls; then following State Highway 191 north to the intersection with Moody Road (approximately 2 miles north of the City of Rexburg); then following Interstate 15 South through the City of Pocatello to a point approximately 1 mile south of the City of Downey, which point is located by extending the northerly boundary of Franklin County to the west.

Zone 2: Remaining area of that portion of the State of Idaho south of Parallel 46 (Washington-Oregon State Line extended eastward toward Montana) that is not included in Zone 1.

DECISION NO. ID79-5112

POWER EQUIPMENT OPERATORS (Area 2)
Remaining Counties and Idaho County (South of the 46th Parallel)

Group 1: Brakemen; Crusher; Plant Feeder (mechanical); Deckhand; Drill Helpers; Grade Checkers; Heater Tender; Land Plane; Oilers; Pumpman

Group 2: Air Compressor; Asphalt Refrigeration Plant Operator; Bell Boy; Bit Grinder; Blower Operator (Cement); Bolt Threader Machine Operator; Broom; Cement Hog; Concrete Mixer; Concrete Saw - multiple cut; Discing - harrowing or mulching (regardless of motive power); Distributor Leverman; Drill Steel Threader Machine Operator; Fireman - all; Heavy Duty Mechanic Helper or Welder Helper; Hoist - single drum; Hydraulic Monitor Operator - skid mounted; Oiler (single piece of equipment); Pugmixer - box or screed Operator; Spray Curing Machine; Tractor - rubber-tired farm type using attachments

Group 3: A-Frame Truck (Hydra Lift, Swedish Cranes, Ross Carrier, Hyster on construction jobs); Battery Tunnel Locomotive; Belt Finishing Machine; Cable Tenders (underground); Chip Spreader Machine (self-propelled); Hoist, 2 or more drums or Tower Hoist; Hydralift - Fork Lift and similar (when hoisting); Oiler (underground); Power Loader (Bucket Elevator, Conveyors); Road Roller (regardless of motive power)

Group 4: Boring Machine (earth or rock) (Quarry Master - Joy) (Tractor mounted); Drills: Churn - Core - Calyx or Diamond; Front End and Overhead Loaders and similar machines - (up to and including 4 yds.) - (rubber-tired); Grout Pump; Hydra-hammer; Locomotive Engineer; Longitudinal Float Machine; Mixer-mobile; Spreader Machine; Tractor - rubber-tired - using Back-hoe, Transverse Finishing Machine, Trenching Machine, Waggoner Compactor and similar, Asphalt Spreaders

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POWER EQUIPMENT OPERATORS (AREA 2) (CONT'D)
Remaining Counties and Idaho County (South of the 46th Parallel)

Group 5: Concrete Plant Operator; Concrete Road Paver (dual); Elevating Grader Operator; Euclid Elevating Loader; Generator Plant Operator - mechanic (diesel - electric); Post Hole Auger or Punch Operator; Power Shovels and Draglines - under 1 yard; Pump-crete; Refrigeration Plant Operator; Road Roller (Finishing High type Pavement); Skidder - rubber-tired; Subgrader; Multiple Station Beltline Operator (Teton Dam Project Only); Service Oiler

Group 6: Asphalt Pavers - self-propelled; Asphalt Plant Operator; Blade Operator (motor patrol); Concrete Slip Form Paver; Cranes up to and including 50 ton; Crusher Plant Operator; Derrick Operator; Drilling Equipment (Bit under 8 inches)(Robbins Reverse Circulation and similar); Front End and Overhead Loaders and similar machines (over 4 yds. to and including 7 yds.); Koehring Scooper; Heavy Duty Mechanic or Welder; Mucking Machine (undeground); Multi-batch Concrete Plant Operator; Piledriver Engineer; Power Shovels and Draglines (1 yd. to and including 3½ yds.); Tower Crane Operator; Tractor - Crawler type - including all attachments; Refrigeration Plant Operator (over 1,000 tons); Trimmer Machine Operator; Tournapulls - Euclid and similar - to and including 40 yds.

Group 7: Cableway Operator; Continuous Excavator (Barber Greene WL-50); Cranes - over 50 ton; Dredges; Drilling Equipment (Bit 8 inches and over) (Robbins Reverse Circulation and similar); Fine Grader - CMI or Equivalent; Front End and Overhead Loaders and similar machines (over 7 yds.); Power shovels and Draglines (over 3½ yds.); Quad type tractors with all attachments; Tournapulls Euclid and similar - over 40 yds. to and including 50 yds.; Multiple Scraper Units

Group 8: Tournapulls - Euclid and similar - over 50 yds. to and including 75 yds.

Group 9: Tournapulls - Euclid and similar - over 75 yds. to and including 100 yds.

Group 10: Tournapulls - Euclid and similar - over 100 yds.

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TRUCK DRIVERS (AREA 1)
Benewah, Bonner, Boundary, Clearwater, Idaho County (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

Group NO.	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	$10.66	$11.31	$11.56	$12.01	$12.46
2	10.70	11.35	11.60	12.05	12.50
3	10.76	11.41	11.66	12.11	12.56
4	10.85	11.50	11.75	12.20	12.65
5	11.06	11.71	11.96	12.41	12.86
6	11.10	11.75	12.00	12.45	12.90
7	11.16	11.81	12.06	12.51	12.96
8	11.20	11.85	12.10	12.55	13.00
9	11.31	11.96	12.21	12.66	13.11
10	11.35	12.00	12.25	12.70	13.15
11	11.66	12.31	12.56	13.01	13.46
12	11.80	12.45	12.70	13.15	13.70
13	11.96	12.61	12.86	13.31	13.76
14	12.10	12.75	13.00	13.45	13.90

FRINGE BENEFITS:

Health and Welfare	$ 1.07
Pensions	1.12

Definitions of ZONES:

Zone 1: Area within a 15 mile radius from the center of the Cities listed below

Zone 2: Area within 15-30 mile radius from the center of the Cities listed below

Zone 3: Area within 30-45 mile radius from the center of the Cities listed below

Zone 4: Area within 45-90 mile radius from the center of the Cities listed below

Zone 5: Area over 90 mile radius from the center of the Cities listed below

Spokane Coeur d'Alene Lewiston

TRUCK DRIVERS (AREA 2) Remaining Counties and Idaho County (South of the 46th Parallel)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$ 9.18	$10.43	.85	.75	.60	.10
Group 2	9.24	10.49	.85	.75	.60	.10
Group 3	9.30	10.55	.85	.75	.60	.10
Group 4	9.36	10.61	.85	.75	.60	.10
Group 5	9.41	10.66	.85	.75	.60	.10
Group 6	9.67	10.92	.85	.75	.60	.10
Group 7	9.73	10.98	.85	.75	.60	.10
Group 8	9.79	11.04	.85	.75	.60	.10
Group 9	9.90	11.15	.85	.75	.60	.10
Group 10	9.96	11.21	.85	.75	.60	.10
Group 11	10.02	11.27	.85	.75	.60	.10
Group 12	10.08	11.33	.85	.75	.60	.10
Group 13:						
Class A	9.56	10.81	.85	.75	.60	.10
Class B	9.77	11.02	.85	.75	.60	.10
Class C	9.90	11.15	.85	.75	.60	.10
Class D	10.08	11.33	.85	.75	.60	.10
Class E	10.19	11.44	.85	.75	.60	.10
Class F	10.31	11.46	.85	.75	.60	.10
Class G	10.59	11.84	.85	.75	.60	.10
Class H	10.82	12.07	.85	.75	.60	.10
Class I	11.05	12.30	.85	.75	.60	.10
Group 14	10.74	11.72	.85	.75	.60	.10

Definitions of Zones:

Zone 1: Area located within 20 miles on either side of Interstate 80 North, from the Oregon-Idaho State Line on the west to the intersection of Interstate 80 North and Interstate 15 west in Cassia County; then following Interstate 15 west to Pocatello; then following Interstate 15 North to Idaho Falls; then following State Highway 191 north to the intersection with Moody Road (approximately 2 miles north of the City of Rexburg); then following Interstate 15 South through the City of Pocatello to a point approximately 1 mile south of the City of Downey, which point is located by extending the northerly boundary of Franklin County to the west.

Zone 2: Remaining area of that portion of the State of Idaho south of Parallel 46 (Washington-Oregon State Line extended eastward toward Montana) that is not included in Zone 1.

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TRUCK DRIVERS (AREA 1)

Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

Group 1: Flat Bed Truck, single rear axle; Escort Driver; Fish Truck; Fork Lift, 3,000 lbs. and under; Fuel Truck Driver (steam cleaner and washer); Helper and Swamper; Leveeperson loading trucks at bunkers; Pickup hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired pulling trailer or similar equipment); Water Tank Truck 1,800 gallons and under

Group 2: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material; Tireperson No. 1

Group 3: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power operated Sweeper; Semi-trailer, Low Bed, Truck and Trailer; Straddle Carrier (Ross, Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yds. and under); Trucks, side, end and bottom dump (under 6 yds.); Water Tank Truck (1,801 to 4,000 gallons)

Group 4: Auto Crane - 2,000 lbs. capacity; Bulk Cement Spreader; Dumptor (6 yds. and under); Flaherty Spreader, Box Driver, Flat Bed Truck (using power take off); Fork Lift (over 3,000 lbs.); Oil Distributor Driver (road, bootperson, leverperson helper); Rubber-tired Tunnel Jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks hauling concrete (over 3 yds. to 6 yds.); Water Tank Truck (4,001 to 6,000 gallons); Wrecker and Tow Trucks

Group 5: Low Boy (under 50 tons); Service Greaser; Tireperson No. 2; Trucks, side, end and bottom dump (over 6 yds. to 12 yds.)

Group 6: A-Frame (Swedish Crane, Iowa 3,000, Hydrolift); Water Tank Truck (over 6,001 to 8,000 gallons)

Group 7: Dumptor (over 6 yds.); Transit Mixers and Trucks hauling Concrete (6 yds. to 10 yds.); Trucks, side, end and bottom dump (over 12 yds. including 20 yds.)

Group 8: Low Boy (over 50 tons); Water Tank Truck (8,001 to 10,000 gallons)

TRUCK DRIVERS (AREA 1) (CONT'D)
Benewah, Bonner, Boundary, Clearwater, Idaho County (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

Group 9: Transit Mixers and Trucks hauling concrete, (10 yds. to 15 yds.); Trucks, side, end and bottom dump (over 20 yds. including 30 yds.) Water Tank Trucks (10,001 to 12,000 gallons)

Group 10: Mechanic, field

Group 11: Tournarocker, D.W.'s and similar, with 2 or 4 wheel power tractor with trailer, gallonage or yardage scale, which is greater; Transit Mixers and Trucks hauling concrete (15 yds. to 20 yds.); Trucks, side, end and bottom dump (over 30 yds. to 40 yds.); Water Tank Truck (12,001 to 14,000 gallons)

Group 12: Transit Mixers and Trucks hauling concrete (over 20 yds); Trucks, side, end and bottom dump (over 40 yds. to 50 yds.)

Group 13: Truck, side, end and bottom dump (over 50 yds. to 100 yds.)

Group 14: Helicopter Pilot hauling employees or material; Trucks, side, end and bottom dump (over 100 yds.)

TRUCK DRIVERS (AREA 2)
Remaining Counties and Idaho County (South of the 46th Parallel)

Group 1: Leverman loading at Bunkers; Pilot Car or Escort Driver

Group 2: Flat Bed - 2 axle and pickup hauling materials; Water Tank Truck (1,800 gallons and under); Fork Lift (3,000 and under)

Group 3: Flat Bed - 3 axle; Fuel Truck (1,000 gallons and under); Greaser; Tireman; Serviceman; Buggymobile; Man Haul (Shuttle Truck or Bus)

Group 4: Transit Mix Truck - 3 yds. and under; Truck Helpers; Slurry or concrete pumping Truck

Group 5: Flat Bed using power takeoff; Water Tank Truck (over 1,800 to 4,000 gallons); Semi-trailer - Low Boy - up to 96,000 lbs. GVW; Bulk Cement Tanker - up to 96,000 lbs. GVW; Fork Lift - over 3,000 lbs. (Bull Lift, Hydro Lift); Ross, Hyster and similar straddle equipment; "A" Frame Truck (Sewdish Crane, Iowa 3,000, Hydro-lift)

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TRUCK DRIVERS (AREA 2) (Cont'd)
Remaining Counties and Idaho County (South of the 46th Parallel)

Group 6: Transit Mix Truck, over 3 yds. - 6 yds.

Group 7: Water Tank Truck - (over 4,000 gallons); Fuel Truck - over 1,000 gallons; Distributor or Spreader Truck

Group 8: Transit Mix Truck - over 6 yds. - 8 yds.; Dumptors; Field Tireman; Serviceman

Group 9: Transit Mix Truck - over 8 yds. to 10 yds.; Snow Plow (Truck mounted)

Group 10: Low Boy - 96,000 lbs. GVW and over; Bulk Cement Tanker - 96,000 lbs. GVW and over

Group 11: Transit Mix Truck - over 10 yds.

Group 12: Turnarocker and similar equipment

Group 13: Truck - side, end and bottom dump
Class A: 6 yds. and under
Class B: Over 6 yds. - including 12 yds.
Class C: Over 12 yds. - including 20 yds.
Class D: Over 20 yds. - including 30 yds.
Class E: Over 30 yds. - including 40 yds.
Class F: Over 40 yds. - including 50 yds.
Class G: Over 50 yds. - including 75 yds.
Class H: Over 75 yds. - including 100 yds.
Class I: Over 100 yds.

Group 14: Truck Mechanic

SUPERSEDEAS DECISION

STATE: Mississippi COUNTIES: *See below
DECISION NO.: MS79-1086 DATE: Date of Publication
SUPERSEDES DECISION NO. MS77-1078 dated June 17, 1977 in 42 FR-31044
DESCRIPTION OF WORK: Building Construction Project (does not include single family homes and garden type apartments up to and including 4 stories.

*Counties: Lowndes County (excluding Columbia Lock & Dam and Tennessee-Tombigbee Project)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanic	4.50				
Bricklayers	6.20				
Carpenters	6.80				
Cement masons	6.40				
Electricians	10.15	.42	3%	.14	.02
Ironworkers, reinforcing	10.75	.60	.815		.06
Laborers	2.90				
Lathers	4.80				
Painters, brush	4.00				
Plasterers	4.54				
Plumbers & steamfitters	8.80	.30	.30		.05
Roofers	3.50				
Sheet metal workers	3.66				
Soft floor layers	4.46				
Tile setters	4.87				
Truck drivers	3.25				
POWER EQUIPMENT OPERATORS:					
Bulldozers	4.50				
Tractor	3.25				

SUPERSEDEAS DECISION

STATE: Wisconsin COUNTY: Statewide
DECISION NUMBER: WI79-2055 DATE: Date of Publication
Supersedes Decision Number WI78-2104 dated October 20, 1978 43 FR 49209
DESCRIPTION OF WORK: Highway and Airport Runway and Taxiway Constr. Projects (does not include bridges over navigable waters; tunnels; buildings in highway rest areas; and railroad construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS and STONEMASONS:					
Zone 1 - Barron, Buffalo, Burnett, Chippewa, Dunn, Eau Clair, Pepin, Pierce, Polk, Rusk, St. Croix and Sawyer Counties	$10.97	.75	.40		
Zone 2 - Brown, Calumet, Door, Florence, Fond Du Lac, Green Lake, Kewaunee, Manitowoc, Marinette, Marquette, Oconto Outagamie, Shawano, Waupaca, Washara, and Winnebago Counties	9.20	.75	.50	.55	.05
Zone 3 - Green, Lafayette and Rock Counties	10.38	.75	.70	.25	
Zone 4 - Crawford, Jackson, Juneau, La Crosse, Vernon, Trempealeau and Monroe Cos.	11.00	.75	.35		
Zone 5 - Walworth County	11.55	.70	.80	.60	
Zone 6 - Dane, Grant, Iowa and Richland Counties	10.79	.75	1.00		
Zone 7 - Milwaukee, Ozaukee, Washington and Waukesha Cos.	12.27	1.20	1.20	.56	.15
Zone 8 - Columbia and Sauk Cos.	11.09	.75	.70		
Zone 9 - Kenosha and Racine Cos.	10.85	.70	.80	.60	
Zone 10 - Sheboygan County	9.20	.75	.50	.55	.05
Zone 11 - Ashland, Bayfield, Douglas and Iron Counties	11.36	.75	.45		
Zone 12 - Dodge and Jefferson Counties	10.30	.75	.40	.40	
Zone 13 - Adams, Clark, Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Price, Taylor, Vilas and Wood Counties	9.85	.75	.40		
CARPENTERS and PILEDRIVERMEN:					
Zone 1 - Ashland County					
Carpenters	9.44	.50	.35	.15	
Piledrivermen	9.64	.50	.35	.15	

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CARPENTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Zone 2 - Barron, Burnett, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk, Rusk, St. Croix, Sawyer and Taylor Counties					
Carpenters	$10.22	.50	.60		.05
Piledrivermen	10.62	.50	.60		.05
Zone 3 - Brown, Calumet, Door, Fond Du Lac, Green Lake, Kewaunee, Manitowoc, Marinette, Marquette, Menominee, Oconto, Outagamie, Shawano, Waupaca & Waushara & Winnbago Cos.					
Carpenters	9.92	.50	.60		.05
Piledrivermen	10.32	.50	.60		.05
Zone 4 - Green, Jefferson & Rock Counties					
Carpenters	10.90	.50	.85		.10
Piledrivermen	11.05	.50	.85		.10
Zone 5 - Kenosha County					
Carpenters	11.60	.50	.85		.05
Piledrivermen	11.68	.50	.85		.05
Zone 6 - Jackson, La Crosse, Monroe, Trempealeau & Vernon Counties					
Carpenters	9.92	.50	.60		.05
Piledrivermen	10.32	.50	.60		.05
Zone 7 - Adams, Columbia, Crawford, Dane, Dodge, Grant, Iowa, Juneau, Lafayette, Richland & Sauk Counties					
Carpenters	10.27	.50	.60		.05
Piledrivermen	10.67	.50	.60		.05
Zone 8 - Florence & Iron Cos.					
Carpenters	10.69	.60	.70		.01
Piledrivermen	10.69	.60	.70		.01
Zone 9 - Milwaukee, Oazukee, Washington & Waukesha Cos.					
Carpenters	11.97	1.00	1.00	.51	
Piledrivermen	12.67	1.00	1.00	.51	
Zone 10 - Racine County					
Carpenters	11.50	.60	.85		.05
Piledrivermen	11.58	.60	.85		.05

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CARPENTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Zone 11 - Sheboygan County					
Carpenters	$10.80	.75	.70		
Piledrivermen	11.84	.75	.70		
Zone 12 - Bayfield & Douglas Counties					
Carpenters	10.65	.40	.50	.75	
Piledrivermen	10.65	.40	.50	.75	
Zone 13 - Walworth County					
Carpenters	10.90	.50	.60		.10
Piledrivermen	11.05	.50	.60		.10
Zone 14 - Forest, Langlade, Lincoln, Marathon, Oneida Portage, Price, Vilas & Wood Counties					
Carpenters	9.92	.50	.60		.05
Piledrivermen	10.32	.50	.60		.05
CEMENT MASONS:					
Zone 1 - Ashland, Bayfield, Douglas & Iron Counties	11.84	.40			
Zone 2 - Barron, Burnett, Chippewa, Dunn, Polk, Rusk, St. Croix, Sawyer & Washburn Counties	10.97	.75	.40		
Zone 3 - Adams, Clark, Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Price, Taylor, Vilas & Wood Counties	9.35	.75	.40		
Zone 4 - Buffalo, Eau Claire, Pepin & Pierce Counties	10.97	.75	.40		
Zone 5 - Brown, Calumet, Door, Florence, Green Lake, Kewaunee, Maintowoc, Marinette, Marquette, Oconto, Outagamie, Shawano, & Waupaca Counties	9.35	.75	.40		
Zone 6 - Crawford, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau and Vernon Counties	9.48	.75	.40		
Zone 7 - Waushara, Winnebago, Sheboygan and Fond Du Lac Counties	8.70	.75	.50	.55	

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CEMENT MASONS: (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 8 - Dodge & Jefferson Cos.	$ 9.80	.75	.40	.40	
Zone 9 - Columbia & Sauk Cos.	11.25	.75	.40		
Zone 10 - Milwaukee, Ozaukee, Washington & Waukesha Cos.	11.33	1.25	1.00	.51	
Zone 11 - Dane, Green, Iowa, Lafayette & Rock Counties	10.55	.75	1.00		
Zone 12 - Grant County	10.58				
Zone 13 - Walworth County	10.26	.70	.80	.60	
Zone 14 - Racine & Kenosha Cos.	10.64	.60	.85	.50	
ELECTRICIANS:					
Zone 1 - Calumet, Outagamie, Waupaca, Waushara & Winnebago Counties	11.73	.70	3%		
Zone 2 - Barron, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk, Price, Rusk & St. Croix, & Taylor Counties	11.62	5%	3%		
Zone 3 - Brown, Door, Kewaunee, & Shawano Counties	12.60	.60	3%		½%
Zone 4 - Florence & Forest Cos.	11.64	.55	3%	8%	1/8%
Zone 5 - Kenosha County	13.62	.51	3%	.45	3/4%
Zone 6 - Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau & Vernon Counties	11.38	.65	3%		
Zone 7 - Walworth County	12.22	.55	3%	5%	½%
Zone 8 - Columbia, Dane, Dodge, Green Lake, Iowa, Marquette, & Sauk Counties	11.04	.84	3%	8%	
Zone 9 - Sheboygan County	11.35	1.10	3%+.45	10%	1%
Zone 10 - Ashland, Bayfield, Burnett, Douglas, Iron, Sawyer & Washburn Cos.	12.13	4%	5%	11%	1%

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ELECTRICIANS: (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 11 - Adams, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Vilas & Wood Cos.	$10.88	.50	3%	8%	½%
Zone 12 - Fond Du Lac County	10.65	1.00	3%+.35	10%	1%
Zone 13 - Green, Jefferson, Lafayette & Rock Counties	12.22	.55	5%	7%	½%
Zone 14 - Milwaukee, Ozaukee, Washington & Waukesha Cos.	12.79	1.00	3%+.45	10%	1%
Zone 15 - Racine Co.	14.02	.55	3%		
Zone 16 - Manitowoc, Marinette & Oconto Counties	12.60	.60	3%		½%
IRONWORKERS:					
Zone 1 - Barron, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk, St. Croix & Trempealeau Counties	12.20	.85	.80		.04
Zone 2 - Ashland, Bayfield, Burnett, Douglas, Forest, Iron, Lincoln, Oneida, Price, Rusk, Sawyer, Taylor, Vilas & Washburn Counties	11.00	.40	.60	1.00	.02
Zone 3 - Adams, Columbia, Crawford, Dane, Dodge, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Langlade, Marquette, Marathon, Menominee, Monroe, Portage, Richland, Sauk, Shawano, Waupaca, Vernon, Waushara, & Wood Counties	11.27	.75	.525		.055
Zone 4 - Brown, Calumet, Door, Florence, Fond Du Lac, Kenosha, Kewaunee, Manitowoc, Marinette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington & Waukesha & Winnebago Cos.	11.36	1.30	1.00	1.21	.15
Zone 5 - Rock County	12.50	.75	.375		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Northern Section, North of La Crosse, Monroe, Juneau, Adams, Waushara, Winnebago, Calumet & Manitowoc					
Linemen	$10.92	.45	7%		
Heavy Equipment Operators	9.83	.45	7%		
Light Equipment Operators	8.74	.45	7%		
Truck Drivers & Heavy Groundman	7.64	.45	7%		
Truck Drivers & Light Groundman	7.10	.45	7%		
Groundman	6.01	.45	7%		
Southern Section, South of La Crosse, Monroe, Juneau, Adams, Waushara, Winnebago, Calumet & Manitowoc					
Linemen	9.97	.45	7%		
Heavy Equipment Operators	8.97	.45	7%		
Light Equipment Operator	7.98	.45	7%		
Truck Drivers & Heavy Groundman	6.98	.45	7%		
Truck Drivers & Light Groundman	6.48	.45	7%		
Groundman	5.48	.45	7%		
PAINTERS:					
Zone 1 - Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Price & Taylor Cos.					
Brush	9.50		.50		
Spray	10.25		.50		
Zone 2 - Barron, Buffalo, Burnett, Chippewa, Dunn, Eau Claire, Pepin, Pierce, Polk, Rusk, St. Croix, Sawyer, Trempealeau, & Washburn Cos.					
Brush	10.40		.15	5%	
Spray	10.65		.15	5%	
Steel	10.40		.15	5%	
Zone 3 - Brown, Door, Kewaunee, & Oconto Counties					
Brush	9.93	.80			
Spray	9.93	.80			
Zone 4 - Florence County					
Brush	9.93	.80			
Spray	9.93	.80			
Zone 5 - Kenosha & Walworth Cos.					
Brush	9.925	.50	.60		
Spray	10.52	.50	.60		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (CONT'D)					
Zone 6 - Adams, Clark, Crawford, Jackson, Juneau, La Crosse, Monroe, Portage, Vernon & Wood Counties					
Brush	$ 9.95		.70		
Spray	10.37		.70		
Zone 7 - Columbiana, Dane, Dodge, Grant, Green, Iowa, Lafayette, Richland, Rock & Sauk Cos.					
Brush	10.46	.80	.30	.40	
Spray	11.21	.80	.30	.40	
Zone 8 - Calumet & Manitowoc Counties					
Brush	9.35				
Spray	9.35				
Zone 9 - Marinette County					
Brush	5.45				
Spray	6.10				
Zone 10 - Jefferson, Milwaukee, Ozaukee, Washington & Waukesha Counties					
Brush	10.35	1.06	.90	.50	
Spray & Steel	10.35	1.06	.90	.50	
Zone 11 - Fond Du Lac, Green Lake, Marquette, Outagamie, Shawano, Waushara, Waupaca, & Winnebago Counties					
Brush & Steel	9.25	.75	.25		
Spray	9.75	.75	.25		
Zone 12 - Racine County					
Brush	9.90	.60	.80		
Spray	10.50	.60	.80		
Zone 13 - Sheboygan County					
Brush	8.55	.45	.30	.20	
Spray	9.05	.45	.30	.20	
Zone 14 - Ashland, Bayfield, Douglas, Iron & Vilas Counties					
Brush	12.16	.40	.40		.11
Spray	12.16	.40	.40		.11

DECISION NO. WI79-2055

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Zone 1 - Milwaukee & Waukesha Counties					
Group 1	$ 9.01	1.00	1.00	.51	.03
Group 2	9.11	1.00	1.00	.51	.03
Group 3	9.16	1.00	1.00	.51	.03
Group 4	9.21	1.00	1.00	.51	.03
Group 5	9.26	1.00	1.00	.51	.03
Group 6	9.31	1.00	1.00	.51	.03
Group 7	9.66	1.00	1.00	.51	.03
Zone 2 - Racine County					
Group 1	8.77	.73	.85	.50	.03
Group 2	8.87	.73	.85	.50	.03
Group 3	8.92	.73	.85	.50	.03
Group 4	8.97	.73	.85	.50	.03
Group 5	9.02	.73	.85	.50	.03
Group 6	9.07	.73	.85	.50	.03
Group 7	9.42	.73	.85	.50	.03
Zone 3 - Kenosha County					
Group 1	8.10	.75	1.00	1.00	.03
Group 2	8.20	.75	1.00	1.00	.03
Group 3	8.25	.75	1.00	1.00	.03
Group 4	8.30	.75	1.00	1.00	.03
Group 5	8.35	.75	1.00	1.00	.03
Group 6	8.40	.75	1.00	1.00	.03
Group 7	8.75	.75	1.00	1.00	.03
Zone 4 - Dane County					
Group 1	9.05	.55	.45		.03
Group 2	9.10	.55	.45		.03
Group 3	9.15	.55	.45		.03
Group 4	9.20	.55	.45		.03
Group 5	9.25	.55	.45		.03
Zone 5 - Remainder of State					
Group 1	8.77	.55	.45		.03
Group 2	8.82	.55	.45		.03
Group 3	8.87	.55	.45		.03
Group 4	8.92	.55	.45		.03
Group 5	8.97	.55	.45		.03

DECISION NO. WI79-2055

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: (CONT'D)					
Zone - Washington & Ozaukee Counties					
Group 1	$ 8.41	1.00	1.00	.51	.03
Group 2	8.46	1.00	1.00	.51	.03
Group 3	8.51	1.00	1.00	.51	.03
Group 4	8.41	1.00	1.00	.51	.03
Group 5	8.41	1.00	1.00	.51	.03
Group 6	8.41	1.00	1.00	.51	.03
Group 7	8.61	1.00	1.00	.51	.03

LABORERS:

Classifications for Zones 1, 2, 3 and 6 RESPECTIVELY

Group 1: Bituminous Workers (shoveler, loader, utility man), Demolition and Wrecking Laborer, Guard Rail Builder, Reinforcing Steel Setter (pavement), Stone Handler, Tree Trimmer, Landscaper, Multiplate Culvert Assembler, Conduit Layer, Unskilled Laborer

Group 2: Bituminous Worker (Dumper, Ironer, Smoother, Tamper), Batch Truck Dumper, Cement Handler, Concrete Handler

Group 3: Chain Saw Operator, Demolition Burning Torch Laborer, Joint Sawyer and Filler (pavement), Vibrator or Tamper Operator (Mechanical, Hand Operated)

Group 4: Air Tool Operator (Hand Operated)

Group 5: Form Setter (curb, walk & pavement), Strike Offman

Group 6: Bituminous Worker (Raker and Luteman)

Group 7: Powderman, Blaster

Classifications for Zones 4 and 5 RESPECTIVELY

Group 1: Bituminous Workers (dumper, ironer, smoother, tamper, shoveler, loader, utility man), Strike off man, Joint Sawer or Filler (pavement), Concrete Handler, Demolition & Wrecking Laborer, Guard Rail Builder, Reinforcing Steel Setter (pavement); Stone Handler, Landscaper, Multiplate Culvert Assembler, Conduit Layer, Unskilled Labor

Group 2: Form Setter (curb, walk, & pavement), Tree Trimmer

Group 3: Air Tool Operator, Vibrator or Tamper Operator, Batch Truck Dump, Cement Handler

Group 4: Bituminous Worker (raker, luteman), Chain Saw Operator, Demolition Burning Torch Laborer

Group 5: Powderman, Blaster

DECISION NO. WI79-2055

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$11.72	1.05	.75		.05
Group 2	11.46	1.05	.75		.05
Group 3	11.37	1.05	.75		.05
Group 4	11.29	1.05	.75		.05
Group 5	11.21	1.05	.75		.05
Group 6	11.17	1.05	.75		.05
Group 7	11.08	1.05	.75		.05
Group 8	10.96	1.05	.75		.05
TRUCK DRIVERS					
Zone 1 - Milwaukee, Ozaukee, Washington & Waukesha Counties					
Group 1	9.40	37.50a	41.00a	.35	
Group 2	9.55	37.50a	41.00a	.35	
Zone 2 - Kenosha & Racine Cos.					
Group 1	9.40	153.37b	41.00a	.35	
Group 2	9.55	153.37b	41.00a	.35	
Zone 3 - Remainder of State					
Group 1	9.40	34.50a	41.00a	.35	
Group 2	9.55	34.50a	41.00a	.35	

FOOTNOTE:

a. Per week per employee on payroll 30 days or longer

b. Per month per employee on payroll 30 days or longer.

DECISION NO. WI79-2055

POWER EQUIPMENT OPERATORS

CLASSIFICATIONS:

Group 1: Bituminous paver or plant, Concrete breaker (truck mounted heavy), Crane, Derrick, Dragline, Dredge, Piledriver, Power Shovel, Material Hoist, Mixer or paver 21 cu. ft. or over, Roller over 5 ton, Self-propelled Stabilizing mixer, Trenching Machine, Tractor (side boom, heavy), Concrete Pavement Spreader (heavy duty) Rubber Tires, Hydraulic Back Hoe, Asphalt Plane Engineer; Automatic slip form concrete paver, Automatic Concrete Subgrader, Batch Mixer, Portable, Caisson Rigs, Central Mixer Concrete, Dredge Engineer, Concrete Batch Plantengineer, Central Mix Plant Concrete, Percussion or Rotary Drill Machine, Grader or Motor Patrol, Loading Machine (Conveyor), Mechanic or Welder (heavy duty equipment), Tractor (scraper, dozer, push, loader), Tugger, End Loader, Asphalt Heater and Planer, Boatman, Bump Cutter and Grooving Machine, Shoulder Widener, Winches and "A" frames, Tube Finisher

Group 2: Concrete Mixer less than 21 cu. ft., Concrete Pump, Steel Roller, 5 tons or less

Group 3: Screed (Bituminous Paver), Shoulderingmachine, Self-propelled chip Spreader

Group 4: Concrete Breaker and Tamper (light), Concrete Spreader, Finishing Machine, Mechanical Float, Curing Machine, Power Subgrader, Joint Sawer (multiple blade), Launch, Roller (pneumatic tired) Self-propelled Tractor (mounted or towed compactors and light equipment), Light Rubber Tired Tractor -End loader, Fork-lift, Belting Machine, Burlap Machine, Jeep Digger, Mulcher, Texturing Machine

Group 5: Fireman, Evironmental Burner

Group 6: Air Compressor, Drilling or Boring Machine (mechanical heavy), Greaser (heavy equipment) Lead-man, Tank Car Heaters, Stump Chipper, Curb Machine, Concrete Proportioning Plant, Generators, Mud Jacks

Group 7: Crusher of Screening Plant, Automatic Belt Conveyor and Surge Bin, Pneumatic Tired Roller Farm Tractor Towed, Pug Mill

Group 8: Oiler, Pump over 3" Surge Bin, Drilling Machine Helper

TRUCK DRIVERS

Group 1: Truck Drivers, 2Axle - Mechanics Helper, Truck

Group 2: Truck Driver, 3 or more Axle Trucks - Euclid or Dumpster type hauling units - Mechanic, Truck

[FR Doc. 79-16182 Filed 5-24-79; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
May 25, 1979

Part V

Department of the Interior

Bureau of Land Management

Federally Owned Coal Areas Under Non-Federal Surface; Lists of Counties

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alabama; Federally Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 91,780 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Alabama. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of countries which have Federally-owned coal areas under private surface ownership in Alabama:

County	Federal coal ownership under private surface, (acres)
Blount	325
Cherokee	1,502
Cullman	970
DeKalb	360
Etowah	45
Fayette	31,577
Franklin	145
Jackson	3,009
Jefferson	1,277
Lamar	870
Marion	2,780
Marshall	173
Morgan	336
Pickens	40
Shelby	401
St. Clair	358
Tuscaloosa	38,930
Walker	7,633
Winston	1,049
Total	91,780

Federal mineral ownership maps (at nominal cost) are or will soon be available for many areas. For further information, contact the Bureau of Land Management, 1315 McFarland Boulevard East, Tuscaloosa, Alabama 35401, (205) 759–5441; or 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79–16096 Filed 5–24–79; 8:45 am]

BILLING CODE 4310–84–M

Arkansas; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 1,228 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Arkansas. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under private surface ownership in Arkansas:

County	Federal coal ownership under private surface (acres)
Franklin	81
Logan	80
Scott	260
Sebastian	807
Total	1,228

Federal mineral ownership maps (at nominal cost) are available for some areas. For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

Illinois; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 3,347 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Illinois. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under private surface ownership in Illinois:

County	Federal coal ownership under private surface (acres)
Adams	40
Bond	513
Brown	281
Edgar	80
Grundy	42
Hardin	80
Jackson	103
Jefferson	60
McDonough	160
Macoupin	522
Montgomery	1,149
Pike	47
Pope	59
Schuyler	211
Total	3,347

Federal mineral ownership maps (at nominal cost) are available for some areas. For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79–16098 Filed 5–24–79; 8:45 am]

BILLING CODE 4310–84–M

Indiana; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 118 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Indiana. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under private surface ownership in Indiana:

County	Federal coal ownership under private surface (acres)
Martin	118
Total	118

For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79–16099 Filed 5–24–79; 8:45 am]

BILLING CODE 4310–84–M

Iowa; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 1,320 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Iowa. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a list of counties which have Federally-owned coal areas under private surface ownership in Iowa:

County	Federal coal ownership under private surface (acres)
Adair	40
Adams	300
Appanoose	40
Clark	315
Decatur	575
Lucas	40
Polk	10
Total	1,320

For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79-16100 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

Kentucky; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 39,416 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Kentucky. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under State-owned surface in Kentucky:

County	Federal coal ownership under private surface (acres)
Bell	11,822
Caldwell	14,774
Christian	12,176
Jackson	285
McCreary	173
Webster	186
Total	39,416

Federal mineral ownership maps (at nominal cost) are available for some areas. For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79-16101 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

Maryland; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 3,662 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Maryland. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under State-owned surface in Maryland:

County	Federal coal ownership under state surface (acres)
Garrett	3,662
Total	3,662

Federal mineral ownership maps (at nominal cost) are or will soon be available for many areas. For further information, contact the Bureau of Land management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

Michigan; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 1,225 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Michigan. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under private surface ownership in Michigan:

County	Federal coal ownership under private surface (acres)
Bay	40
Genesee	85
Saginaw	520
Shiawassee	580
Total	1,225

Federal mineral ownership maps (at nominal cost) will soon be available for some areas. For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910. (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79-16103 Filed 5-24-79; 8:45 am]

BILLING CODE 4310-84-M

Missouri; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 6,779 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Missouri. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under private surface ownership in Missouri:

County	Federal coal ownership under private surface (acres)
Audrain	371
Barton	176
Bates	986
Boone	60
Buchanan	94
Caldwell	86
Callaway	380
Carroll	44
Cass	30
Cedar	204
Clark	188
Clinton	195
Daviess	80
DeKalb	199
Harrison	40
Henry	271
Holt	160
Johnson	140
Linn	440
Livingston	303
Macon	609
Mercer	88
Monroe	5
Nodaway	251
Putnam	80
Ralls	17
Randolph	26
Ray	394
St. Clair	149
Schuyler	183
Scotland	170
Sullivan	198
Vernon	165
Total	6,779

For further information, contact the Bureau of Land Management, 7981

Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79–16104 Filed 5–24–79; 8:45 am]

BILLING CODE 4310–84–M

Ohio; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 23,642 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Ohio. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under State and private surface ownership in Ohio:

County	Federal coal ownership under state surface (acres)	Federal coal, ownership under private surface (acres)
Gallia		200
Muskingum	4,842	
Vinton	18,600	
Total	23,442	200

For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79–16105 Filed 5–24–79; 8:45 am]

BILLING CODE 4310–84–M

Pennsylvania; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 6,797 acres of coal lands under non-Federal (State or privately-owned) surface in the State of Pennsylvania. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under State-owned surface in Pennsylvania:

County	Federal coal ownership under private surface (acres)
Tioga	6,797
Total	6,797

For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79–16106 Filed 5–24–79; 8:45 am]

BILLING CODE 4310–84–M

West Virginia; Federally-Owned Coal Areas Under Non-Federal Surface

The United States Government holds the mineral rights on approximately 7,591 acres of coal land under non-Federal (State or privately-owned) surface in the State of West Virginia. All coal operators, exploration drillers, and those purchasing land and/or coal rights are reminded that any drilling for coal information on Federally-owned coal areas is unauthorized and constitutes trespass, unless a license is obtained from the Department of the Interior, Bureau of Land Management, under 43 CFR Part 3507.

Following is a listing of counties which have Federally-owned coal areas under State-owned surface in West Virginia:

County	Federal coal ownership under state surface (acres)
Webster	7,591
Total	7,591

For further information, contact the Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, (301) 427–7440.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79–16107 Filed 5–24–79; 8:45 am]

BILLING CODE 4310–84–M

federal register

Friday
May 25, 1979

Part VI

Department of Labor

Employment and Training Administration

Migrant and Other Seasonally Employed Farmworkers Program Under the Comprehensive Employment and Training Act

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 675 and 689

Migrant and Other Seasonally Employed Farmworkers Program Under the Comprehensive Employment and Training Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rules.

SUMMARY: This document contains final rules for the Migrant and Other Seasonally Employed Farmworkers Program under the Comprehensive Employment and Training Act. The purpose of this document is to implement this program.

DATES: Effective date of these rules is May 25, 1979. Comments on the final rules are requested by July 24, 1979.

ADDRESS: Comments should be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213. Attention: Lamond Godwin, Administrator, Office of National Programs.

FOR FURTHER INFORMATION CONTACT: Mr. Lindsay Campbell, telephone: (202) 376-6128.

SUPPLEMENTARY INFORMATION:

The Migrant and Other Seasonally Employed Farmworkers Program is authorized by Title III, section 303 of the Comprehensive Employment and Training Act (CETA). Prior to the reauthorization of CETA in October, 1978, the Migrant and Other Seasonally Employed Farmworkers Program was authorized by section 303 of the Comprehensive Employment and Training Act of 1973.

As in the previous CETA statute, section 303 of the reauthorized CETA provides for a comprehensive employment and training program to be administered at the national level by the Department of Labor for migrant and other seasonally employed farmworkers. Section 303 programs are designed to provide specific employment and training services to prepare and place eligible individuals in unsubsidized employment. Additionally, these programs are designed to provide human services to improve the well-being of individuals who remain in the agricultural labor market.

The regulations in this document amend Chapter V of Title 20 of the Code of Federal Regulations by adding a new part 689, which covers programs under section 303 of CETA.

It should be noted that the introductory and general CETA regulations at 20 CFR Parts 675 and 676 (44 FR 19990, April 3, 1979) contain numerous provisions generally applicable to recipients of funds under CETA, including section 303 grantees. These regulations implement the Statutory changes concerning CETA programs in general in the CETA Amendments of 1978. In order to avoid unnecessary duplication, the pertinent provisions of Parts 675 and 676 have been incorporated by reference in these regulations rather than repeated. Therefore, it is necessary to read these regulations in conjunction with the basic CETA regulations at Parts 675 and 676.

Other than the changes required by the basic CETA regulations at Parts 675 and 676, the new section 303 regulations make relatively few changes from the existing section 303 regulations at 29 CFR Part 97, Subpart C. The major changes in the latter category (i.e., those peculiar to the section 303 program) are as follows:

Major Changes

Definition of Seasonal Farmworker

The existing section 303 regulations provided that a farmworker would be eligible as seasonal only if he or she did not work over 150 consecutive days at any one establishment. This limit has been eliminated in response to grantee comments that the limit has had discriminatory effects and has been an administrative burden on the intake process. The grantee must still establish that the applicant is employed seasonally, which is defined as not having a constant year-round salary.

In addition, an alternative lower limit of 25 days has been added to the definition of seasonal farmworker in order to provide a more realistic and administratively feasible basis for determining who is a seasonal farmworker. The lower limit is now that the applicant during the 24 months preceding application must either have been employed at least 25 days in farmwork or earned at least $400 in farmwork.

Funding Cycle

Specific deadlines for the different phases of the funding cycle have been eliminated, but will instead be published as a Notice in the **Federal Register** each year. Eliminating the specific dates gives DOL more flexibility in administering the program and takes into account the possibility of unanticipated changes in the funding cycle deadlines.

Eligibility for Participating in Section 303 Programs

The base period for determining eligibility is extended for persons who have been in the armed forces, incarcerated, hospitalized, or physically or mentally disabled to enable such individuals to participate in section 303 programs.

Review of Funding Request

Certain changes have been made with respect to the review of the Funding Request. These regulations now require at § 689.204 a separate grantee agreement, which describes the applicant's management and organizational structure and its mechanisms for ensuring compliance with program requirements. Thus, the Funding Request now has two distinct components: the grantee agreement and the annual plan. This will provide consistency with other CETA programs, particularly those under Titles II and VI of CETA and will enhance the Department's ability to determine the administrative capabilities of applicants under Section 303.

In addition, some adjustments have been made in the ratings assigned to the review criteria in order to more accurately reflect the past experience of the Department in signing grant applications.

The program development and delivery system have been increased to ranges of 0–20. Administrative capability and responsiveness to farmworkers have been increased to ranges of 0–15. Linkages and coordination have been reduced to a range of 0–5. Review of experience has been reduced to a range of 0–25, which is divided into two parts, program experience, regardless of nature of clientele with a range of 0–10, and farmworker experience, with a range of 0–15.

The Department of Labor's regulation at 29 CFR 2.7 states that it is the policy of the Department of Labor to use proposed rulemaking procedures when issuing regulations for grant programs. The Secretary, however, in signing this document, is waiving the regulation at 29 CFR 2.7 for the following reasons:

(1) These regulations basically continue the policies of the existing Section 303 regulations at 29 CFR Part 97, Subpart C, with relatively few changes;

(2) It is essential that Section 303 program requirements be reconciled as soon as possible with the basic CETA

regulations published on April 3, 1979, as discussed above; and

(3) Publication of these regulations in final form will facilitate planning and application procedures and thereby enhance the effective and successful operation of Section 303 programs.

The Department is nonetheless requesting comments on these final rules. Changes in these rules may be made at a later date, depending upon the extent and nature of any comments.

Accordingly, Title 20 of the Code of Federal Regulations, Chapter V, is amended as follows:

1. In Part 675, § 675.3 Table of Contents for Regulations under CETA is revised by adding a new Table of Contents for Part 689 so that the revised Section reads as follows:

§675.3 Table of contents for regulations under CETA.

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PART 689—MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS PROGRAMS

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689.501 Nondiscrimination and equitable service.
689.502 Prevention of fraud and program abuse.
689.503 Complaints, investigations and sanctions.

2. A new Part 689 is added to read as follows:

PART 689—MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS PROGRAMS

Subpart A—Introductory Provisions

Sec.
689.101 Scope and purpose of Title III, section 303 programs.
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(Sec. 126, Comprehensive Employment and Training Act (29 U.S.C. 801 et seq., Pub. L. 95–524, 92 Stat. 1907), unless otherwise noted.)

2. Part 689 is added to read as follows:

PART 689—MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS PROGRAMS

Subpart A—Introductory Provisions

§ 689.101 Scope and purpose of Title III, section 303 programs.

(a) It is the purpose of Title III, section 303, of the Act to provide job training, employment opportunities, and other services for those individuals who suffer chronic seasonal unemployment and underemployment in the agriculture industry, which has been substantially affected by recent advances in technology and mechanization. These individuals constitute a substantial portion of the Nation's rural employment and training problem.

(b) Because of the special nature of the problem faced by migrant and seasonal farmworkers, the programs developed and implemented under this section of the Act shall be administered by the Employment and Training Administration at the national level. Such programs will be flexible in design and shall have these primary objectives.

(1) *Improvement of Agricultural Employment Conditions.* Provision of supportive services necessary to improve the well-being of migrants and other seasonally employed farmworkers and their families who remain in the agricultural labor market.

(2) *Alternatives to seasonal agricultural labor.* Provision of employment development activities to migrant and other seasonally employed farmworkers and their families who wish to seek alternative job opportunities to seasonal farmwork which will equip them to compete in other labor markets and to secure stable year-round employment providing an income above the poverty level.

§ 689.102 Relationship to other regulations.

(a) The regulations at Part 676 of this Chapter (general provisions governing programs under CETA) apply to programs and activities governed by this Part except as otherwise noted in this Part.

(b) Should the regulations at this Part conflict with regulations at other Parts of this title of the Code of Federal Regulations, the regulations at this Part shall prevail with respect to programs and activities governed by this Part.

§ 689.103 Definitions.

The definitions of terms used generally in the regulations under the Act are set forth in § 675.4. The following definitions are further applicable specifically to section 303 programs.

"Agricultural Establishment" shall mean an economic unit, generally at a single physical location, where business is conducted (For example: farm, orchard, plantation, ranch). For the purposes of the "seasonal farmworker"definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

"Allocation" shall mean the amount of funds calculated in accordance with § 689.104 for section 303 programs in each State and distributed in accordance with the requirements of this Part.

"Appropriate amount" for purposes of committing Title II funds for farmworkers shall mean an amount proportional to the incidence of the farmworkers in the prime sponsor's population.

"Eligible Applicant," for purposes of receiving funds allocable pursuant to § 689.105 shall mean:

(a) A recognized prime sponsor or a public agency designated by such prime sponsor to receive section 303 funds;

(b) A private nonprofit organization authorized by its chapter or articles of incorporation to provide such services as may be funded under this Part.

"Emergency assistance" shall mean temporary services on an emergency basis which are not immediately available from non-section 303 sources.

"Employment and training services" shall mean such services as (a) orientation; (b) counseling; (c) job development; (d) referral; (e) job placement; and (f) followup.

"Farmwork" shall mean work performed for wages in agricultural production or agricultural services as defined in the most recent edition of the Standard Industrial Classification (SIC) Code definitions included in industries 01–Agricultural Production-Crops; 02–Agricultural Production-Livestock excluding 027–Animal Specialties; 07–Agricultural Services excluding 074–Veterinary Services, 0752–Animal Speciality Services, and 078–Landscape and Horticultural Services.

"Funding request" shall mean a formal proposal submitted by an applicant for funding under section 303 which details the type and extent of services to be provided to farmworkers and their dependents.

"Health care" shall include but is not limited to preventive and clinical medical and dental treatment for farmworkers and their dependents.

"Migrant farmworker" shall mean a seasonal farmworker who performs or has performed farmwork during the preceding 24 months which requires travel such that the worker is unable to return to his/her domicile (permanent place of residence) within the same day.

"Nutritional assistance" shall mean services including but not limited to assisting farmworkers and their dependents to obtain food stamps and vouchers, access to other food programs, representation at hearings involving nutritional assistance programs and limited direct cash purchases of food.

"Placement" from a section 303 program shall mean placement as defined in § 675.4 except for the following limitations:

(1) Placement must be in unsubsidized nonseasonal employment.

(2) A placement occurs the first day for which the individual receives a wage from the employer.

(3) For the purposes of section 303, placements with expected durations of three days or less are "other positive terminations."

"Planning estimates" shall mean the preliminary allocations announced for the purpose of providing target funding levels for each State.

"Relocation assistance" shall mean the activities necessary to arrange for a family to move to a new abode for the purpose of receiving services and/or training which will lead to alternative job opportunities to seasonal farmwork. Activities may include but are not limited to: Necessary employment and training services; the costs of the actual transfer of goods and property including mileage for the families' travel; emergency assistance; rent subsidies; and other supportive services.

"Residential support" shall mean the provision of temporary housing for families receiving training, supportive services, or post-placement services. The grantee may offer such housing in several ways including but not limited to directly operating a residential facility with all necessary services or through the grantee's subsidizing all or part of the rental and utility costs for an enrolled family.

"Seasonal farmworker" shall mean a person who during the 24 months preceding application was employed at least 25 days in farmwork or earned at least $400 in farmwork; and who has been primarily employed in farmwork on a seasonal basis, that is, without a constant year-round salary.

"Section 303 programs" shall mean the Migrant and Seasonal Farmworker Programs, under section 303 of Title III of CETA.

"Supplemental funds" shall mean any funds allocated in excess of that amount announced as a "planning estimate."

"Supportive Services" shall mean such services as health and medical service, child care, transportation, emergency assistance, relocation assistance, residential support, nutritional services, and legal services.

"Target area" shall mean a geographic area to be served by a section 303 grant. Such an area may be a county, multi-county area; a State, or a multi-State area.

"Target population" shall mean farmworkers and their dependents who meet the requirements of § 689.107.

§ 689.104 Allocation of funds.

(a) *National Account.* (1) No more than twenty percent (20%) of the statutory reserves for Section 303 activities will be set aside for the National Account, to be used to meet emergency situations and for special projects funded at the discretion of the Department.

(2) Funds from the National Account may be obligated by the Department by means of either contracts or grants to private non-profit agencies, to private profit-making organizations, or to States and local units of government.

(3) The Department shall fund programs from the National Account according to procedures deemed advisable by the Department but all National Account programs shall include performance standards specifically designed for those programs.

(b) *State allocations (allocable funds).* (1) No less than eighty percent (80%) of the funds received for Section 303 activities shall be allocated for farmworker programs in individual States in an equitable manner using the best data available as to the farmworker population as determined by the Department.

(2) *Hold harmless clause.* No State shall be allocated an amount which is less than 90 percent of the amount of the State planning estimates for the prior year. The base amount on which the 90 percent is calculated shall not include any supplemental funds made available in the prior fiscal year. If during any fiscal year the appropriation for Section 303 is less than that appropriated in the previous fiscal year, the Department reserves the right to modify the percentage specified in paragraphs (b)(1) and (2) of this section.

(3) *Allocation Exceptions.* (i) The Department reserves the right not to allocate any funds for use in a State whose allocation is less than $100,000, or the Department may raise the allocation to $100,000.

(ii) Currently funded programs which are unsuccessful applicants for grant funds shall be given notice that funding will terminate upon expiration of the current grant and a reasonable period to phase out their operations, but such notice will not bind the Department to obligate additional funds. The notification of nonselection shall be the notice of termination of funding and the closeout requirements of § 689.414 are to be followed.

(4) *Funding cycle.* Projects funded through State allocations will be funded in accordance with the following funding cycle at dates to be specified by the Department in the **Federal Register**:

(i) Announcement of State planning estimates and the invitation to submit Funding Requests for State(s) or area(s) open for competition as provided in § 689.202.

(ii) Deadline for submission of Preapplication Forms for Federal Assistance forms.

(iii) Deadline for submission of Funding Requests.

(iv) Notification of selection as potential grantees.

(v) Commencement of grant operations.

§ 689.105 Eligibility for allocable funds.

(a) The following organizations and units of government shall be eligible to receive allocable funds under section 303:

(1) A prime sponsor designated under § 676.5 having within its jurisdiction a significant population of migrant and other seasonally employed farmworkers for whom it has committed funds provided under Title II of the Act in an appropriate amount;

(2) A public agency within such a prime sponsor's geographic boundaries designated by the prime sponsor to receive section 303 funds in its place.

(3) A private nonprofit organization authorized by its charter or articles of incorporation to provide employment and training or such other services as are permitted by this subpart.

(b) An applicant eligible under paragraph (a)(1) or (a)(2) of this section which wishes to apply for grant funds to operate programs outside the area for which it is eligible to operate under Title II of CETA may do so only with the concurrence of the prime sponsor for that area so affected. Such concurrence may be accomplished by means of a subgrant from the applicant to the affected prime sponsor or by letter from the affected prime sponsor authorizing the applicant to operate programs in the affected area.

(c) All applicants shall promptly provide the Department of Labor upon request with documented evidence of services provided by the applicant to migrant or seasonal farmworkers. If an applicant is the object of administrative or judicial proceedings at the State or Federal level alleging lack of services to farmworkers, then the applicant must submit with its preapplication a copy or summary of the allegations and of the applicant's refutation of the allegations. The Department of Labor may require from the applicant additional documentation before deciding the applicants' eligibility.

§ 689.106 [Reserved]

§ 689.107 Eligibility for participation in section 303 programs.

(a) Eligibility for participation in section 303 programs is limited to those individuals and the dependents of individuals who have, during any consecutive 12-month period within the 24-month period preceding their application for enrollment:

(1) Been a seasonal farmworker or migrant farmworker as defined in § 689.103.

(2) Received at least 50 percent of their total earned income or been employed at least 50 percent of their total work time in farmwork; and

(3) Been identified as a member of a family which receives public assistance or whose annual family income does not exceed the higher of either the poverty level or 70 percent of the lower living standard income level.

(b) The period for determining eligibility, 24 months prior to application, shall be extended for persons who have been in the armed forces, incarcerated, hospitalized, or physically or mentally disabled. The extended period of time shall be not more than 24 months plus the amount of time the person was in the armed forces, incarcerated, hospitalized, or physically or mentally disabled. Such conditions shall be positively demonstrated by the applicant. This can be done by producing documentary evidence satisfactory to the grantee.

(c) Citizenship requirements shall be pursuant to § 675.5–1(b).

(d) A participant in another program or Title under CETA who met the eligibility criteria for section 303 at the time of enrollment into such other program or Title may be transferred into, or enrolled concurrently, in the section 303 program. A section 303 participant who met the eligibility

criteria for another program or Title under CETA at the time of enrollment into the section 303 program may also be transferred into or enrolled concurrently in such other program or Title.

(e) The grantee shall establish the necessary procedures pursuant to § 676.75–3 to ensure that participants meet the above eligibility criteria.

Subpart B—Grant Planning and Application Procedures

§ 689.201 Grant planning and application procedures in general.

(a) Sections 689.201–689.210 provide procedures for obtaining and modifying a grant to operate programs under section 303 of the Act. Specifically, these sections describe the procedures in the grant award process from the announcement of invitation to submit Funding Requests, through the grant application process, to review by the Department and approval of the grant.

(b) All State allocation funds as described in § 689.104(b) will be awarded as two-year grants through the competitive process described in § 689.206.

(c) The Department may replace any grantee who during the grant period has been terminated for cause, or who has terminated voluntarily, by the following means: (1) opening the area for competitive bidding, or (2) inviting proposals from an interested organization or organizations.

(d) The Department may also require appropriate corrective action as a condition of continued funding of a grantee whose performance has been found to require such corrective action. Such appropriate corrective actions may include but are not limited to personnel reassignments and transfers; short-term funding; suspending the agreement.

§ 689.202 Announcement of State planning estimates and invitation to submit Funding Request.

(a) *Announcements.* The Department through a notice in the Federal Register, will announce annually State Planning estimates of section 303 funds and will invite eligible applicants to submit a Funding Request. The invitation will cover only those areas designated by the Department as open for competition.

(b) *Intention to apply.* Any eligible applicant intending to apply for funds from a State allocation shall submit a Preapplication for Federal Assistance to the DOL office identified in § 689.205(a) by a specified date. The preapplication shall consist of Standard Form 424, described in CFR 29–70, with an attachment identifying the target area by State and counties.

§ 689.203 [Reserved].

§ 689.204 Content and description of funding request.

(a) *General.* (1) This section describes the Funding Request forms which applicants shall use to apply for funds under Section 303. The Funding Request shall consist of two documents, the Grantee Agreement (GA) and the Annual Plan for Farmworkers Comprehensive Employment and Training Programs. Detailed instructions for completing the Funding Request which is described in summary form below, are contained in the Forms Preparation Handbook and its section 303 supplement and are available from the Department upon request.

§ 689.204–1 Grantee agreement.

(a) An applicant applying for assistance in Fiscal Year 1980 or an applicant applying for assistance for the first time in any succeeding year shall submit to the Department a signed copy of the GA. A grantee which has already entered into a GA in a previous year shall submit to the Department with its Annual Plan for Farmworkers Comprehensive Employment and Training programs a certification that the GA remains the same or that it is revised as described in the attachment to the certification. The GA shall consist of the Signatory Page, Eligibility Documentation, the Narrative Description of General Information and Assurances and Certifications.

(b) *Signatory page.* By signing the Signatory Page, the grantee agrees that all work performed under its Annual Plan will be in accordance with the Act and the regulations.

(c) *Eligibility documentation.* The following documents shall be submitted by an applicant to meet the eligibility requirements for section 303.

(1) A statement indicating the legally constituted authority under which the organization functions;

(2) An employer identification number from the Internal Revenue Service; and, for private nonprofit applicants, proof of their tax-exempt status;

(3) A certification by the chief fiscal officer of a government agency or by a Certified Public Accountant (CPA) for private nonprofit organizations attesting to the adequacy of the applicant's accounting system, if applicable.

(4) A copy of the Comprehensive Employment and Training Plan component which describes CETA Title II services to be made available to farmworkers for the fiscal year for which funds are requested (for CETA prime sponsor applicants only) pursuant to § 689.105(a).

(5) Documentation of concurrences from affected prime sponsor(s), as described in § 689.105(b) (for CETA prime sonsor applicants only).

(d) *Narrative Description of General Information.* The Narrative Description of General Information shall include a detailed statement on the following items:

(1) Program purpose.

(2) A brief description of the geographic area to be served and the economic conditions of the area.

(3) *Approach.* A description of how the applicant will provide the services proposed in accordance with the performance criteria contained in § 689.106(d).

(4) *Management and administrative plan.* (i) Organizational structure. A description of the grantee's organizational structure.

(ii) Administrative controls. A description of the internal administrative controls including:

(A) Monitoring system;

(B) Evaluation system;

(C) Personnel or merit system;

(D) Accounting system;

(E) Fiscal reporting and participant tracking system(s);

(iii) Allowance payments sytem. A description of the details of the allowance payments system, including waiver provisions.

(iv) Grievance procedures. A description of the procedures for resolving any complaints or grievances alleging violations of the Act, regulations, or grant.

(v) Equal employment opportunity. A description of the mechanisms which will be used to assure nondiscrimination and equal employment opportunities.

(e) *Assurances and Certifications.* The Assurances and Certifications form appears in the Forms Preparation Handbook. The Assurances and Certifications form is a signature sheet on which the grantee assures and certifies that it will comply with the Act, the regulations under the Act, the grant, and other applicable laws.

§ 689.204–2 Annual Plan for Farmworkers Comprehensive Employment and Training Programs.

An Annual Plan must be submitted by applicants by a specified date in order to obtain funds under Section 303. The Annual Plan shall consist of the following:

(a) Application for Federal Assistance which shall identify the applicant and the amount of funds requested and provide information concerning the area

to be served and the number of people expected to benefit from the program. Standard Form 424 shall be used.

(b) Annual Narrative Description of Program. The Annual Narrative Description of Program shall contain a detailed statement of the following items:

(1) *Need for assistance.*

(i) A description of farmworker needs in the area, including an analysis of the nature and extent of social services provided to farmworkers.

(ii) A description of the rationale for the program mix of employability development and supportive services.

(iii) A breakout of the significant segments to be served (in terms of age, race, national origin, and sex) of the farmworker population, the number of farmworkers and their dependents and their expected participation in employability development and supportive services.

(iv) An assessment of job opportunities in the area documented by a labor market analysis.

(2) *Results and benefits expected.* An enumeration of specific participant objectives broken out between employment and training activities, and supportive services and by the performance criteria established in § 689.106.

(3) *Approach.* The descriptions in paragraphs (i) and (ii) below may be combined if appropriate.

(i) Program activities and services.

(A) A detailed description of each program activity including: specific objectives and performance standards related to (c)(2);

(B) Costs;

(C) A description of the participant flow and relationship among the activities to be provided; and

(D) A description of programs, if any, designed for persons of limited English-speaking ability.

(ii) Delivery Agents.

(A) A list of deliverers and the services to be provided by each.

(B) A description of the linkages established.

(C) A list of the related services and facilities which are available from Federal, State, and local agencies and an indication of those which have been determined to have demonstrated effectiveness in providing employment and training services.

(D) An explanation for non-use or duplication of existing services and facilities including employment and training and social service agencies of demonstrated effectiveness.

(iii) Justification of section 303 funded administrative costs in excess of 20 percent.

(iv) Discussion of program planning summary (PPS) and budget information summary (BIS).

(A) An explanation of how the PPS reflects the goals, objectives, and activity description provided above.

(B) An explanation of how costs were determined by the BIS.

(v) Property. A list of any items of capital equipment which individually cost more than $1,000 including quantity and prices.

(4) *Geographic location served.* Description of the geographic locations within the target area in which the applicant has operated and in which the proposed program will operate, and in which it will recruit and refer participants.

(c) *Detailed budget.* For each program activity, section 303 grantees will be required to submit an itemized budget as defined in § 689.410. The CETA and the non-CETA share of the total costs shall be noted for each program activity. For all section 303 funds requested personnel and nonpersonnel costs shall be itemized for each program activity proposed and for the cost category of administration. This itemization shall include individual operational staff salaries, staff fringe benefits, staff travel, equipment purchases and other such items.

(d) *Program Planning Summary.* The Program Planning Summary requires the applicant to provide a quantitative statement of enrollment levels, the number of participants to be served by each program activity (classroom training, on-the-job training, work experience, services to participants, and other activities), and outcomes for program participants. It also requires identification of the number of individuals to be served within the eligible population.

(e) *Budget Information Summary.* The Budget Information Summary requires the applicant to provide a quantitative statement of planned expenditures and obligations. The applicant shall indicate yearly planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services); the applicant shall indicate planned quarterly obligations and expenditures by program activity.

§ 689.205 Submission of funding request.

(a) An eligible applicant shall submit three copies of the Funding Request to the address listed below:

U.S. Department of Labor, Employment and Training Administration, Patrick Henry Building, Room 6308, 601 D Street, NW., Washington, D.C. 20213, ATTN: Director, Office of Farmworker Programs.

(b) Two copies of the Funding request shall also be submitted directly to the appropriate Regional Administrator for Employment and Training Administration at the same time the three copies are submitted to the above address and labeled: Funding Request for CETA 303 Farmworker Program.

(c) *Opportunity for review and comment.*

(1) The Department will publish annually in the **Federal Register** a list of all eligible applicants which have submitted preapplications.

(2)(i) An eligible applicant wishing to review and comment on the Funding Request of any other eligible applicant within its State as listed in the **Federal Register** must request a copy of the Funding Request from the eligible applicant so listed.

(ii) An eligible applicant shall at the same time the Funding Request is submitted to the Department, send a copy of the Funding Request to all other eligible applicants within the State which have requested a copy of the Funding Request pursuant to this paragraph.

(iii) If a Funding Request is mailed, it shall be sent by registered or certified mail with return receipt requested. If a Funding Request is delivered by hand, the recipient eligible applicant shall provide a written receipt bearing the time and date of delivery.

(3) Comments on Funding Requests shall be submitted to the Department the address provided in § 689.205, within 30 days of receipt of the Funding Request. A copy of all comments shall also be sent to the eligible applicant by registered mail at the same time.

(d)(1) Copies of the Funding Request shall also be submitted by certified mail and return receipt requested to the appropriate State and/or area clearinghouse(s), pursuant to clearinghouse procedures applicable in the applicant's jurisdiction. Eligible applicants shall send to the address specified in paragraph (a) of this section, a statement accompanying the Funding Request indicating that the procedures in this paragraph have been followed.

(2) However, no selection of potential grantee(s) for a State or area will be made until all clearinghouses and other reviewers under the clearinghouse review process have had at least 45 days from the clearinghouses' receipt of

the Funding Request to submit comments.

(e) Funding Requests sent by mail to the address provided in paragraph (a) of this section must be registered or certified with return receipt requested. In order to be considered to be submitted on time by the Employment and Training Administration, the following must be met:

(1) The Funding Request must be certified by the Postal Service or hand-delivered on a date to be specified by the Department.

§ 689.206 Review of funding request.

§ 689.206–1 Basic standards for reviewing funding requests for allocable funds.

(a) *General.* Funding Requests will be reviewed and evaluated by the Department according to the procedures outlined in paragraph (b) of this section. In addition, when appropriate under Section 303 of the Act, Funding Request will be reviewed by the Secretary of the Department of Health, Education, and Welfare (DHEW) or his/her designee in accordance with Section 303 of the Act.

(b) *Determination of eligibility.* The Department will review the documentation described in § 689.204 to determine the eligibility of each applicant and will: (i) Designate the organization as eligible under Section 303; or (ii) determine that the organization is conditionally eligible pending submission of further documentation; or (iii) determine that the organization is ineligible under Section 303. An organization determined to be ineligible will not be reviewed further.

(c) *Review of grantee agreement.* (1) The Department will review the documentation described in § 689.204 to determine that (i) the grantee agreement meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law and, (ii) the grantee has adequate internal administrative controls, accounting requirements, personnel standards, monitoring and evaluation procedures, availability of in-service training and technical assistance, and such other policies as may be necessary to promote the effective use of funds provided under Section 303 of the Act.

(2) The Department may conditionally designate organizations as potential grantees pending resolution of their eligibility status, submission of additional documentation, or changes in the proposed program. The Department also reserves the right to defer designation of any organization which has submitted a Funding Request for a State or area or to invite the submission of new proposals. The Department reserves the right to disapprove a Funding Request if there is adequate evidence of substantial mismanagement of government funds.

§ 689.206–2 Specific criteria for reviewing funding requests.

Funding Requests will be evaluated by the Department based on the criteria listed in this paragraph. Each of the following factors is assigned a numerical range which shall be used to rank Funding Requests. A separate rating within the numerical range for each factor will be assigned to each Funding Request based on information provided in the Funding Request. The sum of the ratings will constitute the overall rating of the Funding Requests. The following factors will be considered in assigning ratings:

(a) Program development. Range 0–20. The program development factor is a rating of the proposed program's potential impact on the full range of farmworker needs and its fulfillment of the intent of section 303. The highest rating of 20 will be awarded to an organization which has adequately analyzed the economic situation of the target area and identified the social and economic needs of the target population, and has developed a program based on this analysis and identification, which provides services including training and supportive services that can be successfully implemented to meet these needs. The rating will consider the following elements:

(1) *Training.* The proposed program provides alternatives for farmworkers to leave farmwork by offering training in a number of occupations providing a wage above the poverty level into which participants can be successfully placed within the existing economic and labor market conditions in the target area. The proposed program provides alternatives for farmworkers to secure full-time agriculture work providing an income above the poverty level.

(2) *Services.* The proposed program provides supportive services which are necessary to assist farmworkers in leaving seasonal farmwork and/or provide services which will improve the living an working conditions of farmworkers remaining in agriculture.

(3) *Program impact.* The proposed program will directly impact on the problems and needs of farmworkers in the particular target area.

(b) *Delivery system.* Range 0–20. The delivery system factor is a rating of the applicant's system for delivering the comprehensive program services and its potential ability to provide effective and timely services to farmworkers. This rating will include the potential effectiveness of subgrantees and contractors in providing services specifically for farmworkers.

The highest rating of 20 will be awarded to an organization whose delivery system is efficiently integrated and whose subgrantees' and contractors' delivery systems are coordinated with the applicant's into a functioning unit.

(c) *Administrative capability.* Range 0–15. The administrative capability factor is a rating of the applicant's management experience and efficiency. The rating shall include consideration of the managerial expertise of the organization's present and proposed staff in managerial and decisionmaking positions. This factor shall also consider administrative efficiency based on comparative administrative cost. The highest rating of 15 will be awarded to organizations which can demonstrate the capability to administer efficiently a multi-activity delivery system with comparatively low administrative costs.

(d) *Responsiveness to farmworkers.* Range 0–15. The responsiveness to farmworkers factor is a rating of the organization's active and visible involvement of farmworkers in implementation of its proposed program of services. The rating will also consider the sensitivity of the organization's present and proposed staff in program positions. The rating will consider the following elements:

(1) *Involvement of Farmworker Boards/Advisory Councils.* This factor is a rating of the involvement of farmworkers on applicant's governing boards and advisory councils in the planning, implementation and operation of the proposed program. This involvement shall be manifested by the responsibilities incorporated in the board's or advisory council's bylaws and the farmworker representation on these bodies. The highest rating of 9 shall be awarded to organizations whose boards or advisory councils have responsibility for reviewing and making recommendations on Section 303 plans, monitoring Section 303 program operations, recommending corrective action, and having established mechanisms for effecting necessary corrective actions, and whose membership includes farmworkers.

(2) *Staff sensitivity.* The sensitivity factor is a rating of the ability of the organization's staff to relate to farmworkers and be responsive to their needs. The highest rating of 6 will be awarded to those organizations whose

staffing includes ex-farmworkers and reflects the ethnic, racial, and sexual composition of the target population.

(e) *Linkages and coordination.* Range 0–5. The linkages and coordination factor is a rating of an organization's demonstrated and documented programmatic ties with appropriate State and local agencies, private nonprofit organizations, and other groups providing resources and services to farmworkers. The highest rating of 5 will be awarded to applicants which would operate programs incorporating services at less than, or no cost to section 303 from other agencies for the purpose of providing manpower and other services to participants and whose Funding Request includes letters of commitment for these services.

(f) *Review of experience.* Range 0–25. The organization's experience in providing employment and training programs will be reviewed and evaluated by the Department to determine those most qualified to receive a grant under Section 303 for program operations in a particular target area. The highest rating of 25 will be awarded to applicants which demonstrate the most experience in accordance with (f) (1) and (2) of § 689.206–2, and whose assertions of effectiveness are supported by evaluations by individuals from the funding source(s) and/or by a Federal or State agency.

(1) Program experience, regardless of nature of clientele. Range 0–10. The organization has operated an effective employment and training program, including but not limited to the program activities and supportive services described in this part.

(i) The organization has met or exceeded the stated objectives for program performance of all program activities it has provided.

(ii) The organization has effectively administrated a multi-activity delivery system, if applicable.

(iii) The administration and management of the program has conformed to acceptable management standards.

(2) *Farmworker experience.* Range 0–15. The organization has provided services specifically for farmworkers. The highest rating of 15 will be awarded to an organization which has operated for farmworkers a comprehensive multi-activity program of employment and training and other services.

§ 689.207 Notification of selection.

(a)(1) Potential grantees selected as a result of the procedures set forth in § 689.206 shall be so notified by the Department. The notification shall invite each potential grantee to negotiate the final terms and conditions of the grant, shall establish a reasonable time and place for the negotiation, and shall indicate the State or area to be covered by the grant. Changes in the proposed program's target area and/or funding level are not appealable under § 689.501(c).

(2) Clearinghouses submitting comments on the application will be notified of the selection of the potential grantee within seven working days of selection. Where a clearinghouse has recommended against the selection of the potential grantee, the notification shall include an explanation as to the reasons why its substantive comments were not accepted.

(b) In the event that no Funding Requests are received for a specific State or area or that those received are deemed to be unacceptable, or where a grant agreement is not successfully negotiated, the Department reserves the right to invite one or more organizations to submit a proposal for that State or area. In the event of a second invitation, the review criteria for allocable funds need not apply, and funds may be awarded at the discretion of the Department.

(c) An applicant whose Funding Request is not selected by the Department to receive Section 303 grant funds shall be notified in writing and shall be provided the names and addresses of potential grantees for its State.

(d) Applicants who submit Funding Requests which have been rejected may not resubmit a new Funding Request for the State(s) or area(s) in which they are interested in providing services until the area(s) is announced by the Department as open for recompetition.

(e) Any applicant whose Funding Request is considered rejected by the Department may request an administrative review as provided in § 689.501(c).

§ 689.208 Negotiations of final grant.

(a) Notice of selection as a potential grantee does not constitute approval of the totality of the Funding Request, the funding level sought, nor of the target area requested.

(b) Prior to the actual award of a grant, representatives of the potential grantee and of the Secretary shall enter into negotiations.

(c) The Department may decline to fund any program component(s) or subgrantee(s) or contractor(s) listed in a potential grantee's Funding Request or may add subgrantees, or modify the target area to be served.

(d) In the event that the negotiations do not result in an acceptable negotiated grant for a Section 303 program in a State or area, the Department may terminate the negotiation and (1) decline to provide funds for Section 303 programs in the State or area for that fiscal year or (2) by announcement in the **Federal Register** invite submission of new proposals for the State or area or (3) negotiate with any eligible organization.

§ 689.209 Grant Award.

(a) At the conclusion of negotiations a grant document which incorporates the results of all negotiations shall be prepared in conformity with 41 CFR 29–70.

(b) The Department shall make a grant award by providing the grantee with a grant agreement consisting of the Grant Signature Sheet, the Assurances and Certification form, the Program of Work, the Program Planning Summary, Budget Information Summary, and Grant Conditions.

(1) The Grant Signature Sheet specifies the amount obligated by the Department, delineates the terms of the grant, and contains the signatures of the Department and the grantee official.

(2) The Assurances and Certification form is described in § 689.204.

(3) The Program of Work shall be a summary statement of the Funding Request.

(4) Grant Conditions are special restrictions placed on the grant by the Department.

(c) The grant agreement becomes effective upon signature by the Department.

§ 689.210 Modification.

(a) *Major modifications.* (1) A major modification to the grant is required under any of the following conditions:

(i) Change in duration of the grant;

(ii) Change in grant allotment;

(iii) Change in the assurances and certifications;

(iv) Substantial change in program design and/or program goals defined as follows:

(A) When the cumulative number of participants to be served, planned enrollment levels for program activities, planned placement terminations, or participants to be served is to be increased or decreased by 15 percent or more.

(B) When the cumulative transfer of funds among program activities or cost categories exceeds $10,000 or 5 percent

of the total grant budget, whichever is greater.

(C) When the program design is altered significantly such as when there is a change from the approved plan in the allowance payment system.

(D) When the grantee adds or terminates any subgrantee, contractor, or program operator resulting in an increase or decrease of $10,000 or 5 percent of the total grant budget, whichever is greater, or in an impact exceeding the limits described in paragraph (a)(iv)(A).

(v) At the initiation of the Department as necessary after consultation with the grantee to assure compliance with the regulations and the approved plan and/or to insure responsiveness to changing economic conditions.

(2) Major grant modifications will not be initiated solely to adjust planned performance to meet actual performance.

(3) Prior approval of the Department is required for major modifications.

(b) Format. Major modifications shall consist of the following:

(1) Revised Program Planning Summary, Budget Information Summary for current and future quarters and a narrative explanation of the proposed changes as appropriate to the National Office with a copy of the appropriate Regional Administrator.

(2) Each request for a modification must contain adequate documentation and analysis to support the request.

(3) Revised signature sheet.

(c) *Minor modifications.* A sponsor may make any change in its Program Planning Summary, Budget Information Summary, or narrative description which is not set out in paragraph (a) of this section without prior approval.

(d) *Approval.* Modification of the grant agreement shall become effective upon signature by the Grant Officer and communication of the signing to the grantee.

Subpart C—Program Design and Management

§ 689.301 General Responsibilities.

(a) This subpart sets forth the program operation requirements for grantees under section 303 including program management, linkages, coordination and consultation, allowable activities, participant benefits, and duration of participation.

(b) *Basic Program Design Responsibilities of Grantees*

A grantee shall be responsible for:

(1) Designing training which, to the maximum extent feasible, is consistent with every participant's fullest capabilities and will lead to employment opportunities enabling every participant to become economically self-sufficient;

(2) Designing program activities which will, to the maximum extent feasible, contribute to the occupational development and upward mobility of every participant;

(3) Providing training only to participants who are legally able to accept employment in the occupation for which training is being provided; and

(4) Making maximum efforts to achieve the goals set forth in the Program of Work.

§ 689.302 Program management systems.

The regulations at § 676.22 apply to section 303.

§ 689.303 Program linkages.

(a) each grantee shall, to the extent feasible, establish cooperative relationships or linkages with other employment and training-related agencies in the area within its jurisdiction, including agencies operating programs funded through the Department such as Job Corps, and agencies providing supportive services. Grantees shall document linkages with other agencies through such means as written memoranda of understanding, written agreements, or contracts and shall make available such documentation to the Secretary upon request (Sec. 105(a)(3)(D)).

(b) The establishment of such cooperative relationships or linkages shall include, at a minimum, contacting all appropriate Title II prime sponsor(s), SESA's, and farmworker programs, if any, in the target area prior to implementing the Section 303 program of services. National Account grantees which recruit on a national or regional basis are exempt from this requirement.

(c) Grantees shall also, to the extent feasible, develop cooperative relationships with other employment and training agencies outside their areas of jurisdiction for the purposes of information exchange and participant referral. Such agencies may include but are not limited to SESAs and other farmworker programs.

§ 689.304 Employment and training activities and services.

(a)(1) A grantee may provide the activities described in § 689.304.

(2) Public service employment is not an allowable activity under the Section 303 program.

(b) *Classroom Training.* The provisions of § 676.25–1 shall apply to classroom training under the Section 303 program with the following additions:

(1) Occupational training shall be designed for occupations in which skills shortages exist and for which there is reasonable expectation of employment. In making these determinations, a grantee shall utilize available community resources such as the local SESA office.

(2) Grantees whose target population includes a significant number of persons of limited English-speaking ability should include provisions for training in the primary language of such persons or training in English-as-a-second language or both.

(c) *On-the-job training.* The provisions of § 676.25–2 shall apply to on-the-job training under the section 303 program except that training on a "hire first, train later" basis is not mandatory. However, such training should be conducted on a "hire first, train later" basis, or with reasonable assurance of ultimate placement with an employer other than the training organization.

(d) *Work experience.* The provisions of § 676.25–4 shall apply to work experience under the section 303 program with the following addition:

Work experience participants may be outstationed at worksites, including Federal agencies and private nonprofit agencies. Outstationed participants shall be assured of the same wages, benefits, and working conditions as are received by similarly employed employees of the outstationed worksite.

(e) *Services to participants.* (1) This program activity is designed to provide those services which are needed:

(i) To enable farmworkers and their dependents to obtain or retain employment or to participate in other program activities leading to their eventual placement in unsubsidized nonseasonal employment; or

(ii) To assist those farmworkers who remain as seasonal agricultural employees, in improving their well-being.

(2) Such services may include, but are not limited to, the following:

(i) Services to applicants

(A) Outreach;

(B) Intake: This includes screening for eligibility, the initial assessment process to determine whether the program can benefit the individual and to determine the appropriate employment and training activity to which the individual should initially be referred, a determination as to the availability of an appropriate employment and training activity; a decision on selection; and dissemination of information on the program;

(ii) Employment and training services:

(A) Orientation;

(B) Counseling: This includes employment related counseling, testing, and vocational or career exploration;

(C) Referral to non-303 funded training and placement;

(D) Job development;

(E) Job placement;

(F) Follow-up;

(iii) Supportive services (Training and nontraining related).

(A) Health and medical services;

(B) Child care: Day care program shall comply with applicable State standards including State licensing requirements.

(C) Transportation;

(D) Emergency assistance;

(E) Relocation assistance;

(F) Residential support;

(G) Nutritional services;

(H) Assistance in securing bonds;

(I) Referral to non-303 funded supportive services;

(J) Family counseling;

(K) Family planning services, provided that such services are made available only on a voluntary basis and are not to a prerequisite for participants in or receipt of any service of benefit from the program; and

(L) Legal and para-legal services.

(iv) Post-placement service. Employment and training and supportive services as described in paragraphs (e)(2)(ii) and (iii) of this section may be provided as appropriate to terminated participants who have been placed in unsubsidized employment. These services shall be provided at the discretion of the grantee and shall enable the terminated participant to retain employment. Such services may be provided during the 60-day period following a participant's termination from the program; a longer period of services for individual participants may be approved by the Department on a case-by-case basis.

(f) *Other activities.* (1) These activities are employment and training activities which are not described in the categories above or are employment and training related activities designed to enhance the economic self-sufficiency of participants in the Section 303 programs. This activity includes, but is not limited to high school equivalency programs, and to tuition assistance projects (extended tuition-support programs and other opportunities in post-secondary education).

(2) The Funding Request shall describe the basic design and provide performance standards and a detailed budget for each of the "Other Activities" to be undertaken.

(g) Combined activities. A participant enrolled in any activity funded under the Act may be enrolled simultaneously in other activity. The primary activity consists of the activity in which the participant is enrolled for more than 50 percent of the scheduled time.

§ 689.305 Compensation for participants.

(a) *Wages.* The regulations at § 676.26–1 concerning payment of wages shall apply to section 303 grantees.

(b) *Allowances.* The regulations at § 676.26–2 concerning payment of allowances shall apply to section 303 grantees.

(c) *Combined Activities.* The regulations at § 676.26–3 concerning compensation for participants in combined activities shall apply to section 303 grantees.

§ 689.306 General benefits and working conditions for program participants.

The regulations at § 676.27 apply to section 303 grantees.

§ 689.307 Retirement benefits for program participants.

The regulations at § 676.28 apply to section 303 grantees.

§ 689.308 Non-Federal status of program participants.

The regulations at § 676.29 apply with respect to participants in section 303 programs.

§ 689.309 Termination conditions; participant limitations.

The regulations at § 676.30 apply to section 303 grantees.

§ 689.310 Procedures for Serving Specific Target Groups.

The regulations at § 676.30(a) apply to section 303 grantees.

Subpart D—Administrative Standards and Procedures

§ 689.401 General.

This subpart concerns administrative requirements, standards, and procedures applicable to section 303 grantees.

§ 689.402 Method of payment to recipients of CETA funds.

The regulations at § 676.32 apply to section 303 programs.

§ 689.403 Depositories for CETA funds.

The regulations at § 676.33 apply to section 303 programs.

§ 689.404 Management information systems.

The regulations at § 676.34 apply to section 303 programs.

§ 689.405 Retention of records.

The regulations at § 676.35 apply to section 303 programs.

§ 689.406 Program income.

The regulations at § 676.36 apply to section 303 programs.

§ 689.407 Recipient contracts and subgrants.

The regulations at § 676.34 apply to section 303 program with the following additions.

(a) Cancellation of subgrants require prior approval by the grant officer.

(b) The reference in § 676.37(c) to the Annual Plan is changed to read "the grant" for purposes of section 303 programs.

(c) No contract or subgrant may extend more than 6 months beyond the termination date or completion of the grant period unless the grantee has been notified of its selection as a potential grantee for the succeeding fiscal year.

(d) The Department may make adjustments in payments with respect to unexpended funds committed under contracts and subgrants described in paragraph (c) of this section at any time between the completion or termination.

§ 689.408 Requirements for contracts with non-governmental organizations.

The regulations at § 676.38 apply to section 303 programs. The reference to prime sponsors in § 676.38 is changed to read "grantee" for the purposes of section 303.

§ 689.409 Property management standards.

The regulations at § 676.39 apply to section 303 programs.

§ 689.410 Allowable costs.

(a) The regulations at § 676.40 apply to section 303 programs except as follows:

(b)(1) Program expenditures shall not be made prior to the effective date of the grant period as set forth in the grant agreement or as subsequently modified by DOL. Expenditures made before such date shall be disallowed unless approved by the Department in advance.

(2) If the grantee incurs expenditures in excess of the total amount of the grant funds, the overexpenditure may not be charged to the grant.

(c) The regulations at § 676.40–2 concerning administration and travel costs shall not apply to section 303 programs.

(d) *Travel costs.* (1) the cost of participant travel and staff travel necessary for the operation or administration of programs under the Act is allowable as provided herein.

(2) Travel costs of section 303 staff or members of governing boards of grantee organizations are allowable without the prior approval of the Department if the

travel specifically relates to programs under section 303 and is within the CETA section 303 target area or if the travel is for the purpose of attending a Department sponsored or approved conference, meeting, or training session. All other travel to be charged to the CETA section 303 grant shall require the prior approval of the Department. These costs shall be charged to administration.

(3) Travel costs of other grantee officials of multifunded programs charged with overall grantee responsibilities are allowable only if costs specifically relate to programs under the Act. Prior approval by the Department is not required. These costs shall be charged to administration.

(4) Travel costs for participants in administrative positions are allowable when the travel is specifically related to the operation of programs under section 303. These costs shall be charged to administration.

(5) Travel costs, based on mileage, for participants using their personal automobiles in the performance of their jobs are allowable if the employing agency normally reimburses its other employees in this way. These costs shall be charged to fringe benefits.

(6) Travel costs to enable participants to obtain employment or to participate in programs under the Act are allowable as supportive services but shall be restricted to the grantee's jurisdiction or within daily commuting distance, unless part of an approved component in the Funding Request.

(7) Travel policies set forth in the Department's Travel and Transportation Manual are required of all grantees, subgrantees and contractors. When a grantee, subgrantee, or contractor, has a more restrictive travel policy than the Travel and Transportation Manual, the more restrictive requirements shall be followed.

(e) *Association Membership.* Grantees are permitted to use grant funds to join those associations which provide bona fide, relevant technical and administrative services in support of section 303 program efforts. The activities of such associations must be designed to contribute to the enhancement of professional and technical program knowledge. For membership dues or other membership related costs to be allowable, the following conditions shall be observed.

(1) The membership costs may not be used in any lobbying or political activities pursuant to §§ 676.69 and 677.70.

(2) The association does not devote any effort to influencing legislation or political activities.

(3) However, organizations whose only activity is technical assistance but which are affiliates of organizations engaging in lobbying, may be appropriate selections for membership, if it can be demonstrated that their activities are separate from the parent association, and that the affiliate association does not contribute to the support of the parent organization.

(4) Grantees wishing to use grant funds for membership in associations must obtain the prior approval of the Department before initiating membership procedures. Grantees shall submit budget information detailing its proposed costs related to the proposed membership and documentation which shows that the association meets the conditions set forth in this section. Such documentation shall include a copy of the corporate charters, bylaws, constitution, or any other pertinent official document which explains the purpose of the association and satisfies the conditions specified in this section. In the case of an association that is affiliated with an organization which conducts lobbying or political activities, the documentation must demonstrate that the activities of the association to be joined are separate from those of the affiliated organization.

(5) When the use of grant funds for membership in an association has been approved by the Department for a section 303 grantee, the Department will announce the approval and it will thereafter be unnecessary for any other 303 grantee to submit the documentation required by paragraph (4).

(6) The Department will conduct grantee reviews to determine that the purposes of such memberships are being carried out and that program and operations are thereby enhanced.

(7) The cost shall be for a section 303 grantee's membership rather than an individual person's membership.

(8) The cost of the membership shall be reasonably related to the value of the services or benefits received. Grantees are authorized to use annually up to one-tenth of one percent of their respective section 303 allocations with a maximum of $750.00 for association-related costs.

(9) Association-related costs shall be incorporated in the grantee's section 303 grant budget, charged to the administration category, and as such, shall be subject to the overall 20 percent administrative cost ceiling.

(f) *Allowances and reimbursements for board and advisory council members.*—(1) *General.* A reasonable allowance to members who attend meetings of any board, council, or committee for section 303 program purposes, and reimbursement of actual expenses connected with those meetings, are allowable costs. However, grant funds shall not be used to pay such allowances to any individual who is a Federal, State, or local government employee, or to an employee of a grantee or sub-grantee.

(2) *Allowances.* Any person who is a member of a private nonprofit grantee or subgrantee policymaking body or of a public agency grantee or subgrantee farmworker advisory council is eligible to be paid an allowance; provided (1) such person's family income does not exceed either 70 percent of the lower living standard income level or the poverty level as described in § 675.4 and (2) the person is not a Federal employee, an employee of a DOL-assisted organization, or an employee of a State or local public agency. Allowances shall not exceed five dollars per meeting, unless the grantee's chief elected official or governing board determines a higher payment more suitable. Allowances in excess of five dollars shall be approved in advance by DOL. No person shall be paid an allowance by any one DOL-assisted organization for attendance at more than two meetings per month, regardless of whether the meetings are for the same or different policymaking bodies.

(3) *Reimbursements.* (i) Any person, whose family income does not exceed 70 percent of the lower living standards income level as described in § 675.4 and who is a member of a private nonprofit grantee or subgrantee policymaking body or of a public agency grantee or subgrantee farmworker advisory council shall be eligible for reimbursement of actual expenses, including actual wages lost, up to $25 a day.

(ii) All board members shall be eligible for receiving reimbursement for actual expenses of travel, meals, and lodging incurred in attending that meeting, or a per diem in lieu of actual expenses.

(iii) The grantee shall define which expenses may be reimbursed, whether incurred as the result of actual attendance at meetings or in the performance of other official duties and responsibilities in connection with the program, and shall establish procedures for the reimbursement of such expenses.

(g) *Limitation on administration costs.* Costs for administration of the grant shall not exceed 20 percent of the total amount of the grant, unless adequate justification for a higher percentage is provided in the Funding Request.

§ 689.411 CETA cost allocation.

(a) The regulations at § 676.41 of this title apply to Section 303 grantees with the following additions and exceptions:

(b) *Administrative cost.* (1) Allowances and reimbursement costs for governing boards and advisory councils shall be prorated as administrative costs among all of the grants, from whatever source, administered by the grantee.

(2) The cost of processing allowance payments for participants shall be charged to the cost category of administration.

(c) *Cost categories assignable to program activities.* (1) Classroom training. Cost categories are: administration, training, allowances, services, wages when paid to participants during classroom training, and fringe benefits (medical and accident insurance for participants only).

(2) On-the-job training. Cost categories are: administration, training and services.

(3) Work experience. Cost categories are: administration, training, services, wages, and fringe benefits.

(4) Employment and Training services. Cost categories chargeable are:

(i) Administration.

(ii) *Allowances.* This includes all allowances paid for short periods of time to participants who are registered for training, but are waiting for startup of a component.

(iii) *Services.* This includes all employment and training services including postplacement services which are not part of another program activity and which are provided to participants by a grantee, contractor, or subgrantee.

(5) *Supportive services.* These services include but are not limited to health and medical services, child care, emergency assistance, relocation assistance, residential support, nutritional services, and other such supportive services. Cost categories chargeable are:

(i) Administration.

(ii) *Services.* This includes all supportive services, including postplacement services, which are not part of another program activity and which are provided to participants by a grantee, contractor, or subgrantee.

(6) Other activities. Cost categories chargeable are: administration, allowances, training, and services.

§ 689.412 Administrative staff and personnel standards.

The regulations at § 676.43 apply to section 303 grantees that are State or local governments. The following provisions shall be applicable only to private nonprofit grantees and to private nonprofit subgrantees receiving section 303 funds:

(a) Personnel policies of grantees and subgrantees shall be stated in written form and available to the Department upon request.

(b) *Opportunities for farmworkers.* Each grantee and subgrantee shall insure that its staff recruiting procedures afford adequate opportunity for the hiring and promotion of persons in the target population.

(c) *Outside employment.* Grantees and subgrantees shall include the following provisions in their published personnel policies relating to outside employment of their employees in section 303 programs.

(1) Such employment shall not interfere with the efficient performance of the employee's duties in the DOL-assisted program;

(2) Such employment shall not involve conflict of interest or conflict with the employee's duties in the DOL-assisted program as described in § 676.62(b);

(3) Such employment shall not involve the performance of duties which the employee should perform as part of employment in the DOL-assisted program; and

(4) Such employment shall not occur during the employee's regular or assigned working hours in the DOL-assisted program, unless the employee during the entire day on which such employment occurs is on annual leave, compensatory leave, or leave without pay.

(d) *Salaries and wages.* (1) Administrative and staff employees in section 303 programs shall be paid at a rate no lower than the applicable Federal, State, or local minimum wage rate, whichever is highest. Subject to this minimum, the salary for each position shall equal, and not exceed, the prevailing rate of compensation paid in the area where the program is carried out to persons in comparable positions in public or private nonprofit agencies. The salary for each position shall be determined through a wage comparability study.

(2) Notwithstanding paragraph (d)(1) at this section, where a grantee or subgrantee has an established system, it may compensate its section 303 program employees at existing rates in effect for comparable positions under such merit system. However, in order to use this methodology, the section 303 program employees must be filling positions or types of positions in existence before the grantee or subgrantee received financial assistance under the Section

303 program, and the salary scale must not have been changed as a result of such financial assistance.

(3) Each grantee and subgrantee shall maintain an up-to-date salary and wage schedule which assigns a specific salary or wage range, incorporating periodic increases to each position.

(e) *Maximum rate of compensation.* No employee engaged in carrying out program activities receiving financial assistance under Section 303 shall be compensated from funds so provided at a rate in excess of $25,000 per year, without approval from DOL. An employee subject to the provisions of salary proration in paragraph (f) of this section shall not be compensated from funds so provided at a rate in excess of the prorated share of $25,000, without approval from DOL. Exceptions may be granted by DOL in cases where, due to the need for specialized or professional skills or due to prevailing local salary levels, application of the foregoing restrictions would greatly impair program effectiveness or otherwise be inconsistent with the purposes to be achieved by the program.

(f) *Prorating salaries.* Where an individual performs functions under several grants, his or her time shall be prorated among the different grants and the portion of the salary charged to the section 303 grant shall not exceed the percentage of time spent performing section 303 functions.

(g) *Employee benefits.* Employee benefits shall be at the same level and to the same extent as those positions in public or private nonprofit agencies in the area where the program is carried out.

(h) *Position responsibilities.* (1) Each grantee and subgrantee shall maintain a written detailed job description identifying job functions and responsibilities for each administrative and staff position under its section 303 program.

(2) Each position shall have specific hiring qualifications and shall be distinguishable from every other position by reason of its responsibilities and job functions. Positions requiring higher salaries or wages shall include higher level of responsibilities commensurate with the salary.

(j) *Personnel procedures.* (1) Each grantee and subgrantee shall maintain a personnel manual containing detailed procedures for hiring new employees, promoting present employees and granting salary increases.

(2) Each grantee and subgrantee shall maintain documentation as to any personnel action (including hiring, promotion, and salary increases) involving its section 303 program employees.

(k) *Bonding and insurance.* The provisions of § 676.43(b) shall apply to section 303 grantees and subgrantees.

§ 689.413 Reporting requirements for recipients.

(a) The reference to "prime sponsor" is changed to read "grantee" for section 303 program purposes.

(b) The regulations at § 676.44 of this title apply to section 303 grantees with the following special provisions:

Section 676.44(a)(4) regarding the Annual CETA Program Activity Summary does not apply to section 303 grantees.

(c) All required reporting shall be submitted directly to the following address:

U.S. Department of Labor, Employment and Training Administration, Patrick Henry Building, Room 6308, 601 D Street, N.W. Washington, D.C. 20213, Attention: Acting Director, Office of Farmworker Programs.

(d) The Forms Preparation Handbook and the section 303 Supplement shall be used as a guide in preparing all required reports.

§ 689.414 Closeout procedures.

Upon closeout, the Department will insure that:

(a) Prompt payment is made to the grantee for reimbursement of costs under the grant being closed out.

(b) After the final reports are received, a settlement is made for any upward or downward adjustments which are made to the Federal share of the costs.

(c) The letter of credit is cancelled unless the grantee is a potential grantee for the succeeding fiscal year.

(d) Final program and fiscal audits are performed as soon as possible after the completion or termination date of the grant.

§ 689.415 Secretary's responsibility for assessment and evaluation.

(a) The regulations at § 676.46 apply to programs assisted under section 303 of the Act.

(b) Moreover, the Secretary of Labor will obtain the approval of the Secretary of Health, Education, and Welfare with respect to direct arrangements by the Secretary of Labor for the provision of basic education and vocational training. This approval will focus on the legality and quality of such service arrangements as well as the relationships of such services to those being delivered under other applicable

laws for which the Secretary of Health, Education, and Welfare is responsible.

§ 689.416 Reallocation of funds.

In a limited number of circumstances, the Department may determine that a portion of a grant should be reallocated to another area because the grantee's plan will be carried out without expending all the funds previously made available for that plan; the funds are therefore not needed where they were originally allocated.

In such instances the following actions shall be taken:

(a) *Notice of intent to reallocate funds.* When the Department determines that a reallocation is appropriate, the grantee shall be notified of the proposed action to remove funds from the grant. Such notification shall specify the basis for the proposed reallocation and shall invite the grantee and the general public to submit comments on the proposed reallocation. Any such comments must be submitted to the Department within 30 days of receipt of the notice. The Department shall consider these comments before making a final determination to reallocate.

(b) *Notification of final determination.* The Department shall notify the grantee of the final determination after reviewing any comments timely submitted. A final decision to reallocate funds of a grantee shall be published in the **Federal Register**, and a modification of the grant shall be made.

(c) *Reallocation procedures.* In reallocating such funds to supplement other grants, the Department shall first consider the need for additional funds by other grantees within the same State. A decision to increase a grant with reallocation funds shall not be made without prior consultation with the grantee as to how the funds will be expended. Such a decision shall be published in the **Federal Register** with an announcement stating the grantee(s) receiving additional allocable funds for the purpose of § 689.104(b)(2), the "hold harmless" provision.

Subpart E—Program Integrity

§ 689.501 Nondiscrimination and Equitable Service.

The regulations at Subpart D, Part 676 shall apply to section 303 programs.

§ 689.502 Prevention of fraud and program abuse.

The regulations at Subpart D, Part 676 shall apply to section 303 programs except that § 676.75–2 (prime sponsor monitoring procedures) shall not apply to grantees other than prime sponsors.

§ 689.503 Complaints, Investigations and Sanctions.

(a) The regulations at Subpart F of Part 676 apply to section 303 grantees with the following additions.

(b) *Procedure for Complaints Arising from Selection of Potential Grantees—* (1) *Administrative remedies.* Potential grantees shall be determined according to the procedures described in § 689.204 through § 689.206. An applicant which wishes to object formally to its nonselection as a potential grantee, after consideration by the Department as provided in § 689.205, may file a Petition for Reconsideration with the National Office within 14 days of the notification of the Department's decision not to award a grant. Reconsideration under this section will not be given to objections by potential sponsors regarding the subjects of negotiation listed in § 689.208.

(2) *Petition for Reconsideration.* A Petition for Reconsideration shall be a written statement by a responsible official of the complainant requesting a review of the nonselection and may enumerate the factors which the applicant asserts should be reviewed in reconsidering its Funding Request, but such enumeration is not required.

(3) *Reconsideration.* (i) Upon receipt of the Petition for Reconsideration, the Department shall, within 14 days, make one of the following determinations:

(A) That the organization be designated a potential grantee.

(B) That the Grant Officer's decision be sustained.

(ii) The representative of the Secretary responsible for resolution of the Petition for Reconsideration shall be an official not directly involved in the original determination. A written notice of the determination described in paragraph (3)(i) of this section shall be sent to the grantee, and such notice shall inform the grantee of its opportunity to request a hearing pursuant to § 676.88(f). The determination shall constitute a final determination for purposes of § 676.86(a)(1).

Signed at Washington, D.C., at the 18th day of May, 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79–16339 Filed 5–24–79; 8:45 am]

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federal register

Friday
May 25, 1979

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Mining Reclamation and Enforcement Provisions; Final Rules for Initial Regulatory Program

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 710, 715 and 717

Surface Mining Reclamation and Enforcement Provisions

AGENCY: Office of Surface Mining Reclamation and Enforcement, (OSM), Department of the Interior.

ACTION: Final rules for initial regulatory program.

SUMMARY: The final regulations establish design criteria for sedimentation ponds and head-of-hollow and valley fills constructed during the initial regulatory program and affirm the buffer zone requirements established in the initial regulatory program. The regulations reflect the Secretary's reconsideration of the December 13, 1977 regulations in light of the directives of the District Court of the District of Columbia.

DATES: The final regulation establishing design criteria for head-of-hollow and valley fills is effective June 25, 1979. The final regulation establishing design criteria for sedimentation ponds will be effective 30 days following publication of notice in the **Federal Register** that the District Court for the District of Columbia has reviewed and approved the regulations.

ADDRESSES: (1) Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; (2) Administrative Record Office, Room 120, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; telephone number 202–343–4728.

FOR FURTHER INFORMATION CONTACT: David R. Maneval, Assistant Director, Technical Services and Research, Office of Surface Mining, Department of the Interior, Washington, D.C. 20240, 202–343–4264.

SUPPLEMENTARY INFORMATION:

1. Section 501(a) of the Surface Mining Control and Reclamation Act requires the Secretary to promulgate regulations establishing an initial regulatory program for surface coal mining operations. The initial regulations were promulgated on December 13, 1977, 42 FR 62639 (Dec. 13, 1977). On February 27, 1978, the Secretary adopted interim final rules modifying the initial regulations controlling the design of sediment ponds. 43 FR 8090–93.

Portions of the initial regulations, including the amended design criteria for sediment ponds, were challenged by the coal industry pursuant to section 526 of the Act in the District Court for the District of Columbia. As a result of that litigation, the Secretary was ordered to reconsider, in particular, 30 CFR 715.17(d)(3), 25 CFR 177.108(d)(3) (buffer zone), 30 CFR 715.17(e), 717.17(e) (sediment pond design criteria), 30 CFR 715.15(b), and 25 CFR 177.106(b) (head-of-hollow fills). See *In Re Surface Mining Regulation Litigation*, 452 F. Supp. 327 (1978) and 456 F. Supp. 1301 (1978).

The final regulations reflect the Secretary's reconsideration of the regulations for sediment ponds, head-of-hollow fills and buffer zones in light of the aforementioned directives of the District Court for the District of Columbia.

Head-of-Hollow, Valley Fill Sedimentation Pond Regulations for Initial Program. Since the regulations which are the subject of this notice were promulgated as proposed on November 14, 1978, the Department has published final regulations implementing Executive Order 12044, March 23, 1978. (43 CFR Part 14, 43 FR 58292–58301, December 13, 1978). The Part 14 regulations became effective on January 26, 1979.

The Department has been under a judicially imposed order to reconsider the regulations for head-of-hollow and valley fills and report to the Court on this reconsideration. Therefore, the Department has decided to utilize the exemption from procedural requirements for significant regulations found in 43 CFR 14.3(f). (See also, 42 FR 62640, December 13, 1977.)

All significant steps with respect to public participation under Part 14 had been completed in development of these final rules prior to the effective date of 43 CFR Part 14 on January 26, 1979. (See 43 CFR 14.1(c)(2).)

2. *Valley and head-of-hollow fills.* In litigation contesting the initial regulatory program, two specific provisions of § 715.15 concerning underdrains and compaction of spoil in valley fills were challenged. On August 24, 1978, the District Court for the District of Columbia kept the regulations in force, but at the same time remanded the regulations for reconsideration in light of the 1978 Skelly and Loy Report. See *Surface Mining Regulation Litigation*, 456 F. Supp. 1301 (1978).

After reconsideration of the regulations, OSM has decided to modify the initial regulation for head-of-hollow and valley fill construction. The new regulations would permit a modified West Virginia rock core system to be utilized at the discretion of the regulatory authority, and authorize special construction methods when the fill is composed predominately of durable rocks.

The definitions of head-of-hollow fill and valley fills have been modified to conform to the new regulations and describe more explicitly the slope criteria for the existing terrain at the fill site.

The definitions are promulgated under authority of Sections 102, 201, 501, 502, 515 and 516 of the Act.

The final rules delete the existing definition of valley fill and head-of-hollow fill in 30 CFR 710.5 and replace it with separate definitions for each term.

The principal sources of technical definitions are American Geological Institute, Glossary of Geology, 1972; American Society of Civil Engineers, Nomenclature of Hydraulics, 1962; U.S. Bureau of Mines, and Related Terms, 1968; Bituminous Coal Institute, Glossary of Current and Common Bituminous Coal Mining Terms, 1947; Soil Science Society of America, Glossary of Soil Science Terms, 1970; and Soil Conservation Society of America, Resources Conservation Glossary, 1976.

To be classified as either a head-of-hollow fill or a valley fill, the slope of the steepest section of existing topography within the fill site must be greater than 20 degrees, or the average slope of the profile of the valley from the toe of the fill must be greater than 10 degrees. If either of these two criteria are exceeded, then the fill is classified as either a head-of-hollow or a valley fill.

Twenty degrees is an acceptable test to determine steep areas in which extra precautions with spoil disposal are justified (see Sec. 515(d) of the Act).

Kentucky regulations require the slope of the existing ground at the toe of all fills to be 10 degrees or less (see also Skelly and Loy, 1977, p. II–3 and Huang, 1978, p. 5).

The top of head-of-hollow fills, when completed, must be at the same elevation as the adjacent ridgeline (see Greene and Rainy, 1975, pp. 1–8).

Comments were received regarding the feasibility of placing site limitations on these structures. Based on seven years of experience of the West Virginia Department of Natural Resources, OSM has decided to allow rock core fills of less than 250,000 cubic yards, near the

elevation of the coal seam when associated with contour mining.

§ § 715.15(a)–(d) Disposal of excess spoil.

30 CFR 715.15(a)–(d), along with the definitions of "head-of-hollow" and "valley fills" in Section 710.5, regulate excess spoil. Section 715.15(a) lists general requirements that apply to all fills, including those dealt with in Sections 715.15(a)–715.15(d). These requirements are basically safety and environmental protection standards which the engineer designing the disposal area must satisfy. If the particular spoil disposal area does not fall within the definitions of head-of-hollow or valley fill, the requirements of Section 715.15(a) are the governing regulations. If the spoil disposal area falls within the definition of valley fill, then in addition to the more general requirements of Section 715.15(a), the valley fill must also meet the requirements of Section 715.15(b). If the particular spoil disposal area falls within the definition of head-of-hollow fill, then in addition to the more general requirements of Sections 715.15(a) and 715.15(b) the fill must comply with Section 715.15(c). Section 715.15(d) provides an alternative method of constructing a head-of-hollow or valley fill.

These different approaches were adopted to allow increased fexibility for the operators and the State regulatory authorities while maintaining the public safety and environmental protection that Congress mandated.

The flatter fill areas are covered by the more general requirements of Section 715.15(a) since the risk of failure or pollution of ground or surface water may be less than in steeper areas.

For valley fills, Section 715.15(b) provides for a fill with a rock underdrain constructed with diversion ditches that carry surface water away from and around the fill. The engineered rock underdrain and diversion ditch system are necessary because valley fills block a path of water flow from a watershed above the valley fill. If the fill is a head-of-hollow fill, then there will be a smaller watershed, in which case Section 715.15(c) provides that the fill may be constructed with a rock chimney drain and water may be diverted toward the rock chimney. Section 715.15(d) governs a special type of either head-of-hollow or valley fill that is made up of at least 80 percent by volume of sandstone, limestone, or other durable rocks that do not slake in water. In such fills, internal drainage is more free and failure because of saturation is much less of a risk, and erosion should be minimal. Therefore, special methods of construction are allowed.

Spoil disposal practices in mining operations have had a major impact on the environment and, in some cases, represented a significant hazard to life and property. The requirements outlined in these Sections of the final regulations provide positive measures to protect life, property, and the environment by establishing criteria for the disposal of excess spoil materials while achieving adequate drainage control and long-term stability. For reference to the potential environmental impacts of excess spoil disposal see: "Final Environmental Impact Statement OSM–EIS–1," pp. III–13–15, 40, 60–61.

If excess materials are improperly placed across drainage channels and provide inadequate drainage and stability, disturbance to the hydrologic balance and impact on safety could be profound. (Comptroller General of the U.S., 1977, pp. 1–2; Coalgate and others, 1973, pp. 93–94; Hopkins and others, 1975, p. 9; Taylor, 1948, pp. 406–407). The purpose of detailed construction standards for disposal of excess spoil is to construct fills which will not require maintenance over the life of the fill. Fills constructed for highways, railroads and buildings are not only carefully engineered, but also monitored and maintained for their lifetime. In contrast, excess spoil fills are ultimately the responsibility of the surface landowner who is likely not to have the capital or equipment for long-term maintenance or remedial action. Therefore, it is essential to design and construct excess spoil fills properly.

Major issues which have been identified based on public comments were separated into five areas:

(1) Semantic interpretations of the terms "haul or convey" versus "transport and placed";

(2) durability requirements for rock used in underdrains;

(3) Lift thicknesses for excess spoil placement;

(4) Allowance of alternative spoil disposal methods; and

(5) Provisions for the disposal of coal processing waste in excess spoil fills.

Each of the principal issues, as well as additional comments, are addressed below.

The authority for these proposed Sections is found in Sections 102, 201, 501, 502, 515, and 516 of the Act. The rationale for selecting the final regulations is found in the context of this general preamble discussion, the disposition of submitted comments related to the proposed regulations, and the preamble to the proposed regulations for these Sections.

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Applicable State and Federal laws comparable to or containing similar requirements include but are not limited to:

1. 30 USC 801. MSHA regulations.
2. 33 USC 1151–75 Water Pollution Control Act.
3. Chapter 30. Articel 6 *West Virginia Code*—"Surface Mining and Reclamation control Act".
4. Chapter 20 Article 6C, *West Virginia code*—"The Coal Refuse disposal Control Act".
5. "Pennsylvania Clean Streams Law," 35 *Pa. Stat. Anon*, Sec. 691.1 *et seq.*
6. "Solid Waste Management Act," 35 *Pa. Stat. Anon*, Sec. 6001 *et seq.*
7. title 25 *Pennsylvania code*, Chs. 95, 97, 101, 125.
8. Ch. 20 Art. 5. *W. Va. code*, "Water Pollution Control Act".
9. 40 CFR 136. "Protection of the Environment".

§ 715.15(a) Disposal of excess spoil: General requirements.

Section 715.15(a) requires controlled placement utilizing current engineering practices common in embankment construction for all types of permanent fills. This Section implements the general requirements outlined in the Act and is applicable to all excess spoil disposal areas. For definition of the different types of fills see 30 CFR § 710.5.

Disposal of excess spoil in designated offsite storage areas such as pre-existing mined benches is presently practiced in several States. In some areas, disposal of excess spoil has occurred without benefit of permits, sufficient bonding, or minimal provisions for enrironmental control. Under the interim regulations, Section 715.15(a)(1), disposal of excess spoil was to be permitted in areas only "other than mine workings or excavations." The Office recognizes the constructive and beneficial results for disposal of excess spoil in such workings or excavations, and strongly encourages this practice which is feasible and consistent with both the Act and the initial performace standards. As a result, the wording of Section 715.15(a)(1) has been modified to clarify the language.

Commenters said the first cut or box cut spoils should not adhere to the same requirements as excess spoil. The commenters said Section 515(d) of the Act separates the requirements of steep versus flat slope areas regarding spoil disposal. The legislative history and the Act do not indicate that excess spoil regulations should be divided based upon mining terrain slopes. Therefore where box cut or first cut spoils are not required to achieve approximate original contour or cannot be handled in accordance with Section 715.14, they should be treated as any excess spoil and comply with the requirements of Section 715.15(a)–715.15(d).

Commenters objected to the use of the phrase "haul or convey" since the Act uses the language "transported and placed." The legislative history shows that "standards require controlled placement of spoil. Spoil must be transported-hauled by truck or other vehicle-placed and compacted..." (123 Cong. Rec. H–7584, July 21, 1977). The intent of the recommended change was to allow uncontrolled end-dumping of spoil as an acceptable method of spoil placement. This recommendation is rejected.

One commenter noted that the use of the word "replaced" in Section 715.15(a)(3) regarding topsoil appeared to be an error. He suggested use of the term "placed" as an alternative. This comment was rejected, as "replaced" is consistent with Section 715.16(a).

A commenter suggested that removal of topsoil, vegetative, and organic material was not necessary "in the nonstructural portion of the fill to insure stability." The Act, however, requires removal of topsoil in Section 515(b)(5); therefore, this comment is considered non-substantive and cannot be accepted.

Some commenters contended that all topsoil should be removed from the entire disposal area before any spoil is placed on it. This is not implied by the regulation. OSM recognizes that the entire removal of topsoil before spoil is placed in the area is undesirable. Concurrent removal of topsoil is accepted and desirable and minimizes the disturbances at the disposal site.

A commenter suggested that moderate slopes are not always stable because the parent bedrock which produces moderate slopes usually results in deeply weathered soils. He suggested that foundation investigations be required prior to fill placement. This comment was rejected, as placing this requirement in Section 715.15(a)(5) would be redundant because Section 715.15(a)(13) requires foundation investigations.

Commenters proposed a variance allowing small depressions or impoundments on the crest of fills, if demonstrated to be consistent with the

postmining land use and stability of the fill. Commenters said that such impoundments would enhance postmining land uses, such as grazing. It is a commonly accepted engineering and construction practice to minimize infiltration of surface water into the fill mass so as to maintain the lowest possible hydrostatic pressure within the fill. (Hopkins and others, 1975; Cedegren, 1967; Chassie and Goughnour, 1976; U.S. Army Corps of Engineers, 1952). The existence of depressions or impoundments, regardless of size, can increase the phreatic surface within the fill. Therefore the prohibition of impoundments on fills is retained in Section 715.15(a)(7) in the final regulations.

Commenters argued that the prohibition of terraces in the proposed final regulations was inconsistent with the definition of approximate original contour in Section 701(2) of the Act. It is agreed that terraces, if properly constructed, are desirable to break long slopes, control erosion, and enhance stability. Therefore, the requirements of Section 715.15(a)(8) have been altered to allow terraces in accordance with Section 715.14 and if approved by the regulatory authority. (Curtis, 1971b, pp. 198–199; Curtis and Superfesky, 1978, p. 156; Figure 1; Skelly and Loy, and others, 1978, pp. 148–149).

Commenters raised objections to the specification in Section 715.15(a)(9) that the toe of the fills rest on a 20 degree or flatter slope. Since the consideration of the slope of natural ground at the toe of the fills is an integral part of stability analyses, this requirement was deleted. (Huang, 1978, pp. 11–12; Lambe, 1969, pp. 366–367.)

Commenters said rock buttresses and keyway cuts are not always necessary (*e.g.*, if the design achieves a 1.5 factor of safety). The use of keyway cuts and buttresses is intended to increase the stability of embankments where steep foundation conditions necessitate special treatment to resist the sliding movement created by the weight of the fill. (Chironis, 1977, p. 107; Huang, 1978, pp. 5, 11–12; Lambe, 1969, pp. 366–367; Loy and others, 1978, p. 9; Comptroller General of the U.S., 1977, pp. 1–2; Chassie and Goughnour, 1976, p. 66). Therefore, Section 715.15(a)(9) has been modified to reflect the change supported by commenters and to clarify the relation of this Section to the Act.

Commenters asserted that persons under the supervision of registered professional engineers should be allowed to conduct the inspections required in Section 715.15(a)(10). The language of Subsection (a)(10) states "registered professional engineer or qualified professional specialist." This should not preclude persons under the supervision of a registered professional engineer from making the inspection provided that they are indeed qualified. The requirement for inspection, certification, and record-keeping is consistent with 30 CFR 77.216–3, and the WV Code, Chapter 20, Article 5–D–9, and in keeping with construction standards for quality assurance.

At the request of one commenter, "critical construction periods" have been clarified in Section 715.15(a)(10). The commenter stated that without this clarification operators would be subject to an indeterminate number of inspections, which would increase cost. While most design and construction engineers should be able to provide guidance on critical construction periods, a list, which should not be considered all inclusive, has been provided in Section 715.15(a)(10).

Commenters suggest that inspection frequency be increased due to variations in embankment construction schedules. The quarterly inspection requirement is maintained as a minimum; however, the regulatory authority may increase the inspection frequency, if fill construction is so rapid that quarterly inspection will not be adequate to monitor construction practices effectively.

Commenters said coal processing waste should be allowed to be placed in head-of-hollow or valley fills. Some commenters asserted that the Office had no legal authority to exclude such waste under these Sections. Others asserted that since the Office allows the use of waste in dams and embankments, OSM should allow its use in head-of-hollow or valley excess spoil fills. They argued that the physical, chemical, and engineering qualities of such waste can be determined and its use adequately controlled so as to assure stability and environmental protection.

The Office accepted portions of these comments. The Office rejects the argument that the exclusion of coal processing waste is beyond its legal authority. It is essential to assure the long-term stability of large fills, especially in the steeper areas, such as the Appalachia coal fields. (H. Rept. No. 95–218, 95th Cong., 1st Sess., p. 114, 1977.) The period of time over which many fills are built and the increasing use of fills in current mining make it difficult for a regulatory authority to monitor construction. This difficulty coupled with serious concern about long-term stability and potential for ground and surface water pollution require thorough control.

Because the risks associated with excess spoil fills are less in flatter areas, the disposal of waste was allowed in spoil disposal areas which do not fall within the definition of head-of-hollow or valley fills. However, waste is still excluded from fills that fall within those definitions. This distinction was made because valley and head-of-hollow fills are in steeper areas where side slopes in excess of 20 degrees and average profiles in excess of 10 degrees are encountered. Fills in such steeper areas are more prone to failure, and the effects of failure more damaging.

Coal waste frequently has properties that contribute to instability, especially wet fine coal wastes (Coalgate and others, 1973, p. 6; Comptroller, General of the U.S., 1977, pp. 1–2). Moreover, depending on the characteristics of the coal seams being cleaned or processed, coal waste often has acid- or toxic-forming potential (Coalgate and others, 1973, pp. 14–18). The stability and toxic-forming characteristics of a given sample of coal waste can be determined by analysis. Depending on the analysis, the use of a given material may be authorized in a general manner, but more frequently a given coal waste will require special handling, such as mixing in a ratio or in a place with spoil being used in the fill. In the latter case, stability or freedom from toxic drainage is only assured when the waste is handled as prescribed. Moreover, the characteristics of the waste often change due to breakdowns or changes in the seam or seams of coal being processed.

Because of all these variables, regulatory control of fills including coal waste is much harder to achieve. The Office, therefore, decided to exclude coal waste from fills in steep areas. For fills in flatter areas, which generally pose less stability and toxic-formation problems, the Office allows the operator the flexibility of including coal waste, provided it is handled to minimize the problems that may be associated with its use.

In response to commenters' assertion that since coal waste is allowed in dams, it should be allowed in fills, it is noted that coal waste is allowed in dams under careful control, because dams are more highly engineered in general, typically built with greater quality control and are constructed over a shorter time. All these factors make regulatory control and environmental safeguards easier to achieve. Waste disposal areas designed and constructed specifically to handle coal processing waste, as specified in the regulations, therefore, are justified.

§ 715.15(b) Disposal of excess spoil: Valley fills.

This Section establishes the requirements for valley fills. This type of fill is characterized by a structure located in a valley where the fill material has been hauled and compacted into place, with diversion of upstream drainage around the fill. For definition of "valley fill", see 30 CFR 710.5.

Some commenters asserted that the 1.5 static, long-term factor of safety requirement for fills was too stringent, while others supported it as necessary to provide adequate safeguards. Reduced factors of safety were considered as alternatives for all fills and also for remotely located fills.

The 1.5 factor of safety is standard engineering practice for earth and rockfill structures located where failure could cause loss of life or property damage (Canada Department of Energy, Mines and Resources, 1977, p. 80; Canada Department of Energy, Mines and Resources, 1972, pps. 5–27; MESA, 1975, p. 5.143; MESA, 1976b, p. 3; Lambe & Whitman, 1969, p. 373). MESA (1975, p. 5.143) and Canada Department of Energy, Mines and Resources, (1972, p. 5–27) recommend the use of reduced factors of safety when the potential of property damage and loss of life does not exist. Meyerhoff, 1970 (pps. 349–355) discusses the correlation of probability of failure with variability in strength parameters, foundation conditions, piezometric surface, and other assumptions utilized in the computations of safety factors. He recommends the standard for safety factors should be increased to 1.7 to account for these relationships, thus further reducing probability of failures. Bishop (1955, p. 7) states that even with high factors of safety, overstress can occur below a 1.8 factor of safety.

While most discussions of fills focus on the protection of life and property, the Act has also mandated the protection of the environment. The Office believes that the added degree of protection provided by increased factor of safety requirements even in remote areas, is warranted, and well justified due to the necessity for: (a) protection of the environment from excessive erosion, contribution of pollutants, and other adverse long-lasting effects of fill failures; (b) protection of existing life and property; (c) protection of life and property which may develop below originally remote areas; and (d) safeguards which must offset the lack of long-term maintenance over the life time of the fill.

Commenters objected to Section 715.15(b)(2)(ii), which requires subdrains to be protected by filter systems. Filters are state-of-the-art requirements to control migration of fines from the foundation or fill material into drains. In fills where drains become nonfunctional due to the migration of fines and subsequent blockage, failure is common. The control of seepage is one of the most critical areas of structural design. (ASCE, 1966, p. 550; Canada Department of Energy, Mines and Resources, 1977, pp. 5–18 to 5–56; Canada Department of Energy, Mines and Resources, 1972, pp. 5–9; Sherard and others, 1963, pp. 81–91; Terzaghi and Peck, 1967a, p. 57; Cedegren, 1967, p. 175; U.S. Army Corps of Engineers, 1952, pp. 10 and 16; U.S. Bureau of Reclamation, 1973, pp. 306–307; West Virginia Department of Natural Resources, 1975, p. 1; MESA, 1976b, p. 3; MESA, 1975, pp. 5.24–5.25 and 8.95–8.102); Comptroller General of the United States, 1977, p. 2; Coalgate and others, 1973, p. 95.) Therefore, OSM has not removed the filter requirement.

Comments were received regarding the minimum size requirements for underdrains and the gradation restrictions for the rock comprising the underdrains. None of the comments provided alternative drain sizes, but instead insisted upon the deletion of the table in Section 715.15(b)(2)(iii) and stressed reliance on site-specific engineering design. Another suggestion was to leave the table and allow the operator an option of submitting a site-specific design, including adequate drainage control.

The rock drain criteria in Subsection 715.15(b)(2)(iii) represent recommendations of current studies concerning valley fill design and construction. (West Virginia Department of Natural Resources, 1975, p. 56; Loy and others, 1978, pp. 6–8; Chironis, 1977, pp. 104–110.) The criteria attempt to strike a balance between site-specific drain design (based on in-depth determinations regarding anticipated flow rates, permeabilities, gradations and local geologic, topographic and hydrologic conditions) and the simplicity of standardized design. The methods used to obtain and place the materials are left to the permittee, and the sizes of the materials are not particularly large considering the amount of material involved. As a result, the requirements of Section 715.15(b)(2)(iii) remain unchanged.

The Office is aware of the problems with ensuring that rock size meets the requirements of Section 715.15(b)(2)(iii). In certain instances, the operator will have to provide multi-staged filter systems in order that the drain, filter, and fill achieve acceptable transitions.

In the table of Section 715.15(b)(2)(iii), commenters noted omission of a value specifying the height of drains in fills exceeding one million cubic yards in volume. This was a typographical error and should read "16 feet" in the final version (Chironis, 1977, p. 108).

Commenters questioned the durability standards set forth in the proposed regulations. Commenters noted the requirements differed from the material control specifications from which they were derived. While there existed a lack of clarity in the proposed Section 715.15(b)(2)(iv), the intention of the regulation was to insure that subdrain material be sufficiently durable to prevent degradation which could result in blockage of the drain and subsequent failure of the fill (Terzaghi and Peck, 1967a, p. 57; Cedergren, 1967, p. 175; U.S. Bureau of Reclamation, 1973, pp. 306–307; Loy and others, 1978, pp. 6–8; U.S. Army Corps of Engineers, 1952, p. 16). The regulations have been modified to correspond to the supporting technical specifications.

Since the availability of underdrain material capable of meeting these standards could be cost restrictive in some areas of the country the final regulations have been modified to allow underdrains which consist of non-degradable, non-acid or toxic-forming rock, which will not slake in water. This provides greater flexibility in that more frequent use of site available rock will be permitted.

The following list of references are provided as acceptable, but not exhaustive guidelines for determining the slake index of rock:

(a) DiMillio, Albert F., "Status of Shale Embankment Research", Public Roads, Vol. 41, No. 4, March 1978, pp. 153 to 161.

(b) Franklin, J. A., and Chandra, R., "The Slake-Durability Test", Pergamon Press, International Journal of Rock Mechanics and Mining Sciences, Vol. 9, No. 3, 1972, pp. 325 to 341.

(c) Heley, W., and MacIver, B. N., 1971, Development of Classification Index for Clay Shales, TRS–71–G, pp. 95. Report 1 Waterways Experiment Station, U.S. Army Corps of Engineers.

(d) Lutton, Richard J., 1977. Design and Construction of Compacted Shale Embankments, Vol. 3: (Slaking Indices for Design. FHWARD–77–1, 88 pp.).

(e) Underwood, Lloyd B., "Classification and Identification of Shales," ASCE Journal of Soil Mechanics and Foundations Division, Vol. 93, No. SM6, November 1967, pp. 97 to 116.

(f) Wood, L. E., and others, 1976 "Guidelines for Compacted Shale Embankments, VII Ohio River Valley Soils Seminar", pages 1 to 5, 1 table and 8 figures.

Commenters questioned the requirement in Section 715.15(b)(3) that eighteen-inch lifts be used in the construction of excess spoils embankments. Requirements for lift thickness in earth fill construction vary with the method of placement and the type of embankment, construction equipment used and gradation of the fill material. The boundary conditions, such as phreatic surfaces within the fill and adjacent areas, may vary from site to site and must be determined from onsite investigation or can be taken into account by conservative assumptions. The eighteen-inch lift thickness proposed in the regulations is based on literature which is applied to dams, groins, and highway embankments as well as spoil fills (43 FR 41761). After further examination of the problem and of the comments received, the Office has determined that larger lift thicknesses are consistent with stable fills in some areas (Chironis, 1977, p. 106; Greene and Raney, 1974, p. 8; U.S. Army Corps of Engineers, 1971, pp. K 10–39, M–15; U.S. Navy Bureau of Yards and Docks, 1971, table 9–3; Grim and Hill, 1974, p. 61). Accordingly, Section 715.15(b)(3) has been modified to allow lifts no greater than four feet in thickness, or less to achieve densities necessary to ensure mass stability, prevent mass movement, avoid, contamination of fill drainage systems, or the creation of voids. The regulatory authority has the discretion to require thinner lifts, if the gradation of the material warrants thinner lifts.

Commenters questioned the requirements in Section 715.15(b)(4) relative to stabilized diversions off the fill and the necessity for sediment control at the exit of diversions. Commenters said that stabilized channels "off the fill" created an unnecessary disturbance and that channels on the fill could protect that portion of the fill from erosion. Diversion of water away from the fill surface is considered sound engineering practice (Canada Department of Energy, Mines and Resources, 1977, pp. 58–59, 95–96; U.S. Environmental Protection Agency 1976b, pp. 32–33, 78; WVDNR, 1975, p. 2; EPA, 1976. Canada Department of Energy, Mines and Resources, 1972, p. 2–2 Coalgate and others, 1973, pp. 93–94; Calhoun, 1968, p. 79; Casagrande, 1978, pp. 3 of attachment; Loy and others, 1978, pp. 79 and 82; MESA, 1976b, p. 1; Comptroller General of the U.S., 1977, pp. 1–2). The material making up the fill structure is generally less resistant than the surrounding bedrock, thus, more stringent design criteria are necessary to protect against erosion of the diversion in the weaker material. The Office realizes that construction of diversions off the fill structure will affect more area than if the diversions were on the fill surface. However, based upon sound engineering practice, OSM believes that less environmental harm will result from retaining the requirement to build diversions off the fill structures. Consequently, the language of the regulations remains unchanged.

The use of the 100 year storm and 24-hour duration storm is discussed in the preamble for Section 715.17 and 715.15(c)(3) which is incorporated herein by reference.

Commenters said that sediment control should not be required at the discharge of the diversion carrying runoff from the drainage area above the fill. They assumed that this area was undisturbed. One commenter recommended sediment control be required only at those diversions carrying runoff from the fill surface. The proposed language has not been changed. Sediment load must be controlled from the fill area, from the diversion structure, or from mining activities existing above the fill. See Section 515(b)(10) of the Act.

§ 715.15(c) Disposal of excess spoil: Head-of-hollow fills.

Section 715.15(c) contains requirements for construction of head-of-hollow fills. These fills may be constructed with rock-core chimney drains or diversions, as for valley fills. The rock-core chimney drain system is designed to direct water falling off the surface of the fill to a central rock-core by means of surface grading. The rock-core extends from the toe to the head of the fill and from the base to the surface of the fill. A system of lateral underdrains will dispose of water from seeps emerging beneath the fill. Filters are provided for the core and subdrains. This fill construction method is relatively new, but as commenters point out, has been used with success in West Virginia for the past several years (Green, 1978, p. 21).

Allowing rock-core chimney drains was based on the following course of events. On December 13, 1977, final rules were adopted for the interim regulatory program which covered the disposal of spoil from surface mining in areas other than mine workings or excavations, and authorized only the rock underdrain system of fill construction. Following adoption of the rules, the Office received petitions for change of the rules affecting head-of-hollow fills. The investigation of the petitions, as reflected in this preamble, has resulted in revisions to the rules.

Petitioners said the Office was being too narrow in defining only one construction method for building head-of-hollow fills. They claimed that the "rock-core system," authorized in West Virginia, provided as much or more protection as the "rock-underdrain system" in the interim program.

Fills built with the rock-core method are stable at present. However, the development of steady-state seepage through fill masses can take many years, and the results of such seepage may not be obvious for some time to come. The following discussion describes some of the problem areas with head-of-hollow fills.

On the one hand, several professional engineers stated the long-term clogging of the rock core by finegrained sediment in the drainage and in some cases piping (internal erosion) caused by the flow of water within the fill could lead to instability and potential failure of the fill (Loy and others, 1978, p. 106; Robins and others, 1977, pp. 1–4; U.S. Congress: H. Rept. 218 95th Congress, 1st. sess. 1977 pp. 121–123). One commenter said the rock-core method should be prohibited because rock drains should only be used for passage of seepage or groundwater flows, not surface flow. The Office appreciates the possibility of siltation and blockage of the drain. As significant amounts of water are introduced into this system, there is an increased potential for blockage of the drain. A deposit of fines within the upper portion of the rock core can occur, since the core will act as an energy dissipater when flows from above the structure lose energy upon reaching the core. The hydraulic gradient increases as the water flows by gravity downward through the core. Thus, material surrounding the core becomes susceptable to piping, bringing more fines into the system.

On the one hand, the major advantage of the rock core construction appears to be its ability to cope with long-term differential settlement of the fill that results in a surface grade toward the center of the fill, where settlement is usually greatest. In areas where settlement may reverse the slope of the crest of the fill (e.g., with water flowing away for the core), the designer may require additional camber.

In an effort to combat some of the problems identified with the rock-core method of excess spoil disposal, two

requirements are added to decrease the potential for blockage of the core.

First, the rock-core system must be surrounded by a properly designed filter. This will reduce piping potential from groundwater in the fill mass, and from flows through the core (*see*, preamble Section 715.15(a)(1)). The construction control measures necessary to prevent contamination of the filters as the size of the collection area increases will prove difficult because the surface of the fill slopes toward the core, and surface runoff will carry large amounts of sediment onto the fill.

Second, these structures must be located in the upper reaches of valleys of hollows and be designed to fill the disposal site to the approximate elevation of the nearby ridgeline (Greene & Raney, 1974, p. 7). The requirements are premissed on widely accepted concepts. For a discussion of the necessity of filters, see the preceding preamble of Section 715.15(b)(2).

The need for minimizing or controlling the surface runoff above a site has been the basis of state-of-the-art diversion design. This concept applies to the head-of-hollow fill system. The combination of controlling surface and ground water flows will result in environmentally sound stable fills. This is accomplished by maintaining low phreatic surfaces and reduction of acid formation and erosion. (GAO, 1977, pp. 1, 48, 93–95; Chassie and Goughnour, 1976, pp. 65–66; Canada Department of Energy, Mines and Minerals, 1972, p. 2–2; Hopkins and others, 1975, p. 9; EPA, 1976b, pp. 32–33; Wahler, 1978, pp. 69–70, 78; National Coal Board, 1970, pp. 8, 56; Taylor, 1948, pp. 406–407; U.S. Department of the Navy, 1974, pp. 7–7–1; Loy and others, 1978. p. 82).

To date, the Office is not convinced that rock core fills are potentially less stable than the rock underdrain fills. Some engineers have expressed doubt that the rigorous West Virginia construction requirements could be adequately monitored in a State that was just beginning a strict inspection program and that inadequate engineering practices would be more likely to result in failure of the rock core system. The Office emphasizes that it is critical that the rock core maintain its permeability throughout. If one impermeable section of the core is constructed or if a section subsequently becomes impermeable, failure could result.

In summary, the rock-core method has been the subject of debate, but it reflects currently acceptable technology based upon the performance record of 250 fills (Green, 1978, p. 2). On the basis of the investigation, the Office is providing a revision to the regulations permitting the rock core system of head-of-hollow fills to be used at the discretion of the regulatory authority with adequate inspection and supervision. At the same time, the Office is instituting a formal study to investigate various types of fills.

The Office also has determined to permit the use of the rock-core system of disposal where the final crest of the fill is at or near the elevation of the coal seam. These type fills will be limited to disposal volumes of 250,000 cubic yards or less. (Heine, 1978, p. 1). The Office believes these fills are relatively small and that any increases in the risk of failure because of the use of the rock core drain is offset by their small size. However, these fills should also be located to minimize the upstream drainage area into the fill.

Section 715.15(c)(2) contains criteria for the rock chimney drain, including size, filters, drainage sump, terrace and grading requirements (West Virginia Department of Natural Resources, 1975, p. 76; Hinger, 1978, pp. 7–22). In response to reports on potential clogging of the rock core *see* general preamble discussion for section 715.15(c). Commenters said that clogging of the rock core will not be a problem because of revegetation requirements reducing sediment yield. This is only true after construction when the disturbed areas have been reclaimed successfully and erosion and sediment load entering the fill have been eliminated. During construction, the area above the fill is generally disturbed by haulroads and mining and reclamation operations which contribute sediment capable of plugging the core. The crest of the fill itself cannot be reclaimed, as is the outslope, therefore, sediment from the crest is also directed into the core.

Commenters were concerned about the expense and availability of enough rock to construct underdrains. Since no details were presented regarding cost, current practices or engineering which would substantiate this claim, and since, as discussed previously, the record contains numerous examples of fills constructed on all types of terrain, this comment was rejected. Moreover, the requirement for a rock underdrain is a critical element for safe fills. (*See*, preamble for Section 715.15(b).)

Section 715.15(c)(3) specifies the hydrologic design capabilities of the drainage control system. The 100-year frequency storm is a standard criterion for control of runoff above nonimpounding structures (West Virginia Department of Natural Resources, 1975, p. 2; MESA, 1976b, p. 1). The 24-hour duration storm was chosen over the 6-hour storm, because it generally results in a runoff volume and peak somewhat higher than that of the 6-hour in the same area (Chow, 1964, pp. 9–50 through 9–65; U.S. Department of Agriculture, Soil Conservation Service, 1972, Chapter 21; U.S. Weather Bureau, 1961, pp. 56–58).

A Commenter requested clarification of the applicability of the final regulations to partially constructed hollow fills. Clarification is provided under the definition of "existing structures" in Section 710.5, and the preamble to Section 710.11.

§ 715.15(d) Disposal of excess spoil: Durable rock fills.

This Section provides an alternative method for disposal of excess spoil, as a result of numerous comments requesting allowances for practices which satisfy site-specific necessity. This Section is applicable in instances where durable rock can be demonstrated to exceed 80% of the volume of excess spoil and represents an addition to the proposed regulations.

Many commenters support the adoption of site specific standards for durable rock fills. The Section has been adopted solely for durable rock fills. Many fill structures have been dumped in place (Davis and Sorenson, 1969, p. 18; U.S. Bureau of Reclamation, 1973, p. 60; Terzaghi and Peck, 1967a, pp. 599, 604; Huang, 1978, p. 5; Robins and others, 1977). As the state-of-the-art progressed, it became obvious to designers that this was a highly cost-effective method of construction (U.S. Department of Energy, 1978, p. 4; Young, 1978, pp. 79–94; Goal and Leer, 1978, pp. 1–10 with Exhibits; Council on Wage and Price Stability/Regulatory Analysis Review Group, 1978, pp. 13–17; Loy and others, 1978, pp. 107–176). Little compactive effort or minimal hauling and handling is required, as the material consolidates under its own weight. In dams, where this method was widely utilized, the sole problem resulted from differential settlements of the structure, which created cracked, impermeable zones and other similar problems, which could lead to instability.

Other problems, such as infinite slope failures, resulted from the existence of outslopes at the angle of repose. These types of failures are generally shallow, but can become retrogressive (Canada Department of Energy, Mines and Resources, 1972, p. 2–3). In addition, if less durable or more impermeable zones were dumped, which created weak layers parallel to the outslope of the fill,

failures could occur. (Canada Department of Energy, Mines and Resources, 1972, pp. 88–89; Taylor, 1948, p. 476; Loy and others, 1978, pp. 88–89).

Section 715.15(d) of the final regulations is based upon the premise that the solution to safe end-dumped fills is rock durability.

The existence of dumped rock fills was carefully considered. A number of the dumped rock embankments considered were made up of extremely durable igneous rock such as hornblende, granodorite, granite and quartz monzonite. These rocks are crystalline in structure and are thus generally more durable than sedimentary rocks. Even though the consideration of end-dumping this type of rock does not directly transfer to regions with sedimentary rock, it does show that rock must be durable when end-dumped.

The variability of excess spoil material supports the use of site specific design requirements. The Office has tried to strike a balance between objective standards and a multitude of possible alternative methods which address special situations, while still satisfying the objective standards required by law.

The concept presented by this Section has been supported by progressive generations of engineering design and appears to promote more cost effective spoil disposal. The following discussion details the requirements of the Section:

(1) The introductory paragraph of section 715.15(d) allows 80 percent durable rock to be placed in a single lift, if site-specific conditions and justification by experienced engineers warrant. Durable rock is determined by the slake durability index, as identified in the preamble to Section 715.15(b)(2)(iv). This introductory paragraph incorporates the requirements of Section 715.15(a) by reference.

(2) Section 715.15(d)(1) provides for the stable configuration of the fill by requiring controlled placement and the consideration and proper handling of less durable materials. This is consistent with the Act, Section 715.15(a)(6), and standard engineering practice (Canada Department of Energy, Mines and Resources, 1972, pp. 2–3 and 2–9).

(3) Section 715.15(d)(2) specifies stability analyses of the structure to show the long-term, static and dynamic factors of safety achieve 1.5 and 1.1, respectively. These requirements reflect the intent of the Act and provide accepted standards for stability, as discussed in the preamble to Section 715.15(b)(2).

(4) Section 715.15(d)(3) state criteria for achieving proper subsurface drainage control, which are consistent with Sections 715.15(a)(1)(i) and 715.15(b)(2). (*See*, preambles for Sections 715.15(a)(1)(i) and 715.15(b)(2).)

(5) Sections 715.15(d)(2), (5), (6), and (7) provide specific requirements for control of surface drainage, grading and terracing. The requirements parallel the comparable subsections of Sections 715.15(b) and 715.15(c).

The provisions of Section 715.15(d) reflect options developed after deliberation of the following items.

Literature used in consideration of alternatives for the regulations show that the Earth's crust is made up of approximately 35 percent clay-bearing rock (Franklin and Chandra, 1972, p. 325). This would include igneous, metamorphic, and sedimentary rocks. Sedimentary rocks are estimated to comprise as much as 82 percent shale, 12 percent sandstone and 6 percent limestone. Mason (1966, p. 153), Drnevich and others, (1976, pp. 50–51), Weigle (1966, p. 67), Huang (1978, p. 30), and Cumming and others (1965, p. 10) have shown that surface mine spoils are composed of relatively high concentrations of clay and silt-sized particles. Some commenters have criticized the Office for applying criteria which address earthfill structures, when most mines are dealing with rockfill. While OSM realizes that overburden materials are of variable grain size, plasticity and permeability, the Office is of the opinion that the excess spoil problem involves both earth fill and rockfill.

As literature has shown, overburden materials may contain silt and sandsize particles. The ability of these materials to withstand weathering and deterioration is dependent upon the type of sediment which occurs as an initial deposit before consolidation and upon the type of cementing material which consolidates the sediment into rock (Mason, 1966, pp. 153–156). Drnevich and others (1976, p. 58) and the U.S. Department of the Navy (1974, p. 7–7–14) have shown that surface mine spoils or soils with silt size particles lose shear strength with time due to exposure to water and weathering. Shales have historically caused many geotechnical problems from improper treatment and required elaborate remedial design (Chassie and Goughnour, 1976, pp. 65–66; Shamburger, and others, 1975, pp. 1–8; Bragg and others, 1975 pp. 1–5; and DiMillio, 1978, p. 153). These types of materials require special consideration and cannot be indiscriminately disposed of. Past excess spoil disposal practices, both in drainways and over mine bench outslopes have resulted in numerous safety and environmental problems where spoil was placed by gravity methods. (Appalachian Regional Commission and the Department for Natural Resources and Environmental Protection 1974, pp. 5–7; Weigle, 1966, p. 67; Robins and others, 1977, pp. 1–3; Loy and others, 1978, pp. 69–74; and Plass, 1967, p. 1).

Comments, which were pertinent to the inclusion of this Section in the regulation, questioned the specificity of excess spoil disposal requirements.

The majority of the comments discussed the lack of flexibility in the proposed regulations for designs of a site-specific or innovative nature. Other comments agreed with the former group, with the exception that they also proposed specific criteria for adoption. Essentially these criteria from the latter group of commenters have been adopted as shown in the context of the final regulations. (U.S. Department of Energy, 1978, pp. 1–15; Casagrande, 1978, Attachment, pp. 1–4; NCA/AMC, 1978, pp. S–190 through S–194; Young, 1978, pp. 15–17; and Ettinger, 1978, pp. 7–22).

OSM believes that the adopted regulatory scheme provides for a site-specific design for each valley, head-of-hollow, or other excess spoil disposal area. The final interim regulations ensure flexibility in that:

(a) The proposed criteria in the regulations have been retained to allow a type of design which is similar to a handbook approach.

(b) The criteria have been amended in final form to allow the construction of durable rock fills.

(c) Overview evaluations of different fill construction techniques will be performed through further research by OSM.

(d) The Office also believes that the opportunity for innovative, flexible design in mining and reclamation practices is permitted.

While the Office has allowed the use of end-dump durable rock fills, it recognizes several areas which may need consideration during design. The end-dump method inherently produces large quantities of sediment due to the active free face. The free face is unreclaimed until completion and thus may require large or frequently cleaned sediment control structures. the sediment control should be close enough to the structure to serve its purpose, but not so close as to be subject to the consequences of shallow or deep movement at the free face.

The proper handling of less durable materials may become a quality control

problem. It is essential that weak zones are placed in a way to contribute to stablity. Mining operations with variable duration of exposure of excess spoil could conceivably require two or more types of disposal areas.

3. *Buffer zones.* Pursuant to the decision of the District Court for the District of Columbia, In re *Surface Mining Regulation Litigation,* 456 F. Supp. 1301 (1978), the Secretary was required to receive additional comments concerning the buffer zone requirements of § 715.17(d). The court reasoned that although the Secretary had pointed to ample support for the regulation, the sources relied upon in the Government's brief were not listed in the certified index in reference to § 715.17(d)(3). Therefore, the Secretary was directed to reconsider the regulation in light of additional comments received. Section 715.17(d)(3) reads as follows:

(3) *Buffer zone.* No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in § 715.12.

It is generally recognized that a buffer zone or "filter strip" of undisturbed land located between a disturbed area and a stream acts to protect the stream from sediment-bearing water flowing from the disturbed area. The vegetation and undisturbed soil within the filter strip has the effect of filtering significant amounts of polluted water before it directly enters the stream. Grim and Hill, 1974, Environmental Protection in Surface Mining of Coal, U.S. Environmental Protection Agency, p. 118.

The Grim and Hill publication expressly states that, at a minimum, a 100-foot filter strip should be retained between a disturbed area (such as a haul road) and a stream (p. 118):

Experience has shown that a protective strip of absorbent undisturbed forest soil between the road and stream usually prevents muddy road water from reaching streams. This strip, often called a filter strip, should be wide enough to absorb all the muddy water that runs off road surfaces. A minimum distance of 100 feet (30.5 meters) is recommended between the road and stream. (Footnote omitted.)

An identical recommendation is contained in guidelines for Construction of Mine Roads, Region 10, U.S. Environmental Protection Agency, which is included as appendix D to Grim and Hill at p. 255. In addition, in Weigle (1965), the author recommends a filter strip at least 50 feet wide if the slope is nearly level. If the slope is very steep, i.e., 70 percent grade, a 165-foot wide filter strip is recommended. For medium slopes, i.e., 40 percent grade, a minimum 105-foot filter strip is deemed appropriate. Moreover, at least two States presently require 100-foot wide buffer zones between disturbed areas and streams. Alabama Guidelines for Minimizing the Effects of Surface Mining on Water Quality, p. 2; Kentucky Revised Statutes 350.085(4).

The Secretary's choice of the 100-foot buffer zone is well supported by technical literature and State legislation in the field.

In accordance with the court's order of August 24, 1978, the Office invited additional comments on the regulation and technical literature and State legislation supporting the requirement.

One commenter said the buffer zone regulation should not allow for surface mining through perennial streams. The same commenter added that surface mining in intermittent streams should only be authorized if provisions are made for diversions. No data were provided to support such recommendations.

The Office has decided to allow the regulatory authority the discretion to authorize surface mining within 100 feet of an intermittent or perennial stream provided that the other requirements of the Act and regulations are met. With properly constructed diversions and application of other sediment control measures the impact of mining within 100 feet of a stream can be minimized.

One commenter suggested that the technical literature was limited to protecting streams from sedimentation from haul roads. The Office believes that generally a filter strip is essential to capture sediment before overland flow reaches an intermittent or perennial stream. To the extent that exemptions are authorized from this requirement, the regulatory authority must assure that all other requirements of the regulations are met.

4. *The design criteria for sediment ponds.* In brief, the February 28, 1978, design criteria for sedimentation ponds required operators to: (a) consider surface area in the design of ponds in order to achieve effluent limitations; (b) provide a sediment storage volume equal to 0.2 acre-feet per acre of disturbed area within the upstream drainage area unless the operator uses onsite or point-of-origin activities to reduce the required 0.2 acre-feet per acre of disturbed area storage volume; and (c) provide 24-hour theoretical detention time for inflow or runoff entering the pond(s) from a 10-year, 24-hour precipitation event. The 0.2 acre-feet per acre of disturbed area sediment storage volume requirement could also be reduced by the regulatory authority upon a showing that lesser sediment yields were appropriate. Additionally, a credit system was established to allow for the reduction of the 24-hour theoretical detention time.

On May 3, 1978, the District Court for the District of Columbia enjoined enforcement of the design criteria for sedimentation ponds contained at §§ 715.17(e) and 717.17(e) of the regulations until the Secretary considered comments on the interim final rules, published final rules and the court reviewed the merits of the rule. Based upon a prediction of imminent irreparable harm to plaintiffs coupled with a lack of an effective review remedy, the court found it necessary to stay the interim final rules to allow for adequate judicial review prior to making coal operators subject to the sediment pond design criteria.

Ten witnesses testified at a public hearing on the interim final rules on March 15, 1978, and 20 additional written comments were received by the close of the comment period on March 29, 1978. The preamble to the proposed rule discussed these comments. 43 FR 52734, 52739 (Nov. 14, 1978).

On December 14, 1978, the Office held an additional public hearing on the proposed rules for sediment ponds and head-of-hollow fills. Additional written comments were also received by the close of the comment period on December 18, 1978. Many of the commenters merely incorporated comments on the permanent program regulations by reference.

§ 715.17(e)(1)

General requirements. The Office has decided to require sedimentation ponds in conjuction with other sediment control measures as "best technology currently available" to prevent to the extent possible additional contributions of suspended solids to streamflow or runoff outside the permit area and to achieve and maintain applicable effluent limitations.

Sedimentation ponds are structures, including barrier dams or excavated depressions, which slow down water runoff to allow sediment to settle out. To effectively settle particles, sedimentation ponds must provide sufficient storage volume for both sediment and detained water. In addition to providing adequate storage volume, ponds must detain water for a

sufficient time to allow sediment to settle out.

It is well established that sedimentation ponds used with other sediment control measures are "state-of-the-art" for controlling sediment movement from surface coal mining operations. The Environmental Protection Agency (EPA) has undertaken a number of studies to determine the best methods for controlling sediment laden flow. EPA studies have concluded that sedimentation ponds are the key to controlling sediment. According to EPA, such ponds are "the most effective structures for trapping sediment." The conventional method for controlling sediment that reaches the periphery of the mining operations is through the construction of a sediment pond to intercept the surface runoff before it leaves the mining site. *Erosion and Sediment Control—Surface Mining in the Eastern United States, at 65 (1976).* Another EPA study indicates sedimentation ponds can be considered as the last opportunity to treat the runoff before the water leaves the mine area. Hill, *Sedimentation Ponds—A Critical Review,* at 2 (Oct. 1976). According to one of the leading commentators in the field, sediment ponds should be located as close to the sediment source as possible and before drainageways reach the main stream. Grim and Hill, *Environmental Protection in Surface Mining of Coal,* EPA–670/2–74–093; at 103 (Oct. 1974).

Also, several states, including West Virginia, Pennsylvania, Kentucky and Montana now require sediment ponds to control sediment from mining operations. Hill, at 13 (1977).

The mechanics of sediment laden flow are complex. The major factors governing the efficiency of a sediment pond are the geometry of the basin, the inflow hydrograph, the inflow sediment graph, the outlet design, the flow pattern within the basin, the characteristics of the sediment and the settling behavior of the suspended sediment particles, the detention time, and where applicable, control devices within the basin which minimize short-circuiting, turbulence, and resuspension. Ward, *Simulation of the Sedimentology of Sediment Detention Basins at 32 (1977).*

The final sedimentation pond design criteria are supported by Sections 102, 201(c), 501(b), 515(b)(10), 515(b)(24) and 516 of the Act. See also *Surface Mining Regulation Litigation,* 456 F. Supp. 1301 (D.D.C. 1978).

The Office has considered alternatives. The rationale for selecting the final regulations in lieu of other alternatives is found in the context of this preamble discussion, the disposition of submitted comments related to the final regulations and the preamble to the proposed regulations.

The final design criteria for sedimentation ponds contain the following key requirements. Sedimentation ponds may be used individually or in series. Especially in mountainous areas, several small ponds may be more desirable than a single large pond because of topographic constraints. Several small ponds may also improve overall detention time. Moreover, one small pond can be used to remove the bulk of the large particles thus reducing the need to clean out a larger polishing pond. Hill, at 14 (1977); *Erosion and Sediment Control* at 54 (1976).

Sedimentation ponds must be constructed prior to any disturbance of the area to be drained into the pond and as near as possible to the area to be disturbed. Grim and Hill at 103 (1974). Generally, such structures should be located out of perennial streams to facilitate the clearing, removal and abandonment of the pond. Further, locating ponds out of perennial streams avoids the potential that flooding will wash away the pond. However, under design conditions, ponds may be constructed in perennial streams without harm to public safety or the environment. Therefore, the final regulations authorize the regulatory authority to approve construction of ponds in perennial streams on a site specific basis to take into account topographic factors. Hill at 11 (1976); *Erosion and Sediment Control* at 54 (1976).

In general, various subsections of the regulations dealing with sedimentation ponds require the operator to demonstrate how elected options will meet design criteria. Several commenters desired clarification as to how this could be accomplished. The operators have the burden of providing adequate assurance or proof that the method proposed are effective and safe. Such proof can be presented for approval by the regulatory authority in many different forms, and is not specified in any specific format. Except as specified in the regulations, such forms may generally include but are not limited to the following:

a. Maps, graphs, or charts.

b. Valid reports of similar work performed by others.

c. Testimony by recognized professionals, or

d. Actual laboratory experiments, and controlled field plot demonstrations.

The operator has the option of electing the most advantegous method. Final approval is still vested in the regulatory authority.

The following general comments were received on Section 715.17(e).

Commenters requested insertion of words in this section to point out the exemption from the requirement to construct ponds in order to track Section 715.17(a). Such insertions as "if necessary," or "as required" were suggested. This issue has been previously addressed in the context of whether sediment ponds are "best technology currently available." Operators will find that sedimentation ponds can be used to their benefit to reduce sediment and achieve effluent limitations. The insertion of the suggested wording might expand the narrow exemption contained in Section 715.17(a). To avoid any possibililty that the exemption would be expanded by this language addition, the Office decided to reject the comment.

Commenters requested clarification of the terminology "disturbance of the disturbed area" as used in the proposed regulations. Disturbance is a progressive process which can be considered as a deviation from a baseline condition. The wording has been clarified to reflect the requirement to construct a pond prior to any disturbance of the existing pre-mining condition.

Commenters suggested allowing construction of sedimentation ponds in intermittent and perennial streams. Because of the physical, topographic, or geographical constraints in steep slope mining areas, the valley floor is often the only possible location for a sediment pond. Since the valleys are steep and quite narrow, dams must be high and must be continuous across the entire valley in order to secure the necessary storage.

There are two other alternatives. One would be to use an area to one side of the stream for the pond. This will not be physically possible in most cases, and if pursued, might cause serious additional disturbance to the environment. Kathuria at 4 (1976).

The other alternative would be to declare the area unsuitable for mining. Each case needs to be judged on its own. The office recognizes that mining and other forms of construction are presently undertaken in very small perennial streams. Many Soil Conservation Service (SCS) structures are also located in perennial streams. Accordingly, OSM believes these cases require thorough examination. Therefore, the regulations have been modified to permit construction of

sedimentation ponds in perennial streams only with approval by the regulatory authority.

§ 715.17(e)(2) Sediment Storage Volume.

The regulations establish two methods for computing required sediment storage volume. First, the operator may utilize the Universal Soil Loss Equation (USLE), gully erosion rates and appropriate sediment delivery ratios to compute sediment yield. This method allows the operator maximum flexibility to account for site specific variations in sediment yield. The preamble to the proposed rules 43 Fed. Reg. 715.17(e)(2) 52470 (Nov. 14, 1978) supporting the selection of the USLE is incorporated herein by reference.

Under the second method, operators may utilize a general rule for computing sediment yield from the disturbed area. The operator may assume a sediment yield of .1 acre-foot for each acre of disturbed area. The regulatory authority is authorized to require greater sediment storage volume if necessary. A lesser sediment storage volume to .035 acre-foot for each acre of disturbed area may be authorized if the operator demonstrates that sediment removed by other sediment control measures is equal to the reduction in the pond sediment storage volume. Further discussion supporting this section is found in the preamble to the proposed regulations at 43 Fed. Reg. 52470 (Nov. 14, 1978).

The following comments were received on Section 715.17(e)(2).

Commenters requested technical justification for the option to construct sediment ponds having accumulative sediment volume from the drainage area to the pond for a minimum of three years. Commenters submitted no data to refute the design option. However, commenters said the majority of ponds had an operational life of less than six months. Commenters added that this was not the case with sedimentation ponds serving reclaimed areas, but few of the latter category were required due to consistent attainment of effluent limitations. Again, commenters failed to submit data supporting this assertion.

The final regulations include a three-year minimum sediment storage volume for ponds. Operators may use the USLE to compute required sediment storage volume to capture sediment yield for a minimum three-year period. As an alternative, operators may compute sediment storage volume based upon an initial requirement of 0.1 acre-foot for each acre of disturbed area within the upstream drainage area. These two options offer operators the flexibility to include site- specific variation in design of sediment ponds.

A three-year minimum storage volume is necessary to collect sediment during normal premining, and reclamation operations under the Act. Under prior state laws, the normal life of ponds designed for contour mines was usually from one to three years. For area mines it was usually much longer. Hill at 11 (1977). With the implementation of the Surface Mining Act, surface coal mining and reclamation operations will generally occur over a period much longer than three years. Premining and actual mining will normally occur over more than one year. Further, the pond may not be removed until the disturbed areas has been restored, the vegetation requirements of 715.20 are met, and the drainage meets applicable stream standards. Thus, a three-year minimum storage volume is not an excessive requirement.

In particular, vegetation standards require, as a minimum, vegetative cover capable of stabilizing the soil surface for erosion. Site-specific investigations in the western coal fields have shown that such stabilization may not occur within the first year or two after mining. Gullies formed on revegetated surfaces will often increase sediment yield. Moreover, internal drainage to graded, topsoil and seeded areas is possible. Hardaway and Kimball, Trip Report at 8, 12, 23 (1976). *See also* Dollhopt et al. 71–73 (1977). This type of extensive erosion after mining requires that sediment ponds be designed with a minimum sediment storage volume of three years.

Moreover, data collected in Appalachia support a three-year sediment storage volume. According to one study, gullies can form after revegetation causing erosion. Curtis and Superfesky at 157 (1978). In addition, measurements of sediment accumulation in debris basins show highest sediment yield during the first six months following mining, with excess sediment loads occurring within three years following mining. Curtis at 88 (1974). According to this study methods of mining and handling spoil affect sediment yield, and so does the speed with which vegetation is established. The Office considered that this study examined surface mining prior to implementation of the standards of the Act. Compliance with the Act should result in a reduction of sediment yields from surface mined lands. However, sediment yield is not only a function of operating practices, but also of revegetation which is more a function of climate, terrain and soil type. Normally in the east, revegetation will require, at the minimum, six months to stabilize the surface area with vegetation. Curtis at 88 (1978). Naturally in the arid west a considerably longer period will be required for adequate stabilization. Hardaway and Kimball at 8, 12, 23 (1976). All of these factors support a pond design standard which includes a sediment pond with a minimum three-year sediment storage volume.

One commenter wanted to create a larger sediment storage volume to reduce the frequency of sediment cleanout. The intent of this regulation is to specify the minimum sediment storage volume necessary for a well-constructed sediment pond. Accordingly the word "minimum" is added to clarify the point.

The use of the USLE for mined area was questioned by several commenters. They contend that although this method is well established for sheet erosion losses on agriculture land, it may not be truly accurate or useful in other areas. The Office has decided to retain the option to use the USLE to compute sediment storage volume procedures since making the USLE predictions is a well established and accepted practice of the engineering and scientific community. Meyer at 3 (1975); Haan at 5.1 (1978); Wischmeir (1965); USDA, 1975, *Procedure for Computing Sheet and Rill Erosion on Project Areas*, SCS Technical, Release No. 5 (Rev.). The USLE recognizes the effects of the primary environmental and physiographic factors causing erosion, without having to establish site-specific conditions through field measurement of data.

The use of gully erosion rates and sediment delivery ratio factors was questioned by some commenters. The Office has retained these requirements. The USLE considers only soil lost by sheet erosion. Where gullies are active, the eroded material must be accounted for in determining the sediment entering the pond. The SCS Technical Release No. 32 is one reference which gives procedures for determining the rate of gully development. Sediment delivery ratio is defined as $D=Y/A$ where Y is the sediment yield from a watershed and A is the gross erosion occurring on the watershed. Gross erosion is the sum of a sheet and rill erosion, gully erosion, and stream erosion. On active and properly reclaimed surface mines, sheet and rill erosion are the principal components of A. Haan and Barfield at 5.47 (1978). The sediment delivery ratio is necessary to account for eroded material which is deposited prior to entering the pond. Haan at 5 (1978); McKensie at 4 (1977).

One commenter questioned whether the regulatory authority should establish methods "for determining sediment storage volume." The Office agrees that this is not the proper role of a regulatory authority. Accordingly, the regulation has been changed by substituting the word "approved" for "established." With this concept, the operator will submit his methods for review and approval by the regulatory authority.

Commenters requested that reference and justification for using the USLE should be discussed. They stated that accumulated sediment volume can be estimated using the USLE or forms thereof. According to commenters, methods using gully erosion rates and sediment delivery ratios, either singly or in combination, which estimate sediment volume are not commonly used for surface mining.

Section 715.17(e)(2)(i) authorizes the use of the USLE, gully erosion rates, and the sediment delivery ratio converted to sediment volume using the sediment density, or other empirical methods derived from regional sediment pond studies to determine the sediment storage volume.

Haan and Barfield (1978), ch. 5, discuss soil erosion and sediment yield similarities between surface mining and agricultural land. The similarities are helpful since agricultural erosion has been studied for many years resulting in the development of procedures for its prediction and control. Soil erosion results when soil is exposed to the erosive powers of rainfall and flowing water. It is not possible to conduct massive earth moving operations necessary for strip mining without exposing soil to these erosive forces. It is possible to use the USLE to plan the surface coal mining and reclamation operations so that sediment production can be reduced. Through the use of properly designed and constructed sediment detention structures containing adequate storage volume the adverse effects of mining on stream water quality can be essentially eliminated. (Haan and Barfield at 5.1 1978).

Commenters questioned the selection of sediment storage volume equal to 0.1 acre-foot for each acre of disturbed area within the upstream drainage area. Other commenters suggested that the 0.1 value be reduced to 0.035. The Office has retained this section of the regulations. This method is provided as an alternative choice to minimize the amount of onsite study for determining adequate sediment storage volume. If the operator utilizes on-site erosion and sediment control measures, such as prompt and progressive backfilling, prompt revegetation, and upstream sediment traps, the regulatory authority may approve a sediment storage volume not less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area. To obtain the reduction in sediment storage volume, the operator must show the sediment removed by other control methods is equal to the reduction in sediment storage volume. Grimm and Hill at 102 (1974). Thus, a sediment storage volume of 0.1 acre-foot per acre of disturbed area is the initial standard which can be adjusted downward to 0.035 upon proper demonstrations by the operator. A sediment storage volume of 0.035 acre-foot for each acre of disturbed area is a nationwide minimum sediment storage volume for sedimentation ponds. Simpson, Westmoreland Resources, comments on the Interim Final Rules, page 1 (March 23, 1978); National Coal Association, Comments, and data on the proposed interim regulatory program, section 715.17(e)(1), Oct. 1977. Robbins, Comments on the Interim Final Rules, at 16 (March 15, 1978).

Commenters suggested the minimum storage volume for sedimentation ponds was excessive. This volume is composed of storage for the runoff from the 10-year 24-hour precipitation event, and 0.1 acre-foot of storage for each acre of upstream disturbed area. A settling pond must include both a settling volume and a sediment volume to hold inflow for a sufficient period of time to allow sediment to settle and provide storage volume for such sediment. Therefore, a settling volume with a minimum detention time, and a sediment storage volume have been specified. Kathuria at 8 (1975); Grim at 106 (1974); Ward at 2 (June 1978).

§ 715.17(e)(3) Detention Time.

This section of the final regulations requires sediment ponds to be designed, constructed and maintained to detain sediment laden water for a period of time sufficient to allow the water to come to rest and clarify to assure the discharge from the pond meets water quality standards of the Act. The average time design inflow is detained in the pond is the theoretical detention time. Haan at 6.6 (1978). This measure of flow through velocity is an essential design criterion for sedimentation ponds. Haan at 6.6 (1978); Hill at 11 (1976); Kathuria at 8, 56 (1976); Ward at 26 (1978); Janiak, Purification of Waters from Lignite Mines, at 59 (1975); USEPA Erosion and Sediment Control, Vol. 2, 51–79 (1976).

The regulations establish a 24-hour theoretical detention time as the initial design detention time for sediment ponds. The regulatory authority is authorized to lower the theoretical detention time upon adequate demonstrations by the person who conducts the surface mining activity. In no event may the regulatory authority lower theoretical detention time from 24 hours without a demonstration that water quality standards including effluent limitations will be achieved and maintained. The regulatory authority may require the pond design to include a theoretical detention time above 24 hours to meet water quality standards including effluent limitations. The regulatory scheme recognizes that to achieve the water quality standards of the Act, the operator must consider site-specific conditions such as soil type, particle size, particle specific gravity, slope, moisture conditions and other physical conditions. In addition, the final regulations recognize the importance of pond inflow and outflow design, and pond shape in determining necessary detention time. Further discussion supporting this section is found in the preamble to the proposed regulations at 43 FR. 52741, Nov 14, 1978.

The following comments were received on section 715.17(e)(3).

Most industry commenters suggested that the use of sedimentation ponds alone will not achieve EPA effluent limitations. Although some industry commenters concede that sediment ponds are the best technology currently available, the same commenters add that even the use of such technology will not achieve EPA effluent limitations. Commenters submitted no independent field data to show that properly designed sediment ponds would not achieve effluent limitations. Rather, commenters challenged the data base, methodology, recommendations and conclusions of the Kathuria study cited in the preamble to the proposed rules. 43 FR 52741, Nov. 14, 1978.

In particular, regarding the initial design criteria of a 24-hour theoretical detention time for the water inflow entering the pond from a 10-year 24-hour precipitation event, commenters suggested that this detention time would not necessarily result in a 94 percent removal efficiency which may be necessary to achieve effluent limitations. commenters added that when particles in the inflow are less than 20 microns, a sediment pond built to OSM criteria will not settle out particles during high rainfall events. Commenters suggested that pond efficiency was more a function of surface area and inflow sediment concentration and velocity. According to

commenters, chemical treatment will probably be a requirement rather than option to meet effluent limitations. Environmental group commenters said sediment ponds were the best technology currently available, but greater detention times and surface area would probable be required to meet effluent limitations.

Sedimentation ponds are the heart of the regulatory scheme. As discussed previously sedimentation ponds are the key to controlling sediment. Nonetheless, as industry commenters point out, sedimentation ponds alone may in some cases be insufficient to acheive and maintain applicable effluent limitations. Therefore, the Office has required the use of additional sediment control measures if necessary to achieve effluent limitations.

In addition to sediment ponds, operators must use, as necessary, straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment to meet effluent limitations. The effectiveness of such sediment control measures is well documented. Grim and Hill at 101–115 (1974), Erosion and Sediment Control 59–72 (1976).

Moreover, disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling and grading, timely revegetation, retaining sediment within disturbed areas, and diverting runoff using protected channels or pipes through disturbed areas will effectively reduce sediment laden flow to sediment ponds thereby decreasing pond maintenance and increasing overall efficiency of sediment control measures employed. Grim and Hill at 101–115 (1974), Erosion and Sediment Control 59–72 (1976).

As commenters have repeatedly said, such sediment control measures will effectively reduce sediment laden flow from surface coal mining and reclamation operations. West Virginia Surface Mining and Reclamation Association, Comments on Interim Rules, Section 715.17(e) at 6 (1977), West Virgina Department of Natural Resources, Comments on Interim Rules, Section 715.17(e) 1 of 2 (1977).

The final design criteria for sedimentation ponds, in conjunction with other sediment control, are intended to achieve the water quality standards of the Act. The sediment pond design criteria requiring inflow detention time are critical to effective performance of sediment ponds. Under the final regulations, a 24-hour theoretical detention time for water inflow or runoff entering the pond from the 10-year 24-hour event is established as the threshold criteria for sediment ponds.

The regulatory authority may require additional detention time if necessary to achieve effluent limitations. Similarly, the regulatory authority may approve a lower detention time to 10 hours, when the person who conducts the surface mining activities can demonstrate that the process will achieve and maintain effluent limitations and is harmless to fish, wildlife and related environmental values.

The detention time requirements are based upon the following technical literature and comments. In 1976, EPA commissioned a study of nine selected sediment ponds in the States of Pennsylvania, West Virginia and Kentucky. Kathuria, Effectiveness of Surface Mine Sedimentation Ponds (1976). The conclusions and recommendations of this study demonstrate the need for and timeliness of the final design criteria for sediment ponds. According to the study, construction of ponds not in accordance with approved plans and specifications and poor subsequent maintenance of the ponds were the two major factors contributing to their poor performance. Moreover, the investigators found that timely removal and disposal of accumulated sediment, cleaning of clogged outflow pipes, repair of emergency spillways and embankment repair are extremely important for the proper functioning of sediment ponds and are usually overlooked. Kathuria at 3 (1976). Thus, the final regulation for sediment ponds are essential to assure that sediment ponds are properly designed, constructed and maintained to achieve the water quality goals of the Act.

The study identified three ponds which achieved EPA effluent limitations during both baseline (non-storm conditions) and storm conditions. Kathuria at 47, 48 (1976). Based upon these and other collected data which show that removal efficiency is a function of detention time, the study recommended that sediment ponds be designated and constructed with at least a 10-hour actual detention time. Kathuria at 8, 56 (1976).

Studies of actual pond detention time versus theoretical detention time have shown actual detention time to be 30 to 70 percent of theoretical detention time with most ponds falling into the lower category. Hill at 11 (1976). Assuming ponds are approximately 50 percent efficient, to achieve an actual detention time of 10 hours, as recommended by Kathuria, ponds should be designed with a theoretical detention time of approximately 20 hours. According to data collected by Kathuria, the pond will have a removal efficiency of 90 percent with this detention time. According to a simulation model run by Ward, removal efficiencies greater than 90 percent may be required if water quality standards are to be achieved. Ward at 30 (1978). Since according to Kathuria data, removal efficiency begins to level off at approximatley 24 hours theoretical detention time because of the additional time required to settle particles less than 20 microns, the Office has decided to establish at 24-hour theoretical detention time as the initial design standard for sediment ponds.

Regarding industry's contention that when even small amounts of incoming sediment are less than 10 or 20 microns in size, effluent limitations will not be achieved, the Office emphasizes that three of the nine ponds tested by Kathuria meet effluent limitations during baseline and rainfall events with inflow containing sediment in the 10 to 20 micron particle size range. Kathuria at 89–100 (1976).

In addition, using Stoke's Law, which is an idealized formulation recognized as basic to all settling theory, a 20-micron particle would settle at a rate of approximately 2.4 ft/hr at 10 degree C, therefore falling 57 feet in a 24-hour period. A 10-micron particle under the same conditions settles at approximately 0.6 ft/hr falling 14.4 feet in 24 hours.

Of course, short-circuiting and eddy currents make the real world situation different from the ideal situation expressed by the Stoke's Law approach. Assuming the pond to be approximately 50 percent efficient, the average actual detention time (as opposed to the theoretical 24-hour detention time) would be 12 hours. Twelve actual hours detention time should be ample to remove the 20-micron particles and most of the 10-micron particles. For the majority of the runoff events, the detention time achieved will be significantly higher than 24 hours, thus offering additional removal capability. The Office believes, therefore, that sediment ponds will generally be effective in removing particles 10 microns and larger.

To the extent that inflow volume or sediment concentration become factors in failing to achieve water quality standards, operators should consider locating ponds out of perennial streams and utilize measures to control the inflow rate to sediment ponds. For

example, Kathuria found that Pond 2 which met effluent limitations had the benefit of initial settling of inflow in a pit area. The surge effect from a rainfall event was reduced by controlled pumping of influent to the pond. Pond 6 also had a portion of the inflow pumped from the mining pit area to the sediment pond. Kathuria at 22, 31–34 (1976). Other measures can also be applied to reduce the surge effect of a rainfall event. Erosion and Sediment Control 59–72 (1976), Grim and Hill 101–115 (1974), Hill at 14 (1976).

With the proper design construction and maintenance of sediment control measures including sediment ponds, the Office believes that water quality standards of the Act can be met. To the extent that particle size distribution precludes attainment of water quality standards even with application of these sediment control measures, the operator must use flocculants to achieve water quality standards. Hill at 6 (1976).

The Office emphasizes that Congress was well aware that best technology for sediment control could necessarily include the use of flocculants. In discussing best technology currently available, the House Committee on Insular Affairs stated:

> One example of the best available technology for sediment control, which is applicable throughout the United States and can be used on a mine-by-mine or a multiplemine basis, is that technology employed at the surface coal mine of the Washington Irrigation and Development Company. This mine is located in the Hanaford Creek drainage, south of Centralia, Washington. The general geographic characteristics of this area are common to other coal areas. . . . In this instance, in order to meet year-round water quality standards for migrating fish, the company designed a relatively inexpensive method of settling virtually all of the sediment in the surface runoff from the mining operation. Several sets of double siltation entrapment ponds were constructed on the small tributaries leaving the mine property. Elimination of sediment loads is achieved through a two-stage process, with the initial gravity settling occurring in the first pond and the introduction of a biologically inert flocculating compound into the flow between ponds. This results in a discharge that contains even less silt than the normal background flow. . . . H. Rept. 95–218, 114, 115 (1977).

Thus, Congress clearly contemplated the use of flocculants to achieve water quality standards. Further, Congress intended that such innovative technology should be transferred to other coal fields. In this regard, the Committee added:

> This technology sets a standard for the industry and is representative of the innovation the mining industry can achieve when required to meet specific water standards as a precondition to operation. It should be noted that this approach is applicable not only in area-type mining situations but also in the mountain mining operations in the Appalachian coal fields, where such facilities might serve more than one specific mine site in a small drainage area. H. Rept. 95–218, 115 (1977).

Moreover, the Committee was well aware that control costs would increase with the use of flocculants. Nonetheless, the Committee stressed that achieving water quality standards must be the guiding principle under the Act. To remove any doubt with respect to whether water quality standards should yield to cost considerations, the Committee said:

> The bill requires that the standard for siltation control should be the best available technology in recognition that the application of such technology might well increase present siltation control costs of some mine operations. However, the Committee rejected the notion that the standards should be adjusted to what individual mine operatiors state they can or cannot afford. The Committee's action requires the adjustment of operation to the environmental protection standards rather than the opposite. With this approach, the Committee believes that operators will find the right combination of techniques to meet the siltation on the most cost-effective basis. H. Rept. 95–218, 115 (117).

Thus, Congress intended that operators use flocculants if necessary to achieve and maintain water quality standards.

Congress' belief that flocculants are available to effectively control sediment in the submicron size range is buttressed by testimony on flocculants received during public hearing on the proposed rules. During hearings in Charleston, West Virginia on the proposed rules for the permanent program, a vendor of such chemical agents testified to their effectiveness in facilitating the capture of submicron size sediment. Public Hearing 450–459 (Oct. 26, 1978). Therefore, the Office has included flocculants as best technology currently available if necessary to achieve and maintain water quality standards.

Commenters suggested that the term detention time be more precisely defined in the regulations. Theoretical detention time is determined by a flood routing procedure for the design event. Haan, at 2.91, 4, 8, and 4.17, 6.6 (1978). The routing procedure balances the design release rate and the available storage (settling storage). The balance achieved assures that water will be released rapidly enough to prevent overtopping the dam, and that it will be released slowly enough to allow proper settling for the design event. Soil Conservation Service National Engineering Handbook Chapters 15 and 17 (1971). As the release rate is decreased, the amount of storage is increased and the outflow hydrograph is lengthened (because the settling storage is released over a greater length of time). The net effect of a smaller release rate is greater distance between the centroids of the inflow and outflow hydrographs, thus, giving a larger theoretical detention time. The determination of the centroid (of the outflow hydrograph) is an analytical procedure discussed in Haan and Barfield, at 6.6 (1979).

Commenters questioned the selection of a 10-year 24-hour precipitation event as the design criterion for a sediment pond.

The selection of a 10-year 24-hour precipitation event as the inflow design criterion for sediment ponds is based upon Section 515(b)(10)(B) (i) of the Act which requires the Office to assure that additional contributions of stream flow do not exceed applicable Federal law. Under the Clean Water Act, EPA effluent limitations are applicable to coal mining operations, 40 CFR Section 434. According to EPA regulations, treatment facilities to meet such effluent limitations should be constructed to include the volume which would result from a 10-year 24-hour precipitation event. *See also* Grim at 241 (1974). To assure a uniform regulatory scheme and enable the regulatory authority to measure compliance with both EPA effluent limitations and OSM standards, the Office has decided that sediment ponds should be designed to control a 10-year 24-hour precipitation event. This should also reduce the regulatory burden on the operator by eliminating confusion between EPA regulations and OSM regulations.

Commenters questioned the requirement that chemical treatment processes be designed by a professional engineer. Commenters specifically questioned the ability of even a few professional engineers to properly design chemical treatment processes. They also noted that EPA does not require that a professional engineer design treatment processes. This Office also determined that designing processes for chemical treatment of water will require special expertise. Accordingly, the Office removed the restriction, thus permitting the operator to use the services of any qualified persons.

Commenters questioned whether qualified operators approved by the regulatory authority should operate chemical treatment processes.

Commenters said that approval by the regulatory authority was not necessary. Other commenters were concerned about apparent conflict with recent UMW wage contract agreements. Other commenters said OSM was without statutory authority to require certification of waste-water treatment operators.

The Office has decided to delete the requirement for a qualified person approved by the regulatory authority to operate a treatment process. This additional flexibility should avoid any conflicts with UMW wage contract agreements. It is emphasized, however, that operators have the burden of achieving and maintaining effluent limitations. The operator is therefore responsible for selecting a qualified person to operate a chemical treatment process to meet such limitations.

A few commenters suggested removal of "chemical" in reference to treatment processes. Commenters said that inclusion of "chemical" in the regulations would decrease development of alternative methods, because the term "chemical" excluded other methods which were mechanical, or electrical.

The Office has retained this terminology. Alternative sediment control measures are permitted under Section 715.17. Chemical treatment which may include flocculants is an option chosen by the operator if approved by the regulatory authority. Chemicals used as flocculants include both organic and inorganic compounds that effectively cause the coalescing of individual particles and their resulting increased rate of settling.

§ Section 715.17(e)(4) Dewatering.

This Section of regulations requires a non-clogging dewatering device (which can be a principal spillway) to achieve and maintain the required theoretical detention time. The dewatering device and the principal spillway are required to pass the runoff resulting from a 10-year 24-hour precipitation event without use of the emergency spillway. If the design flow passes through the emergency spillways, there is no practical way to detain it. Thus, the detention time would be inadequate. For this reason, flow through the emergency spillway is restricted to precipitation events exceeding the 10-year 24-hour event. Erosion and Sediment Control—Surface Mining in the Eastern United States, Vol. 2 at 55–80 (1976); Hill at 17 (1976); Haan at 6.1–6.27 (1978).

The sediment pond dewatering device may be designed in a number of ways. One method is to place the inlet of the principal spillway (usually a pipe spillway) at the elevation of the required sediment storage. A second method would be to place the inlet of the principal spillway at an elevation above the required sediment storage elevation. If this latter alternative is selected, sediment cleanout would not be necessary when sediment accumulate to 60 percent of the required sediment volume. However, the reduction in settling storage must not reduce the actual detention time below the theoretical detention time.

§ Section 715.17(e)(5) Short-Circuiting.

This Section of the regulations requires each person who conducts surface mining activities to design, construct and maintain sedimentation ponds to prevent short-circuiting to the extent possible. Short-circuiting is defined as a process which transports sediment through a pond in less than the detention time required for sediment to settle out. Short-circuiting can be caused by improper pond construction, high velocity jet action of incoming water, wave action and inlet and outlet design. Hill at 10 (1976); Kathuria at 84 (1976).

Methods of preventing short-circuiting include baffles, partitioning the pond into chambers, maintaining a length to width ratio of five to one, constructing an energy dissipator at the pond entrance, modifying the inlow, or adding two or more basins in series. Erosion and Sediment Control—Surface Mining in the Eastern United States, at 68 (1976). *See also* Ward, at 57 (1977); Janiak, at 59 (1975); Kathuria at 58 (1976).

Commenters said it is impossible to "prevent" short-circuiting. Therefore the regulations should require only that operators "minimize" short-circuiting.

To accommodate this concern while at the same time assure an enforceable standard, the Office has modified the langauge of the regulation to required that operators prevent short-circuiting to the extent possible. Thus, the burden is on the operator to show that all available methods have been utilized to prevent short-circuiting.

§ 715.17(e)(6) Effluent Limitations.

This Section of the final regulations provides that the design, construction and maintenance of sedimentation ponds or other control measures will not relieve the person from compliance with applicable effluent limitations contained in 30 CFR 715.17(a). The additional design flexibility provided to operators is thus coupled with the responsibility to achieve and maintain water quality standards. This minimum requirement is mandated by Section 515(b)(10)(B)(i) of the Act which provides that in no event may this Office authorize the discharge of suspended solids in excess of requirements set by applicable state or Federal law. *See also* 121 Cong. Rec. 6201 (1975).

Commenters suggested that operators should be relieved from compliance with effluent limitations if the design criteria for sedimentation ponds were met. Many of the same commenters said there should be minimal or no design criteria for sedimentation ponds.

As stated previously the Office is without authority to relieve operators from compliance with Section 715.15(b)(10)(B)(i) of the Act. Further, as a result of extensive industry comment, considerable flexibility has been added to the final regulations. For example, pond detention times and sediment storage volume may be lowered upon proper demonstration. In addition, no surface area requirements are included in the design criteria. These modifications have been made because industry has said it should have the flexibility to use alternative means to meet effluent limitations. With this additional flexibility, operators and their engineers will need a guiding limitation to properly design, construct and maintain sediment ponds. Moreover, the Office must be assured that the measures approved by the regulatory authority are effectively controlling the discharge of suspended solids. The effluent limitations provide this essential standard to measure the effectiveness of the sediment control system.

§ 715.17(e)(7) Principal and Emergency Spillway.

The regulations require the design, construction and maintenance of principal and emergency spillways to safely pass a 25-year, 24-hour precipitation event or larger event specified by the regulatory authority. As provided in Section 715.17(e)(4), the principal spillway must dewater the sediment pond at a rate to achieve and maintain the required detention time during a 10-year, 24-hour precipitation event. To assure that the emergency spillway is used only for precipitation events exceeding a 10-year, 24-hour event, the final regulations prohibit any discharge through the emergency spillway during the passage of runoff resulting from such an event and lesser events. The minimum capacity of the emergency spillway should be that required to pass the runoff from a 25-year, 24-hour event less any reduction due to flow in the principal spillway.

Erosion and Sediment Control, Vol. 2, 50–69 (1976); Haan, 6.26–6.27 (1978); SCS, Pond 278–313 (1977).

Commenters questioned whether the regulatory authority should specify spillway grades and water velocities. These commenters said that the regulatory authority should assume liability in case of failure. In consideration of these comments, the regulations permit the operator to select spillway grades and velocities with final approval resting with the regulatory authority. The purpose of the grade and velocity requirements is to provide protection against downstream scouring by released water. This modification recognizes that the operator has the responsibility to design a safe sediment control system and bears liability in the event of failure.

Commenters questioned whether only events greater than the 10-year, 24-hour magnitude were permitted to pass over the emergency spillway. Some commenters interpreted the proposed regulations to allow a "lesser precipitation event" to pass through the emergency spillway. The intent at the final regulation is to provide for the detention of any and all events less than or equal to the 10-year, 24-hour event, for the required time period. For example, the emergency spillway may not be located at an elevation where the 5-year, 24-hour precipitation event might be discharged through the spillway. Such action would short-circuit the detention time for the runoff volume of the 10-year, 24-hour precipitation event. Grim at 241 (1974); Erosion and Sediment Control as 65 (1976); Haan at 6.27 (1978).

§ 715.17(e)(8) Sediment Removal.

This section of the final regulations provides for the timely maintenance of sediment ponds. A properly designed sediment pond poorly maintained will not achieve water quality standards. Kathuria at 3, 47, 48 (1976). To assure that the sediment pond contains adequate unoccupied sediment volume, sediment must be removed from sediment ponds when the volume of sediment accumulates to 60 percent of the design sediment storage volume. The regulatory authority is authorized to allow sediment removal when the permanent sediment storage is decreased to 40 percent of the total sediment storage volume if additional sediment storage volume is provided above that required for the design sediment storage and theoretical detention time is maintained.

These requirements are necessary to assure that the pond has adequate sediment storage as a reserve for future precipitation events inasmuch as runoff events are not entirely predictable. Additionally, the remaining water volume (40 percent of required sediment volume) reduce the velocity of inflows and allows for resuspension of previously settled sediment. When resuspension occurs, the concentration of suspended solids exceed the concentration of the inflow to the pond. Erosion and Sediment Control—Surface Mining, the Eastern United States Vol. 2 at 53 (1976); Hill at 11, 13, 14 (1976); Kathuria, Effectiveness of Surface Mine Sedimentation Ponds, EPA–600/2–76–17 at 3 (1976); Haan at 6.1–6.27 (1978).

Commenters questioned sediment removal requirements. Some commenters want to utilize 100 percent of the storage volume for sediment prior to cleanout while others suggested 70, 80 or another percentage without technical justification.

The Office has decided to retain the sediment removal requirements. Timely removal and disposal of accumulated sediment is extremely important for the proper functioning of a sedimentation pond. This maintenance is too often overlooked. Kathuria at 3, 25, 28, 31 (1976). Actual operational experience show that some sediment ponds fill up with sediment after only one moderate storm. Grim at 106 (1974).

A number of studies have recommended criteria for timely removal of sediment from ponds. One commentator said ponds should be cleaned when storage capacity is reduced to 40 to 50 percent of design capacity. Hill at 11 (1976). Another commentator recommends that ponds should require maintenance when 60 percent full. Grim at 106. *See also* Erosion and Sediment Control, Vol. 2 at 53 (1976). Based upon those studies and to assure effective maintenance of sedimentation ponds, the Office has decided to require removal when sediment accumulation reaches 60 percent.

§ 715.17(e)(9) Freeboard.

This section of the final regulations requires a one-foot freeboard above the water surface in the pond with the emergency spillway flowing at design depth. The purpose of freeboard is the protection of the embankment against overtopping created by wave action. U.S.D.A. Technical Release No. 60, "Earthdams and Reservoirs," Erosion and Sediment Control, Vol. 2 at 65 (1976); SCS (No.) Pond 378–2 (1977); Grim at 241 (1974).

Commenters suggested deleting the freeboard requirements. They said freeboard requirements are specified by MSHA for large ponds, and should not be included in these regulations. Commenters did not provide any information on other methods to prevent overtopping created by wave action. Therefore, the comment was rejected.

§ 715.17(e)(11) Embankment Settlement.

This section of the final regulations requires the construction height of the dam to be increased a minimum of five percent over the design height to allow for settlement. The regulatory authority may authorize an exemption from this requirement if it has been demonstrated that the material used and the design will ensure against all settlement. Erosion and Sediment Control at 69 (1976); SCS (No.) Pond 378–2 (1977).

Commenters suggested deletion of Section 715.17(e)(11). The commenters stated that section 715.17(e)(10) and Section 715.17(e)(16) effectively considered the intent of this section by using the term "settled embankment." Other commenters suggest that the requirement apply only to the embankment in the immediate vicinity of the emergency spillway. Because settlement of an earth embankment is uncertain, an overage is included for safety. The value of five percent may still be insufficient if the construction methods will not meet the criteria specified for compaction. Soil Conservation Services Practice Standards 378-pond at 378–2 and 378–7; USDI Bureau of Reclamation at 202 (1960). In such cases the designer should make the appropriate design allowances. The retention of this section is necessary to protect against failure of embankments.

§ 715.17(e)(13) Embankment Slide Slopes.

To assure embankment stability, this Section of the regulations requires the combined upstream and downstream side slopes of the settlement embankment to be not less than 1v:5h with neither steeper than 1v:2h. SCS (No.) Pond 378–2 (1977).

A correction was made to the first line of this subsection because a key word "combined" had been omitted between the word "the" and upstream. This omission is verified by referral to the SCS (No.) Pond 378–3 (1977).

While the embankment stability analysis may allow slopes steeper than 1v:2h, the procedure requires an intensive geologic investigation and testing. The side slope criteria specified for small ponds is standard for most small dams and has proven adequate. The Office considers this alternative design a sounder approach, as many

designers do not have the facilities to perform complex investigations. This slope criteria also provides additional protection against erosion due to impacting rain and runoff. Moreover, the slope is not so steep as to impede good surface stabilization by vegetation.

§ 715.17(e)(14) Embankment Foundation.

This Section of the regulations requires the embankment foundation to be cleared of all organic matter with surfaces sloped to no steeper than 1v:1h and the entire foundation surface scarified. SCS (No.) Pond 378–1, 7 (1977); Erosion and Sediment Control, Vol. 2 at 69 (1976).

Commenters suggested deletion of the 1v:1h slope criteria between the foundation and the embankment materials, because such requirements will result in occupation of excessive areas by the foundation. The Office has retained this section of the regulations. The basic concept for this specification is to ensure an adequate seal between the excavated slope of the foundation and the embankment materials, both on the bottom and the side slopes. Steeper slope criteria could result in additional shear at this important junction. The requirement is retained to ensure the creation of an adequate and safe junction of these two materials. SCS (No.) Pond 378–2 (1977).

§ 715.17(e)(15)(16) Fill Material.

These Sections of the final regulations require fill material to be free of sod, large roots, and other large vegetative matter, and frozen soil, and in no case may coal processing waste be used. The placing and spreading of fill material must be started at the lowest point of the foundation. The fill must be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of the regulation. SCS (No.) Pond 378–7 (1977); Erosion and Sediment Control, Vol. 2 at 69 (1976).

Commenters requested permission to use coal processing waste as a fill material in embankment construction. The commenters said coal processing waste could serve as a supplement to embankment materials in areas where soil and rock material were limited. The use of the waste would also allow a desirable use for these products.

Coal processing waste may not be used to construct embankments. Several problems are involved in using coal processing wastes. *See* the preamble discussion under disposal of excess spoil (Section 715.15(a)–(d)). Due to the difficulty in obtaining the required compaction thin lift thickness is usually required. Other problems are the potential for spontaneous combustion resulting from the inflammable nature of the waste and the potential for acid and toxic forming material within the waste. For these reasons, coal processing waste was not included in the list of approved construction materials. *See also* McKenie, at 3, 4 (1977).

Commenters said authorizing the regulatory authority to specific lift thickness and compaction requirements was beyond the scope of the Act.

Section 515(b)(10)(B)(ii) of the Act provides that sedimentation ponds must be constructed as designed and approved in the reclamation plan. This provision of the Act is intended to assure that the regulatory authority has the authority to require the design of sediment ponds to meet the requirements of the Act. Moreover, Section 510(a) authorizes the regulatory authority to grant, require modification of or deny plans to construct sediment ponds. The Office therefore believes the Act authorizes the regulatory authority to specify lift thickness and compaction requirements for sediment ponds. Such measures are essential for erosion control and stability. SCS (No.) Pond 378–7 (1977).

§ 715.17(e)(17) Embankments Greater than 20 feet in Height.

This section of the regulations establishes more stringent design standards if the pond embankment is more than 20 feet in height or has a storage volume of 20 acre-feet or more. Under either of these conditions, the combination of principal and emergency spillways must safely discharge the runoff from a 100-year, 24 hour precipitation event or larger event as specified by the regulatory authority.

The embankment must also be designed with a static safety factor of at least 1.5 or higher safety factor as determined by the regulatory authority. Further, appropriate barriers must be provided to control seepage along conduits that extend through the embankment. Finally, the criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 must be met. SCS (No.) Pond 378–2–3 (1976); Erosion and Sediment Control. Vol. 2 at 59–69 (1976); SCS Technical Release No. 60, at 5.1 and 5.4. See also preamble discussion to Section 816.72, 44 Fed. Reg. 15205–6 (March 13, 1979).

Commenters questioned the need for additional design criteria for large dams.

The general design criteria for principal and emergency spillways, and embankments are drawn from technical literature which distinguishes between large and small sediment ponds. SCS (No.) Pond 378 (1977); Grim at 239 (1974).

To prevent more extensive damage to public health and safety and the environment resulting from a failure of a dam capable of releasing a large volume of water, the Office has decided to impose additional safety requirements for such structures.

§ 715.17(e)(20) Inspections.

This Section of the final regulations requires all ponds to be examined for structural weakness, erosion and other hazardous conditions in accordance with 30 CFR 77.216–3. With approval of the regulatory authority, dams not meeting the criteria of 30 CFR 77.216–3 must be examined at least four times per year.

Commenters were opposed to weekly inspections for all ponds including those not meeting the size or other criteria in accordance with MSHA requirements 30 CFR 77.216–3. According to commenters the small size and brief duration of these impoundments make weekly examinations for structural weakness, erosion, and other hazardous conditions unnecessary.

The Office has decided to modify this Section to allow for inspections on a less frequent basis. Since the ponds are small and have been designed and constructed according to section 715.17, weekly inspection and subsequent reporting required under MSHA for large impoundments might have no significant value.

§ 715.17(e)(21) Removal of Sedimentation Ponds.

This Section of the final regulations provides that no pond may be removed until the disturbed area has been restored and the vegetative requirements of Section 715.20 are met. Additionally, the drainage entering the pond must meet applicable State and Federal water quality requirements for receiving streams.

The Office believes there is sufficient control within the regulation for the regulatory authority to approve any changes or amendments pertaining to long term control.

Another commenter requested that the landowner should have a role in determining the postmining use of the sedimentation pond. The Office interprets this comment to apply to cases where the landowner is not the operator. Such decisions would have to be mutually agreed upon by the two parties and in accordance with approved postmining land uses.

§ 715.17(e)(22)

This section of the regulations allows for special sediment control measures, in addition to a sediment pond, where surface mining activities are proposed to be conducted on steep slopes. The exemption from constructing a sediment pond in accordance with the design criteria of this section is authorized only after a demonstration that a sediment pond constructed according to paragraph (e) of this section would jeopardize public health and safety or result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required. To qualify for an exemption from the pond design criteria, the operator should submit a quantatative analysis demonstrating jeopardy to public health and safety or demonstrating sediment flow to streamflow in excess of the incremental sediment volume trapped by the additional pond size required. The operator must also demonstrate that every effort has been made within the requirements of the regulations to mitigate the possibility of making the required findings. For example, the operator is not entitled to an exemption if a pond is proposed for a main watershed when it can be located out of the watershed. The regulations have been clarified to specify that the exemption is limited to design criteria. Requirements such as compliance with effluent limitations [§ 715.17(e)(6)] and design by a registered professional engineer [§ 715.17(e)(18)] may not be varied.

This section of the regulation also requires the design, construction and maintenance of a sediment pond as near as physically possible to the disturbed area which complies with the design criteria of paragraph (e) to the maximum extent possible. In addition, a detailed plan and commitment specifying sedimentation control measures is required.

Some commenters suggested that the exemption should be limited to pre-existing structures only. According to such commenters, there is no need to grant an exemption for a new operation as a well planned steep slope operation should be able to meet the pond design criteria. One commenter added that the exemption should only be granted by OSM.

The Office has decided to retain the section as proposed. It is emphasized that the exemption is for the interim program only and operators are not relieved from effluent limitations or the requirement to build a sediment pond. Additionally, with the submission of necessary plans and maps detailing the location and effectiveness of necessary sediment control measures, the public will be able to adequately monitor the implementation of this provision.

§ 717.17(e) Sediment ponds—Underground Mining

These Sections are substantially identical to corresponding Sections in 715.17(e). The reader is referred to the appropriate portions of the Preamble Sections 715.17(e) for information concerning the technical basis, alternatives considered, and statutory authority. In addition to the Sections of the Act cited in those portions of the Preamble, Sections 717.17(e) is based on Section 516 of the Act.

The disposition of comments on Section 715.17(e) is incorporated herein by reference. Other comments relating solely to underground mining operations are responded to as follows:

Commenters said the requirements to construct a sedimentation pond before any disturbance to the area is unnecessary for underground mining operations. The commenters state that underground mining operations do not create situations where water would be polluted.

Sedimentation ponds are required prior to any mining disturbance of the disturbed area. Generally, underground mining activities includes an exploratory drilling program, excavating and developing a bench or a working area or constructing mine portals or shafts, excavating access and haulage roads from the mine site to a power source, and construction of a tipple and coal preparation plant. In view of these surface disturbances, a sediment pond must be included to collect the sediment from these activities. Therefore, the Office has retained this Section.

The preamble discussion for Section 715.17(e)(2) is incorporated herein by reference.

One commenter requested clarification regarding the applicability of Section 717.17(e)(22) to drift underground mines on steep slopes. The commenter suggested that when the pond is placed in the main drainage of the watershed the pond will be extremely large.

Section 717.17(e)(22) allows an exemption from the pond design criteria only after a demonstration that the ponds designed in conformance with the design criteria will jeopardize public health or welfare or increase sediment yield. Under Section 717.17(e)(1)(ii), sediment ponds are to be located out of perennial streams unless approved by the regulatory authority. The Office does not envision the regulatory authority authorizing the construction of sediment ponds in perennial streams in those situations where the pond would jeopardize public health and safety. Therefore, this exemption would normally apply in situations where a pond is proposed to be located out of a perennial stream and it still poses a threat to public health and safety.

Dated: May 17, 1979.

Joan M. Davenport,
Assistant Secretary, Energy and Minerals.

PART 710—INITIAL REGULATORY PROGRAM

A. 30 CFR § 710.5 Definitions is amended as follows:

1. The definitions of head-of-hollow fill and valley fill are revised.

§ 710.5 Definitions.

Head-of-hollow fill means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the fill measured at the steepest point are greater that 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°. In fills with less than 250.00 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

Valley fill means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the fill measured at the steepest point are greater than 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°.

PART 715—GENERAL PERFORMANCE STANDARDS

A. 30 CFR § 715.15(a) and (b), is amended as follows:

1. Paragraphs (a) and (b) are revised.

2. New paragraphs (c) and (d) are added.

§ 715.15(a) Disposal of excess spoil: General requirements.

(1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes

in the approved permit application in accordance with Sections 715.15(a)–(d). The spoil shall be placed in a controlled manner to ensure—

(i) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of Section 715.17(a)

(ii) Stability of the fill; and

(iii) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under Section 715.16. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of Section 715.17(c). All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the regulatory authority. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with Section 715.13, except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the regulatory authority and consistent with Section 715.14(b)(2).

(9) Where the slope in the disposal area exceeds 1*v*:2.8*h* (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and key way cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: (1) removal of all organic material and topsoil, (2) placement of underdrainage systems, (3) installation of surface drainage systems, (4) placement and compaction of fill materials, and (5) revegetation. The registered engineer or other qualified professional specialist shall provide to the regulatory authority a certified report within 2 weeks after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is—

(i) Demonstrated to be nontoxic and nonacid forming; and

(ii) Demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or manmade watercourses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the regulatory authority and MSHA.

(b) Disposal of excess spoil: Valley fills.

Valley fills shall meet all of the requirements of Section 715.15(a) and the additional requirements of this Section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(i) A system of underdrains constructed of durable rock shall meet the requirements of Paragraph (2)(iv) of this Section and:

(A) Be installated along the natural drainage system;

(B) Extend from the toe to the head of the fill; and

(C) Contain lateral drains to each area of potential drainage or seepage.

(ii) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(iii) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of Paragraph (2)(iv) of this Section. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd ^{3}	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd ^{3}	Sandstone	16	8
Do	Shale	16	16

(iv) Underdrains shall consist of nondegradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the regulatory authority, in lifts no greater than 4 feet or less if required by the regulatory authority to—

(i) Achieve the densities designed to ensure mass stability;

(ii) Prevent mass movement;

(iii) Avoid contamination of the rock underdrain or rock core; and

(iv) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 24-hour precipitation event or larger event specified by the regulatory authority. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of Section 715.17(c).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1*v*:20*h* (5 percent). The vertical distance between terraces shall not exceed 50 feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1*v*:2*h* (50 percent). The regulatory authority may require a flatter slope.

(c) Disposal of excess spoil: Head-of-hollow fills.

Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in Sections 715.15(a) and 715.15(b) and the additional requirements of this Section.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Section 715.15(b), with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards may use the rock-core chimney drain.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(i) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 715.15(b)(2)(iv).

(ii) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(iii) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1*v*:33*h* (3 percent). Instead of the requirements of Section 715.15(a)(7), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3- to 5-percent grade toward the fill and a 1-percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the runoff from a 100-year, 24-hour precipitation event, or larger event specified by the regulatory authority.

(d) Disposal of excess spoil: Durable rock fills.

In lieu of the requirements of Sections 715.15(b) and 715.15(c) the regulatory authority may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this Section and Section 715.15(a) are met. For this Section, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the regulatory authority.

(1) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(i) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this Section.

(ii) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than 20 percent of the fill volume as determined by tests performed by a registered engineer and approved by the regulatory authority.

(2)(i) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(ii) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety:

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

(3) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(i) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(ii) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(iii) The internal drain shall be protected by a properly designed filter system.

(4) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of Section 715.17(c).

(5) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1*v*:20*h* (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(6) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, 24-hour

precipitation event. Diversion design shall comply with the requirements of Section 715.17(c).

(7) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(i) The slope of the outslope between terrace benches shall not exceed 1*v*:2*h* (50 percent.).

(ii) To control surface runoff, each terrace bench shall be graded to a slope of 1*v*:20*h* (5 percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(iii) Terrace ditches shall have a 5-percent slope toward the channels specified in paragraph (6) above, unless steeper slopes are necessary in conjunction with approved roads.

B. 30 CFR § 715.17(e) is amended as follows:

1. Paragraph (e) (1)–(e)(9) are revised.

2. New paragraphs (e) (10)–(22) are added.

§ 715.17(e) Hydrologic balance: Sedimentation ponds.

(1) *General requirements.* Sedimentation ponds shall be used individually or in series and shall—

(i) Be constructed before any disturbance of the undisturbed area to be drained into the pond;

(ii) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the regulatory authority;

(iii) Meet all the criteria of this Section.

(2) *Sediment storage volume.* Sedimentation ponds shall provide a minimum sediment storage volume equal to—

(i) The accumulated sediment volume from the drainage area to the pond for a minimum of 3 years. sediment storage volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the regulatory authority; or

(ii) 0.1 acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount if required by the regulatory authority based upon sediment yield to the pond. The regulatory authority may approve a sediment storage volume of not less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area, if the person who conducts the surface mining activities demonstrates that sediment removed by other sediment control measures is equal to the reduction in sediment storage volume.

(3) *Detention time.* Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event). Theoretical detention time is defined as the average time that the design flow is detained in the pond; and is further defined as the time difference between the centroid of the inflow hydrograph and the centroid of the outflow hydrograph for the design event. Runoff diverted under Sections 715.17(c) and 715.17(d), away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and onsite sediment control practices shall be considered. sedimentation ponds shall provide a theoretical detention time of not less than twenty-four hours, or any higher amount required by the regulatory authority, except as provided under subparagraphs (i), (ii), or (iii) of this paragraph.

(i) The regulatory authority may approve a theoretical detention time of not less than 10 hours, when the person who conducts the surface mining activities demonstrates that—

(A) The improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, in-flow and out-flow facility locations, baffles to decrease in-flow velocity and short-circuiting, and surface areas; and

(B) The pond effluent is shown to achieve and maintain applicable effluent limitations.

(ii) The regulatory authority may approve a theoretical detention time of not less than 10 hours when the person who conducts the surface mining activities demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

(iii) The regulatory authority may approve a theoretical detention time of less than 24 hours to any level of detention time, when the person who conducts the surface mining activities demonstrates to the regulatory authority that the chemical treatment process to be used—

(A) Will achieve and maintain the effluent limitations; and

(B) Is harmless to fish, wildlife, and related environmental values.

(iv) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under subparagraphs (3)(i)–(iii) of this Section shall be included in the permit application.

(4) *Dewatering.* The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the regulatory authority, and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(5) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this Section shall not relieve the person from compliance with applicable effluent limitations as contained in 30 CFR 715.17(a).

(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(8) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to 60 percent of the design sediment storage volume. With the approval of the regulatory authority, additional permanent storage may be provided for sediment and/or water above that required for the design sediment storage. Upon the approval of the regulatory authority for those cases where additional permanent storage is provided above that required for sediment under Paragraph (2) of this Section, sediment removal may be delayed until the remaining volume of permanent storage has decreased to 40 percent of the total sediment storage volume provided the theoretical detention time is maintained.

(9) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the regulatory authority. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the

principal spillway. Emergency spillway grades and allowable velocities shall be approved by the regulatory authority.

(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the regulatory authority that the material used and the design will ensure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where *H* is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1*v*:5*h*, with neither slope steeper than 1*v*:2*h*. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation areas shall be cleared of all organic matter, all surfaces sloped to no steeper than 1*v*:1*h*, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in on case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this Section. Compaction shall be conducted as specified in the design approved by the regulatory authority.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the regulatory authority.

(ii) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the regulatory authority to ensure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(iv) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with Section 715.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the regulatory authority, in accordance with 30 CFR 77.216–3. With the approval of the regulatory authority, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the vegetation requirements of Section 715.20 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with Sections 715.14, 715.16, and 715.20, unless the pond has been approved by the regulatory authority for retention as being compatible with the approved postmining land use. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of Section 715.17(k).

(22) (i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health and safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with the design criteria of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

PART 717—UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS

A. 30 CFR § 717.17(e) is amended as follows:

1. Paragraphs (e) (1)–(e)(9) are revised;

2. New paragraphs (e)(10)–(23) are added.

§ 717.17 Protection of the hydrologic system.

* * * * *

§ 717.17(e) Hydrologic balance: Sedimentation ponds.

(1) *General requirements.* Sedimentation ponds shall be used individually or in series and shall:

(i) Be constructed before any disturbance of the undisturbed area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;

(ii) Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the regulatory authority,

(iii) Meet all the criteria of the Section.

(2) *Sediment storage volume.* Sedimentation ponds shall provide a minimum sediment storage volume equal to—

(i) The accumulated sediment volume from the drainage area to the pond for a minimum of 3 years or the life of the pond, whichever is greater. Sediment storage volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume. Conversions shall use either the sediment density or other empirical methods derived from regional sediment pond studies may be used if approved by the regulatory authority; or

(ii) 0.1 acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount if required by the regulatory authority based upon sediment yield to the pond. The regulatory authority may approve sediment storage volume of not less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area, if the person who conducts the underground mining activities has demonstrated that sediment removed by other sediment control measures is equal to the reduction in sediment storage volume; and

(iii) The accumulated sediment volume necessary to retain sediment for 1 year in any discharge from the underground mine passing through the pond.

(3) *Detention time.* Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event), plus the average inflow from the underground mine. Theoretical detention time is defined as the average time that the design flow is detained in the pond; and is further defined as the time difference between the centroid of the inflow hydrograph and the centroid of the outflow hydrograph for the design event. Runoff diverted under Sections 717.17(c) and 717.17(d) away from the disturbed drainage areas and not passed through the sedimentation pond, need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and onsite sediment control practices shall be considered. Sedimentation ponds shall provide a theoretical detention time of not less than twenty-four hours, or any higher amount required by the regulatory authority, except as provided under Paragraphs (i)(ii), or (iii) of this Subsection.

(i) The regulatory authority may approve a theoretical detention time of not less than 10 hours, when the person who conducts the underground mining activities demonstrates that—

(A) The improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, in-flow and out-flow facility locations, baffles to decrease in-flow velocity and short-circuiting, and surface areas; and

(B) The pond effluent is shown to achieve and maintain applicable effluent limitations

(ii) The regulatory authority may approve a theoretical detention time of not less than 10 hours when the person who conducts the underground mining activities demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

(iii) The regulatory authority may approve a theoretical detention time of less than 24 hours to any level of detention time, when the person who conducts the underground mining activities demonstrates to the regulatory authority that the chemical treatment process to be used—

(A) Will achieve and maintain the effluent limitations;

(B) Is harmless to fish, wildlife, and related environmental values;

(iv) The calculated throretical detention time and all supporting documentation and drawings used to establish the required detention times under Subparagraphs (3)(i)–(iii) of this Section shall be included in the permit application

(4) *Dewatering.* The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the regulatory authority, and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(5) Each person who conducts underground mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this Section shall not relieve the person from compliance with applicable effluent limitations as contained in 30 CFR 717.17(a)

(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation events and lesser events through the sedimentation pond, regardless of the volume of water and sediment present from the underground mine during the runoff.

Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to 60 percent of the design sediment storage volume. With the approval of the regulatory authority additional permanent storage may be provided for sediment and-or water above that required for the design sediment storage. Upon the approval of the regulatory authority for those cases where additional permanent storage is provided above that required for sediment under Paragraph (2) of this Section, sediment removal may be delayed until the remaining volume of permanent storage has decreased to 40 percent of the total sediment storage volume provided the theoretical detention time is maintained.

(9) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the regulatory authority, plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a Minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the regulatory authority.

(10) The minimum elevation of the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the regulatory authority that the material used and the design will ensure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where *H, in feet,* is the height of the embankment as measured from the upstream toe of the embankment.

(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than $1v{:}5h$, with neither slope steeper than $1v{:}2h$, Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than $1v{:}1h$,

and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this Section. Compaction shall be conducted as specified in the design approved by the regulatory authority.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream top of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the regulatory authority, plus any in-flow from the underground mine.

(ii) The embankment shall be designed and constructed with an acceptable static safety factor of at least 1.5, or a higher safety factor as designated by the regulatory authority to ensure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(iv) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and guillies develop shall be repaired and revegetated, in accordance with Section 717.20

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports and notifications shall be made to the regulatory authority, in accordance with 30 CFR 77.216–3. With the approval of the regulatory authority, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored and the vegetation requirements of Section 715.20 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with Sections 717.14 and 717.20, unless the pond has been approved by the regulatory authority for retention as compatible with the approved post-mining land use 717.17(k). If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of Section 717.17(k).

(22) (i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health or safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with the design criteria of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

[FR Doc. 79-16395 Filed 5-22-79; 2:37 pm]

BILLING CODE 4310-05-M

federal register

Friday
May 25, 1979

Part VIII

Department of Health, Education, and Welfare

Office of Education

Metric Education Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 161b]

Metric Education Program

AGENCY: Office of Education, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commissioner of Education proposes to revise the regulations governing grants under the Metric Education program as authorized by the Metric Education Act of 1978. These grants assist metric education projects that encourage and prepare students, teachers, parents and other adults to learn and use the metric system of measurement as part of the regular education program.

DATES: Comments on these proposed regulations must be received on or before July 9, 1979.

ADDRESSES: Comments should be addressed to Dr. Floyd A. Davis, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Floyd A. Davis, 202–653–5920.

SUPPLEMENTARY INFORMATION:

Background

The Metric Education Program provides grants and contract awards to State Educational Agencies (SEAs), local educational agencies (LEAs) and other public and nonprofit private agencies, organizations and institutions. These awards support projects designed to teach the effective use of the metric system of measurement.

The Metric Education Program, formerly authorized under section 403 of Pub. L. 93–380 (Education Amendments of 1974), has been reauthorized by the Education Amendments of 1978, Pub. L. 95–561, Section 311, with no substantial changes. This reauthorization places the Metric Education Act in Part B of Title III of the Elementary and Secondary Education Act of 1965, as amended.

Because of the inclusion of the Metric Education Act in Title III of the Elementary and Secondary Education Act, LEAs must afford the public an opportunity to comment on the subject matter of their applications in accordance with Sec. 1006 of the Elementary and Secondary Education Act of 1965, as amended. In addition, LEAs and SEAs must meet the requirements in Title III of the Elementary and Secondary Education Act for meeting the needs of students in nonprofit private elementary and secondary schools.

These proposed regulations simplify and clarify existing regulations. They also provide examples in the areas of eligibility and types of activities that may be carried out under the provisions of the Act.

Project directors, curriculum planners, and other interested individuals who attended the National Metric Education Conference (September 25–27, 1978) were informed that new regulations for the Metric Education Program would be developed. They were given copies of the current regulations in a format that would elicit comment and facilitate analysis.

While no major issues were identified, the substance of the formal conference discussion in this regard has been incorporated into this notice of proposed rulemaking (NPRM). This procedure is not a substitute for the regular comment process but simply an attempt to (1) ensure that the NPRM would be more reflective of constituent needs, interests, and concerns and (2) as a consequence, facilitate the overall regulations development process.

Education Division General Administrative Regulations (EDGAR)

These proposed regulations do not contain certain types of administrative requirements. These requirements are covered in the Education Division General Administrative Regulations.

In addition, applicants are encouraged to read the statute which authorizes the program, since these regulations do not incorporate provisions that are stated clearly in the statute.

Copies of the statute and other relevant material will be made available to applicants with the application packet.

Citation of Legal Authority

As required by Section 431(a) of the General Education Provisions Act, as amended (20 USC 1232(a)), a citation of statutory or other legal authority has been placed in parentheses on the line following the text of each section.

Invitation to Comment

Interested persons are invited to submit written comments, suggestions, and recommendations to be considered prior to the issuance of the final regulations. Comments, suggestions, and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 45th day after publication of this document will be considered.

All comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in suite 835 1832 M Street, NW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday of each week except Federal holidays.

Authority: Part B of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561.

Dated: May 1, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 17, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Number 13.561 Metric Education Program)

The Commissioner redesignates Part 160 of the Code of Federal Regulations (CFR) as Part 161b and proposes to revise the regulations to read as follows:

PART 161b—METRIC EDUCATION PROGRAM

Subpart A—General

Sec.

§ 161b.1 What is the Metric Education Program?
§ 161b.2 Who is eligible to receive an award?
§ 161b.3 What regulations apply to the Metric Education Program?
§ 161b.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

§ 161b.10 What categories of activities are supported?
§ 161b.11 What are the outcomes of an effective metric education project?

Subpart C—How Does One Apply for a Grant?

§ 161b.20 What rules must be followed?
§ 161b.21 How is an applicant notified?

Subpart D—How Is A Grant Made?

§ 161b.30 How does the Commissioner select a metric education project?

Subpart E—What Conditions Must Be Met By the Grantee?

§ 161b.40 Are there restrictions on the types of costs that may be supported?
§ 161b.41 Are there other restrictions?

Authority: Part B of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561.

(20 U.S.C. 2951–2954)

Subpart A—General

§ 161b.1 What is the Metric Education Program?

The Metric Education Program assists projects that encourage and prepare students, teachers, parents and other adults to learn and use the metric system of measurement. Under this program, the Commissioner awards

grants and procurement contracts for the metric education projects.

(20 U.S.C. 2951–2952)

§ 161b.2 Who is eligible to receive an award?

(a) The following are eligible to receive an award:

(1) State educational agencies (SEAs), local educational agencies (LEAs) and other public agencies and organizations.

(2) Public and private institutions of higher education (including junior and community colleges) and other private organizations; and

(3) Any two or more of the parties above.

(b) A grant can only be made to a public agency or nonprofit private organization or institution.

(c) A private profitmaking organization is eligible only for a procurement contract under this program.

(20 U.S.C. 2952)

§ 161b.3 What regulations apply to the Metric Education Program?

(a) *Regulations for grants.* The following regulations apply to grants under the Metric Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) and in Part 100a (Direct Grant Programs), Part 100c (Definitions); and

(2) These regulations in this part 161b.

(b) *Regulations for procurement contracts.* The regulations in this part do not apply to procurement contracts under the Metric Education Program. These contracts are subject to—

(1) Federal and HEW procurement regulations in 41 CFR Chapters 1 and 3; and

(2) Requirements and Criteria in particular requests for proposals.

(20 U.S.C. 2952)

§ 161b.4 What definitions apply to this program?

(a) Definitions in EDGAR. The following terms used in these regulations are defined in Part 100c: Applicant, Application, Award, Commissioner, Elementary school, Local education agency (LEA), Nonprofit, Nonpublic elementary or secondary school, Private, Project, Public, Secondary school, and State educational agency (SEA).

(20 U.S.C. 2951–2952)

(b) *Specific program definitions.* As used in these regulations—

"Act" means the Metric Education Act of 1978, Part B of Title III of the Elementary and Secondary Act of 1965, as amended by Pub. L. 95–561 (Education Amendments of 1978).

"Adaptation" means the modification of a metric educational strategy or plan to meet the particular needs of a specific learner population.

(20 U.S.C. 2951–2952)

"Institution of higher education" (IHE) means an institution as defined in Section 1001 of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3381)

"Interdisciplinary" means the involvement of two or more academic disciplines, for example, the involvement of disciplines that may include, but are not limited to, mathematics and science.

"International System of Units" or "SI" (le Systeme International d'Unites), means the system of units established in 1960 by the General Conference on Weights and Measures under the Treaty of the Meter. These units are based on and include the meter (length), kilogram (mass), second (time), Kelvin (temperature), Ampere (electric current), and candela (luminous intensity). A seventh base unit, the mole (amount of substance) is being considered as another SI base unit. The radian (plane angle) and the steradian (solid angle) are supplemental units of the system.

"Learner population" means the group intended to benefit from or to participate in a metric education project.

"Metric system" means the "Metric system of measurement" as defined in Sec. 312 of the Act.

"Performance-oriented approaches" means educational approaches involving students in a sequence of problem-solving activities, the solutions to which require the use of concrete examples and experiences.

"Project impact potential" means the degree to which a project may be adapted, expanded, and replicated by other entities.

(20 U.S.C. 2951–2952)

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

§ 161.10 What categories of activities are supported?

(a) *Metric education project grants.* Funds are awarded for metric education projects that may include but are not limited to the following types of activities:

(1) Training educational personnel to teach and carry out projects in the use of the metric system of measurement. This may include inservice and preservice training.

(2) Training parents of students and other adults in the use of the metric system.

(3) Developing an interdisciplinary metric curriculum.

(4) Developing and disseminating metric instructional materials.

(5) Developing media to increase public awareness of metric education by providing cost effective self-teaching approaches.

(6) Developing, demonstrating, improving, expanding, continuing, or adapting metric education projects.

(7) Developing a statewide and multi-state metric education plan. This may include developing a master metric education interdisciplinary curriculum plan that sets forth metric education objectives, strategies, and activities for a variety of academic subjects.

(8) Developing metric education curriculum and instruction for use in institutions of higher education for purposes other than teacher training.

(9) Developing special strategies for supporting metric education projects in rural or isolated areas. This may include the use of mobile metric education units.

(b) The Commissioner may, in any given year, fund particular activities upon publication of notice in the **Federal Register.**

(c) *Procurement contracts.* The Commissioner may award procurement contracts under this Program. Requests for proposals are solicited for contracts in the COMMERCE BUSINESS DAILY. The Commissioner does not award contracts for activities that duplicate any grant activities under the program.

(20 U.S.C. 2952)

§ 161b.11 What are the outcomes of an effective metric education project?

A project receiving assistance under this part must demonstrate effective methods for—

(a) Improving the long-term capabilities of individuals and institutions to use and teach the metric system of measurement;

(b) Developing or adapting new techniques and approaches to meet the metric educational needs of the learner population(s);

(c) Identifying and using local and other resources for metric education purposes;

(d) Supporting new or existing metric educational activities of educational agencies and institutions;

(e) Continuing successful project activities after Federal funding is ended; and

(f) Evaluating the metric educational activities in meeting the project's objectives.

(20 U.S.C. 2952)

Subpart C—How Does One Apply for a Grant?

§ 161b.20 What rules must be followed?

The Commissioner only makes a grant to an eligible applicant that—

(a) Submits an application; and

(b) Complies with all procedural rules governing the submission of the application.

(20 U.S.C. 2953)

Subpart D—How Is a Grant Made?

§ 161b.30 How does the Commissioner select a metric education project?

(a) The Commissioner evaluates an application on the basis of the selection criteria used in 45 CFR Part 100a.202 through 100a.206 (EDGAR) and the criteria contained in these regulations. Applicants are advised to read the EDGAR criteria carefully.

(b) The selection criteria in EDGAR constitute 60 possible points and include the following:

(1) *Plan of operation.* (15 points)

(2) *Quality of staff.* (10 points)

(3) *Budget and cost effectiveness.* (15 points)

(4) *Evaluation plan.* (10 points)

(5) *Adequacy of resources.* (10 points)

(c) The criteria contained in the following paragraphs supplement the EDGAR criteria and constitute 40 possible points. The maximum possible point score for each criterion indicates the relative importance assigned to that criterion by the Commissioner, as follows:

(1) *Needs.* (10 points) The extent to which the proposed project—

(i) Provides for an effective response to the assessed metric education needs of the learner population(s);

(ii) Focuses on enabling the learner population to acquire measurable skills for using the metric system of measurement; and

(iii) Provides for active participation of the learner population in planning project activities that contribute to their acquiring measurable skills in using the metric system.

(2) *Staff and parent needs.* (8 points) The extent to which the proposed project—

(i) Responds to staff development needs in metric education; and

(ii) Provides for feasible, effective instruction of parents and other adults in the use of the metric system of measurement.

(3) *Outcomes.* (12 points) the extent to which the proposed project—

(i) Contributes to the incorporation of metric educational activities and strategies into the regular educational program of the funded agency;

(ii) Contributes to performance-oriented metric education approaches;

(iii) Has a high project impact potential for contributing to the adaptation, expansion, and replication of project strategies and activities in the regular educational program of other agencies; and

(iv) Includes a strategy for continuing support after Federal funding is ended.

(4) *Dissemination.* (10 points) the extent to which the project—

(i) Provides a clear description of a plan for the dissemination of successful and promising metric education products, practices and strategies which are developed and implemented by the project staff;

(ii) Provides a description of plans for non-participants to capitalize on the skills acquired by project participants; and

(iii) Provides a description of the mechanism by which dissemination efforts will be accomplished.

Subpart E—What Conditions Must be Met by the Grantee?

§ 161b.40 Are there restrictions on the types of costs that may be supported?

(a) Funds may be used only for the following types of travel:

(1) Travel by the project director or his or her designee to a metric education national conference; and

(2) Travel by the project director or by the project instructional staff to visit or provide services at grantee's project training sites.

(b) Funds may be used for the following costs if the Commissioner determines they are necessary for carrying out a metric education project:

(1) Purchase, replacement, and adaptation of metric measurement apparatus, and instructionally essential supplies and materials (limited to 20 percent of the direct costs of the award); and

(c) Funds may not be used for the provision of stipends, dependency allowances, substitute pay, or the purchase of textbooks that are not specifically for metric instruction.

(20 U.S.C. 2952)

§ 161b.41 Are there other restrictions?

(a) SEAs and LEAs must meet the requirements in sec. 302(b), Title III of the Elementary and Secondary Education Act of 1965 as amended, for meeting the needs of students in nonprofit private elementary and secondary schools.

(20 U.S.C. 2942)

(b) LEAs must afford the public an opportunity to comment on the subect matter of their applications in accordance with sec. 1006 of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3386)

[FR Doc. 79-16362 Filed 5-24-79; 8:45 am]

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federal register

Friday
May 25, 1979

Part IX

Department of Health, Education, and Welfare

Office of Human Development Services

Projects for Severely Disabled Individuals

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

[Program Announcement No. 13626-792]

Special Projects for Severely Disabled Individuals

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Availability of FY 1979 Grant Funds for Special Projects for Severely Disabled Individuals.

SUMMARY: The Rehabilitation Services Administration, Office of Human Development Services, announces the availability of grants for Special Projects for Severely Disabled Individuals authorized by Section 311(a)(1) of the Rehabilitation Act of 1973, as amended. Regulations governing Special Projects for Severely Disabled Individuals are published in the *Code of Federal Regulations* in 45 CFR Part 1362.

DATE: Applications for grants must be received in the Office of Human Development Services by July 13, 1979.

Program Purpose

The purpose of Special Projects for Severely Disabled Individuals is to establish programs for providing vocational rehabilitation services which hold promise of expanding or otherwise improving rehabilitation services to handicapped individuals (especially those with the most severe handicaps), including blind or deaf individuals, irrespective of age or vocational potential, who can benefit from comprehensive services.

Program Priorities: Goals and Objectives

The disability groups to be given priority in this grant program are determined on an annual basis by the Commissioner of Rehabilitation Services. Among the factors considered in such decisions are: (1) the disability groups identified in the authorizing legislation as examples of the populations these projects are intended to serve; (2) categories of severe disability identified as currently underserved by the public rehabilitation programs; and (3) other programmatic considerations, including expanding or improving services for persons handicapped by a specific disability recognized as offering problems of national scope in the field of rehabilitation.

Priority target populations for Special Projects for Severely Disabled Individuals in FY 1979 are persons severely handicapped by the following disabilities: blindness, deafness, mental illness, mental retardation and multiple sclerosis. It is planned to fund one (1) project for each of these disability groups. In the event that no application in a particular disability area is determined through the review procedure to merit Federal support, a second project may be approved for funding in one of the remaining priority disability areas. The decison in such circumstances will be a responsibility of the Commissioner of Rehabilitation Services.

It is important that applicants fully understand that Projects for Severely Disabled Individuals must focus their activities on individuals having *one* of the above impairments as their primary disability. This would not, of course, eliminate from the scope of the projects multiple-handicapped persons having other impairments in addition to their primary disability, e.g., an individual with the primary disability of deafness but who is also substantially handicapped by an emotional disorder.

Special Projects for Severely Disabled Individuals are intended to demonstrate effective methods for expanding or otherwise improving rehabilitation services for groups of persons severely handicapped by specific impairments. Examples of appropriate project objectives are listed below. It should be understood that these are examples only, and are not intended to restrict or limit applicants in developing objectives for project proposals in one of the priority disability areas.

1. Development of a cooperative program between a voluntary organization or a specialized treatment resource and a State rehabilitation agency to foster a coordinated approach to the provision of rehabilitation services leading to competitive employment or, where necessary because of the severity of the disability, to sheltered or home industry employment for the target population.

2. Establishment of a community-based program to provide the comprehensive services necessary for assisting the target population to obtain gainful employment, and thus eliminating or delaying substantially their need for institutional care.

3. Development of a coordinated, interagency approach aimed at facilitating the transition of a disability group from institution to community, and assisting these individuals to make a satisfactory vocational adjustment.

4. Establishment of cooperative arrangements between a public or voluntary agency and a mental health resource to demonstrate the effectiveness of joint programming in integrating treatment and vocational rehabilitation services for a priority disability group with the additional handicap of an emotional disorder.

5. Establishment of an outreach program, in either a rural or a metropolitan area, to identify low-functioning deaf, older blind or other multiple-handicapped individuals from one of the priority populations, followed by extensive evaluation and the provision of the services essential to their vocational rehabilitation.

Eligible Applicants

State or other public or nonprofit agencies or organizations are eligible to apply for these grants. If the applicant is other than the State rehabilitation agency, the approval of the appropriate State agency must be secured.

Available Funds

The total appropriation for the Special Projects for Severely Disabled Individuals program in FY 1979 is $7,048,000. Of this amount, approximately $2,060,000 will be used for non-competing Continuation grants to maintain support for projects initiated in prior years under this authority. An additional $4,500,000 has been earmarked for projects to serve persons with spinal cord injuries, and such projects are not covered in this program announcement. Therefore, an estimated $488,000 is available for new grants under this program announcement in FY 1979.

It is anticipated that a total of five (5) grants ranging from $75,000–$125,000 will be awarded with the average grant award expected to be $97,600.

Under existing regulations, approved projects can be funded for a maximum of three (3) years. In the event of a change in the regulations, approved projects recommended for more than three (3) years may be adjusted appropriately.

In FY 1978, 22 applications were subjected to peer review in the area of mental illness, of which 2 were funded. Nine (9) projects in the area of blindness, deafness and multiple sclerosis were funded of the 24 applications reviewed.

Grantee Share of the Project

While the authorizing statute does not require that the grantee share in the cost of the project, it is generally expected that grantees will provide matching

funds. In previous years, the cost-sharing ratio has been approximately 90 percent Federal, 10 percent grantee.

Grantee contributions must be project-related and allowable under the Department's applicable cost principles specified in the appropriate appendix to Subpart Q of 45 CFR Part 74.

The portion of project costs not borne by the Federal government is matching or cost-sharing, and may consist of the following: (1) grantee cash outlays, including the outlay of funds contributed to the grantee by third parties; and (2) grantee non-cash contributions which consist of charges for the use of, or depreciation in, real or non-expendable personal property owned by the grantee—see 45 CFR, 1362.8(e).

The Application Process

Availability of Application Forms

Grant applications must be submitted on standard forms provided for this purpose. Application kits which include these forms and related instructions and information may be obtained by writing to: Director, Division of Innovative Programs and Demonstrations, Rehabilitation Services Administration, Room 3411, Mary E. Switzer Building, 330 C Street SW., Washington, D.C. 20201.

Application Submission

One (1) signed original and two (2) copies of the application with all attachments, including a written statement of approval from the appropriate State rehabilitation agency, are required. The completed applications should be submitted to the: Division of Grants and Contract Management, Office of Human Development Services, Room 1427, Mary E. Switzer Building, 330 C Street SW., Washington, D.C. 20201.

The application must be signed by an individual authorized to act for the applicant agency or organization, and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Circular A–95 Notification Process

In order to comply with Office of Management and Budget Circular No. A–95, Revised (interim procedures at 41 FR 3160, July 29, 1976), applicants for grant support must, prior to submitting an application, notify both the State and the Areawide A–95 Clearinghouses of their intent to apply for Federal Assistance. If the application is for a statewide project which does not affect areawide or local planning and programs, such notification need only be sent to the State Clearinghouse. Some State and Area Clearinghouses provide their own forms on which this information is to be submitted. Applicants are advised to get in touch with the appropriate State Clearinghouse (listed at 42 FR 2210, January 10, 1977) for detailed information on meeting the A–95 requirements.

Application Considerations

It is recommended that applicants confer with their State rehabilitation agency in the initial stages of developing an application to ensure that requirements of these State agencies are met.

Applications which do not conform with the prescribed instructions, are incomplete, or are received after the deadline of July 13, 1979, will not be reviewed.

Unsuccessful applicants will be informed of this fact, and a brief statement of the reasons for this decision will be provided the applicant.

All final decisions on the approval of applications for funding are made by the Commissioner of Rehabilitation Services, who will make grant awards consistent with the purposes of the authorizing legislation, the relevant Federal regulations, and this program announcement, within the limits of available funds.

The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Awarded, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is being given, and the amount of funding contributed by the grantee to project cost. The initial Notice of Grant Awarded also specifies the total project for which Federal support is contemplated.

Special Consideration for Funding

In FY 1979, priority consideration will be given those applications in which vocational rehabilitation is the primary project objective.

Criteria for Review and Evaluation of Grant Applications

All new and competing continuation applications received on a timely basis and conforming with the guidelines in this announcement will be reviewed by qualified experts. Applications are rated in accordance with the following numerical scale of 0 to 4: Not Acceptable—0, Poor—1, Acceptable—2, Above Average—3, and Outstanding—4.

The specific criteria against which applications will be evaluated are listed below:

1. Project objectives are identical with or are capable of achieving program objectives as defined in this announcement.
2. Project activities or tasks are capable of achieving project objectives.
3. Estimated cost to the Government is reasonable in relation to anticipated project results.
4. Budget items are appropriate in relation to project activities.
5. Adequate facilities are available to the applicant to carry out the project.
6. Project personnel, actual or proposed, are, or will be, well trained and qualified.
7. Staffing levels are adequate to carry out the project.
8. Project contains an adequate evaluation component.
9. Project provides for adequate liaison with the State rehabilitation agency and community groups to ensure client referrals, outreach and utilization of project results.
10. Project demonstrates the potential for the project to be continued after termination of Federal support.
11. Project demonstrates the potential for project results to be effectively utilized after termination of support.

Closing Date for Receipt of Applications

New and competing continuation applications must be received by July 13, 1979. Applications will be judged on time if:

a. The application was sent by mail not later than the date specified above as evidenced by the U.S. Postal Service postmark or the original receipt from the U.S. Postal Service, or

b. The application is hand-delivered to the office designated for the submission of the application. Hand-delivered applications will be accepted no later than the close of business on the date specified above.

(Catalog of Federal Domestic Assistance Number 13.626, Rehabilitation Services and Facilities Special Projects.

Dated: May 10, 1979.

Robert R. Humphreys,

Commissioner of Rehabilitation Services.

Approved: May 18, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-16383 Filed 5-24-79; 8:45 am]

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federal register

Friday
May 25, 1979

Part X

Department of Health, Education, and Welfare

Office of the Secretary

Protection of Human Subjects of Biomedical and Behavioral Research

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

Protection of Human Subjects of Biomedical and Behavioral Research

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notice of Report and Recommendations for Public Comments.

SUMMARY: On July 12, 1974, the National Research Act (Pub. L. 93–348) was signed into law, thereby creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. One of the charges to the Commission was to conduct a "special study" of the ethical, social and legal implications of advances in biomedical and behavioral research and technology. In discharging its duties under this mandate, the Commission: contracted for the conduct of an iterative policy study involving a national panel of consultants; contracted for a national opinion survey to serve as an adjunct to the policy study; and sponsored a four-day colloquium of 25 scientists and scholars. The Special Study addresses the implications of advances in biomedical and behavioral research and recommends the establishment of an advisory commission to anticipate the probable effects of research and technological advances for individuals and society, and to stimulate public participation in decisionmaking. The published copy of the report which includes the supporting documents assembled by the Commission is available as DHEW Publication No. (OS) 78–0015, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DATES: The Secretary invites comment on the Special Study. The Comment period will close August 23, 1979.

ADDRESS: Please send comments or requests for additional information to: F. William Dommel, Jr., J.D., Assistant Director for Regulations, Office for Protection from Research Risks, National Institutes of Health, 5333 Westbard Avenue, Room 303, Bethesda, Maryland 20205, Telephone: (301) 496–7005, where all comments received will be available for inspection weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m.

Dated: March 30, 1979.

Charles Miller,

Acting Assistant Secretary for Health.

Approved: May 17, 1979.

Hale Champion,

Acting Secretary.

National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

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National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

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Special Study

Implications of Advances in Biomedical and Behavioral Research

I. The Mandate

The National Commission for the Protection of Human Subjects was directed under section 203 of Public Law 93–348 to conduct a "special study" of the ethical, social and legal implications of advances in biomedical and behavioral research and technology. The issues reflected in the special study go back at least to 1945 (the year of Hiroshima) and have continued to develop in significant ways since Public Law 93–348 was enacted in July 1974. Since the last century, but most markedly from the time of World War II, advances in science and technology have been influencing the character of social and individual life. Such advances have created problems not only on account of their immediate consequences, but also because of their side effects. Questions have been raised regarding issues that range from "tampering with nature" to invasion of privacy. In addition, the complexity of scientific and technological issues has placed a strain on governmental machinery, most notably in democratic societies and nations where public participation and understanding have important roles to play in the formation of policy. In addressing section 203, accordingly, the immediate problems of biomedical and behavioral research and technology must be considered in relation to broader aspects of social change and public policy.

The recognition by then Senator Walter Mondale that the impact of biomedical and behavioral science and technology was more widespread and had given rise to more public disquiet than had been properly appreciated led him to sponsor S.J. Res. 145 in 1968 and S.J. Res. 75 in 1971, resolutions from which section 203 of Public Law 93–348 was derived. Similar considerations were responsible for a series of additional steps and inquiries in the government and elsewhere during the 1970's.

In the Congress, the Office of Technology Assessment, established in 1972, has conducted inquiries into the impact of certain innovations in medical technology and services. Related areas have been studied by other divisions of Congress, including the staffs of the relevant House and Senate subcommittees, the General Accounting Office, and the Congressional Clearinghouse on the Future in the Legislative Reference of the Library of Congress.

At the National Academy of Sciences, the Academy of Engineering and the Institute of Medicine have studied the medical and nonmedical impacts of some innovations. Within DHEW, an Office of Health Technology has recently been established to coordinate

analysis and testing by agencies of efficacy and safety, cost effectiveness, and standards of development for new and existing technologies, and to assist in determining which intervention mechanisms should be used to promote, inhibit or control the development and use of technologies. The National Institutes of Health has established an Office for the Medical Applications of Technology and has also been seeking to extend the roles of the National Advisory Councils to enlarge the contribution of public representatives to the development of research policies and priorities. The establishment of local Professional Standards Review Organizations and Health Systems Agencies provides new mechanisms for involving members of the professional community and lay public in monitoring the health care delivery system, including such new technologies as computerized tomography. The Bureau of Health Planning and Resources Development is sponsoring a study, mandated by Public Law 93–641, on technological advances in health and planning.

Similarly the reintroduction of science policy advisers into the Executive Office of the President, through the creation of the Office for Science and Technology Policy in 1976, could play a part in the development of public policies in the area of section 203.

Each of these assessment activities has its own goal, and none of them attends exclusively and explicitly to the ethical, social and legal implications of advances in technology. While the various mechanisms have been performing in their own spheres, there has been a demonstrable increase in interest in careful review of the implications of new technologies.

The most striking episode to take place in the area of the Special Study since the enactment of Public Law 93–348 has been controversy over recombinant DNA research. The broad concern over such research was almost totally unforeseen, even by the scientists most closely involved. This controversy demonstrated the range and depth of public disquiet and political feeling that can be aroused by the prospect of seemingly drastic new biomedical or behavioral influences on society originating in branches of science too technical for the public to understand. Whether or not, in fact, recombinant DNA research involves so grave a threat to the public health as some participants have maintained, the debate has made it clear that a better system of early warning and monitoring is required. Novel developments likely to result from projected biomedical and behavioral research should be identified and assessed systemically before they arouse public alarm and political passions.

II. Activities Sponsored by the Commission

A request for proposals, which reiterated the language of section 203, was published in the *Commerce Business Daily* in February 1975. Proposals received were evaluated by a technical review panel which recommended that a contract be awarded jointly to Policy Research Incorporated and the New Jersey Institute of Technology (PRI/NJIT) to conduct and iterative policy study involving a national panel of consultants. Two other projects were implemented simultaneously. One was a national opinion survey to serve as an adjunct to the policy study. The other, recommended by the technical review panel as an alternative approach to the mandate, was a four-day colloquium of twenty-five scientists and scholars. A core group of the participants prepared a report of the colloquium.

The reports to the Commission that resulted from these different projects (reprinted in the Appendix of this statement) involved very different approaches to the special study. The PRI/NJIT policy study used a dynamic communication technique designed to analyze value-laden policy-related content. It consisted of a structured, iterative inquiry mailed to and completed by 121 consultant panelists between February and August 1976. Each successive inquiry instrument was based on responses to the preceding one. Panelists were thus provided feedback and were able to compare and contrast their own views with those of others. The study design relied heavily on a policy Delphi technique that sought to synthesize divergent positions advocated by respondents. Anonymity was protected, panelists had the opportunity to modify their positions, and different positions on issues were presented. Five subject areas were selected with the expectation that advances in those areas would generate a broad range of ethical, legal and social concerns during the next twenty years.

The national opinion survey was designed to elicit public attitudes toward advances in biomedical and behavioral research technology and alternative policies to deal with them. A structured questionnaire was administered to a random sample of 1,679 noninstitutionalized adults in the continental U.S. A parallel version of the questionnaire was administered to the Delphi panelists, and the responses of the public and the panel were compared and contrasted.

The colloquium developed an historical and sociological perspective on recent advances in biomedical and behavioral research and services using a case study method. The social impact of advances was explored, as were existing legal and institutional constraints and incentives governing the introduction of new technologies into medical practice. In addition, current knowledge about the public's understanding of and attitudes toward advances and their implications was reviewed.

In general, these different approaches yielded similar results. The immediate consequences of the scientific and technological advances in biomedical and behavioral research and services since World War II are perceived, for the most part, as beneficial by professionals and the lay public. Neither group fears that the scale and character of the advances to be expected over the next few decades will change so drastically as to invalidate this optimistic assessment. Some of the anxieties expressed in the legislative hearings on the original Mondale resolution, and more recently in the recombinant DNA debate, appeared to both groups of the Commission's respondents to have been exaggerated. If immediate action is called for at the present time, both groups agreed, it will chiefly be to create new institutions to monitor the development and introduction of new technologies in the biomedical and behavioral fields, and to draw the attention of legislatures and the public to social problems arising from the use of these new technologies.

Some of these resulting social problems are already apparent, and the kinds of measures required to deal with them are discussed below. But it is probably worth underlining that, among all of the Commission's respondents, no significant body of opinion emerged that was opposed to continuation of the scientific and technological research that has led to so many innovations since 1945. Still less was there significant support for anything resembling a moritorium on biomedical and behavioral research. On the contrary, there was widespread consensus that, for the foreseeable future as for the past, the advantages flowing from such research will continue to outweigh the incidental problems resulting from them.

III. Findings with Implications for Public Policy

Several broad findings may be derived from the policy study, public opinion survey and the report of the colloquium sponsored by the Commission that are generally consistent with other literature addressing similar problem areas.

1. Today most Americans view scientific advances and technological innovations positively. However, there is growing recognition among the public, the scientific community and government officials that societal problems are increasingly complex and that the application of advances and innovations in biomedical and behavioral research and technology should take into account not only scientific and technological factors, but also their social context and the extent to which society can accommodate these advances.

2. Value conflicts are an inevitable consequence of the tensions in a pluralistic society between competing commitment to personal freedom and social responsibility, privacy and the public need for information, and the degree to which citizens should be protected by government. Behind these diverse concerns lie quite different views of the human image, of the nature of state authority, and of the form of the public welfare. The ethical concerns raised by advances in biomedical and behavioral technology reflect not only the novelty of these advances, but the deeper uncertainty and diversity of social values. Any public policy about these advances must respect the plurality of social values. Solutions which are reached in a democratic manner must genuinely protect the welfare of individuals and communities.

3. Situations in which the introduction of new technology could be of considerable benefit to some individuals, but only at the expense of others, create problems of equity. Often technological innovations are initially available only at high cost due to the expense of development and the apparatus involved. If public funds are used to make these new technologies available, decisions must be made regarding which individuals should benefit, and how to allocate benefits when resources are limited. There is a need to address the problem of equity of access to the benefits of innovations and the problems suurounding the allocation of limited resources.

4. The lack of understanding of the details of scientific developments and the feeling that decisions are made by depersonalized government agencies lead to an erosion of trust by the public. Research activities, including funding mechanisms, should be accessible to the public to enhance general understanding of developing knowledge. Mechanisms should be developed both to educate the general public and to encourage its participation in making value decisions. Scientists should be sensitive to concerns of the general public.

5. There is a recognition that the introduction of new technologies may have unanticipated and unwanted side effects detrimental to the health of individuals, and the mechanisms need to be developed to protect against such hazards. There should be an early warning system in which there is an assessment of potential secondary impacts prior to the dissemination of new technologies. The results of such technological assessments should be widely available to the public to provide a knowledge base for decision-making and to enhance public pariticipation in the development of policy.

IV. Recommendations

The Commission's findings that have implications for public policy cluster in two areas: one set of findings indicate a perceived need for a program to assess the social impact of technology. The second suggests a need to facilitate public information and public participation in research and technological innovations and the policy decisions that result. These findings suggest that a mechanism should be established to monitor and evaluate innovations and to provide an early warning system in which the probable effects of innovations in biomedical and behavioral research and technology can be assessed publicly, prior to development of widespread dissemination. The existing entities referred to previously serve narrower constituencies and goals, and the independence and broader mandate of a new body are needed.

The establishment of a mechanism to encourage public participation in policy formulation was of special concern to Mr. Mondale who, during legislative hearings on the resolution to establish a Commission on Health Science and Society in 1971, said that studies of advances and their implications should be incorporated into a public process by which society might express its right to say something about its own future: "The public's stake is too great. And the need for consensus as to how society should deal with these profound problems is too clear . . . I think we need something far more official and far more public if we are to reach agreement on the ways in which society is to organize itself to handle these unprecedented problems."

The National Commission for the Protection of Human Subjects recommends, as have Mr. Mondale and Senator Kennedy, that an advisory commission be employed to anticipate the probable effects of research and technological advances for individuals and society, and to stimulate public participation in decision making. A commission with diverse memebership, independent of control by any government agency or private institution, would be able to examine issues without the customary institutional and political constraints. The commission should not be dominated by health professionals, for its main purpose would be to facilitate widespread debate involving all segments of society in the ethical and policy issues that affect all people and about which diverse views should be heard. The commission would be able to clarify many issues and foster better understanding by the public and by those directly involved in decision making. It would not itself decide issues but rather help society to decide who should decide them and to explore the implications of various decisions that may ensue.

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Friday
May 25, 1979

Part XI

Department of Labor

Wage and Hour Division

Employee Benefit Plans; Amendment to Interpretative Bulletin

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 860

Employee Benefit Plans; Amendment to Interpretative Bulletin

AGENCY: Wage and Hour Division, Labor.

ACTION: Amendment to Interpretative Bulletin.

SUMMARY: The Interpretative Bulletin on the Age Discrimination in Employment Act of 1967, as amended ("ADEA" or "Act"), sets forth various interpretations which indicate the construction of the ADEA that the Department of Labor believes to be correct and which will guide it in the performance of its administrative and enforcement duties under the Act. After enactment of the Age Discrimination in Employment Act Amendments of 1978, Pub. L. 95–256, 92 Stat. 189 (approved April 6, 1978), the Department of Labor published in the **Federal Register** of September 22, 1978, a proposed amendment to the Interpretative Bulletin with respect to employee benefit plans. After considering carefully numerous written comments as well as testimony at a hearing on the proposed amendment, the Department has revised the original proposal, which it now publishes in final form.

DATES: Effective date: May 25, 1979. Since this is an interpretative rule or statement of policy, the 30-day delay in effective date as prescribed in section 553(d) of title 5, U.S. Code, does not apply. The enforcement policy that will be followed by the Department of Labor and by the Equal Employment Opportunity Commission under this interpretative bulletin is explained in more detail below in part 9 of the preamble. The Equal Employment Opportunity Commission, which will take on administrative and enforcement responsibility for the ADEA effective July 1, 1979, concurs with this enforcement policy.

FOR FURTHER INFORMATION CONTACT: Francis V. LaRuffa, Jr., Chief, Branch of Age Discrimination, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3028, Washington, D.C. 20210, telephone 202–523–7640. (This is not a toll-free number.)

For additional copies of this interpretation, contact: Office of Information and Consumer Affairs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4331, Washington, D.C. 20210, telephone 202–523–8743. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department of Labor published its proposed amendment to § 860.120 of the Interpretative Bulletin on the ADEA on September 22, 1978 (see 43 FR 43264). This section of the Interpretative Bulletin deals with employee benefit plans under section 4(f)(2) of the Act, 29 U.S.C. 623(f)(2).

Prior to the 1978 amendments, when the Act protected individuals between the ages of 40 and 65, section 4(f)(2) provided:

> (f) It shall not be unlawful for an employer, employment agency, or labor organization * * *
>
> (2) to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *.

In fashioning the section 4(f)(2) exception with respect to employee benefit plans, Congress explicitly recognized that the cost of providing certain benefits to older workers is greater than providing those same benefits to younger workers. To require that the same benefits be provided to all workers without regard to age, Congress feared, would discourage the employment of older workers or would unduly burden the employer and thereby jeopardize the continued maintenance and operation of such plans. As explained by Senator Javits during passage of the original bill in 1967, section 4(f)(2) is "particularly significant," "since, in its absence, employers might actually have been discouraged from hiring older workers because of the increased costs involved in providing certain types of benefits to them" (S. Rept. 723, 90th Cong., 1st Sess. (1967), p. 14; 113 Cong. Rec. 31254–31255). Senator Javits also stated: "The meaning of this provision is as follows: An employer will not be compelled under this section to afford to older workers exactly the same pension, retirement, or insurance benefits as he affords to younger workers" (113 Cong. Rec. 31255). In a similar vein, Representative Daniels pointed out that section 4(f)(2) was "designed to maximize employment possibilities without working an undue hardship on employers in providing special and costly benefits" (113 Cong. Rec. 34727). See also Hearings before the Senate Labor Subcommittee on S. 830 and S. 788, 90th Cong., 1st Sess., 1967, pp. 27–30, 53, 106–107.

The Department's original interpretation of section 4(f)(2), as published in the **Federal Register** on June 21, 1969 (34 FR 9709), and as republished in successive editions of the Code of Federal Regulations (CFR), reflected the congressional purpose underlying section 4(f)(2) in setting forth the general rule governing employee benefit plans falling within the exception:

> * * * Â retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage.* * *
>
> [29 CFR 860.120(a)(1977).]

The 1978 amendments, in addition to increasing the maximum age of those individuals protected by the Act from 65 to 70 (and making other changes not relevant here), added a final clause to section 4(f)(2) so that it now reads:

> (f) It shall not be unlawful for an employer, employment agency, or labor organization— * * *
>
> (2) to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such * * * employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual * * *.

The principal purpose of this amendment was to make clear that "the exception does not authorize an employer to require or permit involuntary retirement of an employee within the protected age group on account of age" (H. Rept. No. 95–950, 95th Cong., 2d Sess. (1978), p. 8 (ADEA Conference Report)).

In amending section 4(f)(2) Congress also made clear that the Department should issue more comprehensive guidance with respect to section 4(f)(2), particularly because of the increase in the maximum age level of those covered by the Act. See 124 Cong. Rec. H 2271 (daily ed. Mar. 21, 1978) (remarks of Rep. Hawkins); 124 Cong. Rec. S. 4451 (daily ed. Mar. 23, 1978) (remarks of Sens. Williams and Javits). The increase in the maximum age level of those covered has raised questions about many common benefit practices affecting employees at age 65. In the absence of comprehensive guidance, these questions would have to

be answered by the Department, and by the courts, on a potentially lengthy, costly and uncertain case-by-case basis.

The congressional requests for more comprehensive guidance from the Department were accompanied by a reiteration of the purposes of section 4(f)(2), reflecting the statements as described above which were made during the original enactment of the ADEA. Most significant was the following statement by Senator Javits, who was minority manager of the original ADEA and the 1978 amendments (124 Cong. Rec. S. 4450–S. 4451, daily ed., March 23, 1978):

> The purpose of section 4(f)(2) is to take account of the increased cost of providing certain benefits to older workers as compared to younger workers.
>
> Welfare benefit levels for older workers may be reduced only to the extent necessary to achieve approximate equivalency in contributions for older and younger workers. Thus a retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage. This is consistent with the following statement I made during the November 6, 1967 floor consideration of the original act:
>
> The amendment relating to * * * employee benefit plans is particularly significant: Because of it an employer will not be compelled to afford older workers exactly the same pension, retirement, or insurance benefits as younger workers and thus employers will not, because of the often extremely high cost of providing certain types of benefits to older workers, actually be discouraged from hiring older workers. At the same time, it should be clear that this amendment only relates to the observance of bona fide plans. No such plan will help an employer if it is adopted merely as a subterfuge for discriminating against older workers.
>
> The Department of Labor intends to promulgate comprehensive regulations in order to provide guidance in this regard for sponsors of employee benefit plans and the Secretary is urged to act as soon as possible.

Senator Williams, the majority manager, agreed that Senator Javits' statement "accurately reflects congressional intent in this regard." *Id.* at S. 4451.

Statements to the same effect were made during House floor debate by Congressman Hawkins (124 Cong. Rec. H. 2270–H. 2271, daily ed., March 21, 1978), Congressman Pepper (*id.* at H. 2275), Congressman Weiss (*id.* at H. 2276) and Congressman Waxman (*id.* at H. 2277). All of these statements indicate the congressional understanding of the language of section 4(f)(2), as originally enacted and as amended, which condemns any benefit practice which is "a subterfuge to evade the purposes of this Act." That understanding was succinctly stated by Congressman Waxman:

> I am hopeful, however, that employers do not terminate capable and healthy older workers from benefit plans solely on the basis of age. In the absence of actuarial data, which clearly demonstrates that the costs of this service are uniquely burdensome to the employer, such a policy constitutes discrimination and a conscious effort to evade the purposes of the act. (*Id.* at 2277.)

The legislative history of the 1978 amendments establishes one exception to the otherwise uniform rule under section 4(f)(2) that age-based reductions in employee benefit plans must be justified by actuarially significant cost considerations. That exception is with respect to certain retirement plans—both defined contribution plans and defined benefit plans. The legislative history makes clear that

> an employer will be permitted under the act, as amended, to maintain a defined contribution plan—other than a plan which is merely supplemental to a defined benefit or defined contribution plan maintained by the employer—which precludes employer and, if applicable, employee contributions to such a plan subsequent to an employee's attainment of the plan's normal retirement age. [124 Cong. Rec. S. 4450, daily ed., March 23, 1978, remarks of Sen. Javits.]

This statement by Senator Javits, with which Senator Williams concurred, is identical in all material respects to a statement by Congressman Dent with which Congressman Hawkins concurred (see 124 Cong. Rec. H. 2271, daily ed., March 21, 1978).

The legislative history also makes clear that under the ADEA, as amended, an employer maintaining a defined benefit retirement plan is not required (1) to credit, for purposes of benefit accrual, those years of service which occur after an employee has attained the normal retirement age under the plan; (2) to adjust actuarially the benefit accrued as of normal retirement age for an employee who continues to work beyond that age; (3) to commence benefits at normal retirement age when an employee's actual date of retirement is later; or (4) to provide for the accrual of benefits under such a plan during any years of service by an employee after normal retirement age. (See S. Rept. No. 95–493, 95th Cong., 1st Sess. 14–16 (1977); 123 Cong. Rec. H. 9977, daily ed., September 23, 1977.)

The Department of Labor's proposed interpretation, based on this legislative history, resulted in numerous comments from the public. These comments have been detailed and useful. They have convinced the Department that its proposed interpretation is in need of certain modifications and clarifications. Accordingly, as is explained in more detail below, several changes have been made in the interpretation.

In the preamble to the proposed interpretation, the Department discussed seven general questions that had arisen with respect to employee benefit plans under the ADEA, and it then explained how it had proposed to resolve them. The discussion below of the various comments received by the Department is grouped under the same headings. In addition, two other important issues raised by the comments are discussed below under headings 8 and 9 in the preamble. The first of these issues is whether the failure of the ADEA to preempt State age discrimination laws insulates such laws, to the extent that they relate to employee benefit plans, from the preemption provisions in section 514 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144.

The second issue not discussed originally, but which is discussed below, is the effective date of this amendment to the interpretative bulletin.

1. *What Kinds of Employee Benefit Plans Fall Within Section 4(f)(2)?*

The preamble and the proposed interpretation stated that section 4(f)(2) applies only to plans in which age is an actuarially significant factor in plan design, and used the example of group term life insurance to illustrate the kind of plan encompassed by this principle. The original proposal also stated that age is not an actuarially significant factor in the design of time off with pay plans, such as paid vacations and paid sick leave.

The comments on this aspect of the proposed interpretation were not numerous. Several commenters asserted that age is a significant actuarial cost factor in sick leave plans, particularly where such plans are separately insured. These same commenters questioned whether the Department, in formulating its position, had overlooked such plans or had intended to challenge the validity of the cost data with respect to such plans. The commenters requested clarification of the Department's position with respect to this issue.

The Department's original statement was intended to refer to those numerous paid sick leave plans which are not insured. Such plans do not fall within section 4(f)(2). An uninsured paid sick leave plan, like a paid vacation plan, is

simply not an "employee benefit plan such as a retirement, pension, or insurance plan" as described in section 4(f)(2). However, there may be certain insured sick leave plans whose design is such that age is an actuarially significant cost factor. In terms of their cost, these plans are frequently similar to short-term disability plans. Where such plans exist and where the employer can show clearly that the cost of providing older workers with the same benefits as younger workers is higher because of age, then the benefits for older workers can be correspondingly reduced, in accordance with the principles contained in this § 860.120. The final interpretation reflects this approach by describing as "uninsured" those paid sick leave plans which are outside the scope of section 4(f)(2).

Other comments requested that the Department define the term "employee benefit plan" in order to make clear what plans fall within section 4(f)(2) and what plans do not. Some commenters suggested using the same definition as in section 3(3) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1002(3). In the Department's view, however, it would not be appropriate to use the ERISA definition, because it encompasses plans which are maintained to provide vacation benefits, prepaid legal services and certain other benefits whose cost does not increase with the age of the employee participant. The Department believes that it is sufficient to rest with its original statement, in view of the change in the reference to paid sick leave.

A major part of the comments received pointed out the absence of any discussion in the proposed interpretations of employee-pay-all plans which employers sometimes offer to their employees. It is clear that an employee-pay-all plan is subject to the provisions of section 4(a)(1) of the Act, since such a plan is one of the "terms, conditions, or privileges of employment" with respect to which discrimination on the basis of age is forbidden. Regardless of who pays for an employee benefit plan, it is available to employees of the employer and is therefore governed by the section 4(a)(1) prohibition against discrimination.

However, it does not follow that the level of benefits available to older workers under an employee-pay-all plan must be no less than those available to younger workers. Section 4(f)(2) of the ADEA permits a reduction in the level of benefits for older workers where the cost of supplying the same level of benefits to older workers as to younger workers would be higher. There is no reason why a reduction in the level of benefits for older workers which would be permissible under a plan paid for in whole or in part by an employer should not also be permissible under an employee-pay-all plan. Accordingly, the interpretation takes the position that section 4(f)(2) applies to employee-pay-all plans. In such a plan, benefits for older workers may be reduced to the same extent and according to the same principles as apply to employee-paid plans.

The application of the ADEA to employee-pay-all plans raises not only the question of the level of benefits; it raises also the question of the costs paid by employees for those benefits. Regardless of whether benefits for older workers under an employee-pay-all plan are at the same level as or lower than benefits for younger workers, older workers cannot be required to pay more for the particular level of benefits they receive than the actual cost of those benefits. Requiring older workers to pay more than the actual cost of the benefits is plainly discrimination based on age, and no provision of the ADEA excuses such a practice.

These positions with respect to employee-pay-all plans are reflected in the interpretation below.

2. *What Kinds of Cost Data May Be Relied on To Show That Age is an Actuarially Significant Factor in Plan Design?*

The proposed interpretation took the position in § 860.120(d)(1) that an employer may rely on data which show the actual cost to him of providing the particular benefit in question. The proposal also stated, however, that where such data do not exist or where the universe of employees is too small to be statistically significant, reasonable actuarial data on benefit costs for similarly situated employees can be relied on.

This proposed interpretation, in requiring that employers rely on their own cost data in most instances, was intended to prevent employers from relying on other cost data which do not accurately reflect their own experience, even though such other data might be accurate with respect to other employers or groups of employers. In other words, the approach was designed to prevent potential abuses in the use of cost data.

Those who commented on this aspect of the proposed interpretation had several points to make. Some commenters noted that the Department's approach would prevent an employer from relying on cost data for a larger group of similarly situated employees (except where an employer's own workforce is too small to be statistically significant). This approach was criticized as being unnecessarily restrictive, particularly since a larger group of similarly situated employees would be likely to be more representative of a particular employer's experience over the years. In this connection, some commenters observed that an employer forced to rely on its own cost experience might have to make adjustments in benefit levels each year, as a result of an unusually high or low number of deaths, illnesses or other events insured against in the previous year.

Another commenter requested that the Department state explicitly that where little or no reliable cost information is available—as may be the case with respect to some benefits after age 65—reasonable projections from cost data for younger ages be permitted.

After reviewing the comments and considering the orginal proposal afresh, the Department has decided to permit an employer to make adjustments in benefits on the basis of any reasonable data on benefit costs. In order to be considered reasonable, the data relied upon must reflect approximately the actual cost to the employer, over a representative period of years, of the benefits in question. Under this standard, an employer may rely on his own cost data for a representative period of years; this longer period will serve to reduce the cost impact of unusually high or low incidences of events insured against in a single year. An employer may also rely on cost data for a larger group of similarly situated employees. However, where an employer which is a self-insurer, or which is experience-rated by an insurance company, incurs costs which are significantly different from costs for similarly situated employees, the cost data for the similarly situated employees will not be considered reasonable as a basis for approximating the particular employer's benefit costs. This approach is adopted in § 860.120(d)(1) below.

The interpretation also makes clear that where reliable cost information is not yet available, reasonable projections may be made from existing cost data.

3. *May comparisons of benefit costs at different age levels be made with respect to the benefit package as a whole, or must the cost comparison be made on a benefit-by-benefit basis?*

The proposed interpretation required that all cost comparisons be made on a benefit-by-benefit basis, not on an overall "benefit package" basis. The

rejection of the "benefit package" approach was based on two major concerns: (1) that its application could deprive individual employees of benefits of particular value to them in a way unjustified by the age-related costs of those benefits, and (2) that it would be a less workable standard for compliance.

Comments in this area have sharply questioned the appropriateness of the Department's proposed rejection of the benefit package approach. These comments have also urged that if the Department persists in the benefit-by-benefit approach, it should clarify what it means by a "benefit."

In advocating a benefit package approach, commenters made several general points. First, several commenters stated that the legislative history does not explicitly rule out a benefit package approach; its only explicit requirement is that payments made or costs incurred by employers for employee benefit plans for older workers must be no less than for younger workers.

Second, numerous commenters contended that the more restrictive benefit-by-benefit approach would deprive not only employers, but also employees (including older employees), of the flexibility to design a package of fringe benefits responsive to their particular needs. Specifically, an employer who makes equal contributions at all age levels for each fringe benefit whose cost goes up with age may find that his employees want a package of benefits forbidden by the proposed interpretation.

Thirdly, commenters emphasized that group insurance plans of any type cannot be tailored to fit the individual needs of each employee. Generalities based on the needs of average or typical employees must be used in the design of such plans.

Finally, various commenters asserted that the purported convenience of being able to determine compliance with section 4(f)(2) by examining each employee benefit plan in isolation was an insufficient basis on which to forbid the use of a benefit package approach.

After a careful review of the legislative history in the light of these various comments, the Department has concluded that an exclusive adherence to the benefit-by-benefit approach is not warranted.

Although the legislative history does not compel a benefit-by-benefit approach exclusively, there is clear support for such an approach. Thus, Senator Javits described benefit plans one by one in indicating the compliance standard applicable to "a retirement, pension *or* insurance plan * * *" (124 Cong. Rec. S 4450, daily ed., March 23, 1978, emphasis added). Also in 1978, Congressman Waxman, apparently referring to health insurance, condemned reductions for older workers "[i]n the absence of actuarial data which clearly demonstrates that the costs of *this* service are uniquely burdensome to the employer" (124 Cong. Rec. H 2277, daily ed., March 21, 1978, emphasis added). Moreover, the 1978 legislative history specifies a particular rule with respect to one type of benefit—retirement or pension benefits—without reference to other benefits or costs. All of these indications point to a benefit-by-benefit approach.

Nevertheless, this legislative history need not be read as rejecting a benefit package approach altogether, since it does not appear that Congress had the opportunity to consider the matter fully. Certainly there is no explicit rejection of a benefit package approach.

Moreover, the language and purposes of the act itself suggest that in some circumstances a benefit package approach should be permitted. The language of section 4(f)(2) condones a benefit arrangement which is "not a subterfuge to evade the purposes of [the] Act," and section 2(b) declares that one of those purposes is "to help employers and workers find ways of meeting problems arising from the impact of age on employment." One way of "meeting problems arising from the impact of age on employment" is to make sure that there is enough flexibility under section 4(f)(2) so that (1) older workers can continue to have the same level of certain fringe benefits which are particularly valuable to them as do younger workers, and (2) employers can avoid higher fringe benefit costs for older workers which would otherwise result by reducing the level of some other benefit or benefits more than the benefit-by-benefit approach would permit. This approach would meet the purposes of both section 2(b) and section 4(f)(2), provided that the costs of the benefits were no less for older workers than for younger workers, and provided that the benefits provided were not a subterfuge to evade the purposes of the ADEA.

Accordingly, the interpretation permits a benefit package approach, which is subject to certain restrictions which are described in detail under heading 7 of this preamble, as well as in § 860.120(f). These restrictions are designed to assure that the greater flexibility of the benefit package approach is used to provide older workers with a benefit package which meets their needs at least as well as the benefit-by-benefit approach, if not better.

Benefit-by-Benefit Approach

In accepting the benefit package approach, the Department does not thereby reject the benefit-by-benefit approach. The benefit package approach, even with its restrictions, is designed to afford greater flexibility in the design of employee benefits than the benefit-by-benefit approach would have provided, but many employers may find that the benefit-by-benefit approach is a simpler means by which to assure compliance with the ADEA. For this reason, the precise application of the benefit-by-benefit approach must be defined.

Many comments indicated uncertainty or confusion as to the precise meaning of a "benefit" under the benefit-by-benefit approach. Some commenters seemed to believe that the Department intended a "plan-by-plan" approach. Many others suggested that the approach be understood to look at benefits on an "event-by-event" basis (that is, to take together all benefits available to an employee for a particular event—death, disablement, etc.). The Department acknowledges the ambiguity of the proposed interpretation. The Department also acknowledges that it anticipated a somewhat flexible definition of a "benefit" which would have permitted the substitution for older employees of similar benefits meeting the same basic need.

The Department now believes, however, that the desired flexibility—that is, flexibility that will better meet the needs of employees—may be and should be justified on a benefit package approach. The Department therefore now takes a strict view of a "benefit" under the benefit-by-benefit approach. The Department specifically rejects the suggestion that the benefit-by-benefit approach should be understood as an "event-by-event" approach which would ignore differences in the forms of benefits available for a particular event. Adjustments in benefits under the benefit-by-benefit approach are to be made in the amount of the benefit, not in its form. Where benefits *are* different in form or otherwise, they must stand up to a benefit package analysis. This is all explained more fully under heading 7 below and in § 860.120(f).

(4) *May the Level of a Benefit be Reduced on the Basis of the Average Cost of the Benefit for all Employees Within an Age Range (Such as 65 to 70 years Old), or Must the Cost of the*

Benefit be Calculated on a Year-by-Year Basis?

The proposed interpretation took the position in § 860.120(d)(3) that cost comparisons and adjustments must be made on a year-by-year basis. The purpose behind this approach was to avoid a large and sudden reduction in benefits for employees reaching a certain age which could not be justified by cost considerations with respect to that age.

The great majority of comments received took issue with this interpretation. Many comments noted that it has long been the practice in the insurance industry to price insurance on the basis of average costs in five-year age brackets, rather than on the basis of yearly costs. The same practice, it was pointed out, is reflected in section 79 of the Internal Revenue Code and Treasury Regulations thereunder. To change from the normal five-year average price approach to the Department's proposed approach, these commenters stated, would add to the administrative burden of maintaining such plans and of communicating changes in benefit levels to participants.

Several commenters also noted that under a five-year average cost approach, older employees within each age bracket would receive a *higher* level of benefits than under a year-by-year approach; conversely, younger employees within each age bracket would receive less. Accordingly, it was pointed out, the five-year bracketing approach, viewed in a broader perspective of an employee's total years of service with an employer, would be no more harmful to older employees than a year-by-year cost approach.

The Department has rejected an average cost approach based on periods of longer than five years. Some commenters suggested that a 10-year period be permitted, and others suggested that reductions in benefits at age 65 be based on the average cost of those benefits for a 25-year period (from ages 40 to 65). Such approaches, however, would lead to the drastic reductions in benefit levels at older age groups which the Department has sought to avoid.

Another comment requested that the interpretation make clear that cost-based reductions in benefit levels could start at any age—not just at age 65. (This comment may have been prompted by the example given in § 860.120(d)(3), which was of reductions starting at age 65.)

After reviewing the various comments and reassessing the original proposal, the Department has decided to permit up to a five-year average cost approach, which is reflected in the interpretation below. Of course, a year-by-year approach or any other approach using age brackets of less than five years is also an acceptable form of compliance. The interpretation also states explicitly that reductions in benefit levels, if cost-justified, may begin at any age. Examples of this approach are given in the interpretative bulletin itself.

5. *Where the Government pays for certain benefits to employees on the basis of age—such as Medicare beginning at age 65—may an employer to that extent cease to provide those same benefits under his employee benefit plan, even though as a result the cost to the employer of providing medical benefits to older employees may be less than for younger employees?*

The interpretation permits such coordination of benefits, even though the availability of the Government-paid benefits may be based on age, provided that, when the Government-paid benefits are included, older employees still enjoy no less of a benefit than younger employees. It is in the nature of many employee benefit plans to respond to individual needs, and it would seem reasonable for such plans to take into account the extent to which individual needs are met by other benefits provided by the Government. This principle applies not only to Medicare, but also to Social Security disability and old-age and other such government-provided benefits.

Some comments in this area have validly pointed out that "Government-paid" benefits are ultimately paid for by employees and employers as a result of payroll deductions, taxes and similar devices. The Department did not intend to imply otherwise in using that shortened expression to describe such benefits.

The basic position expressed in the proposed interpretation has not been changed, except insofar as the interpretation seemed to disapprove any adjustment in health insurance coverage which did not simply offset (or "carve-out") Medicare benefits actually paid from regular health plan benefits. As indicated in the specific discussion of health insurance below, the Department is taking the position that plans which "supplement" rather than "carve-out" Medicare benefits are permissible where the total health benefit for employees over 65 is no less favorable than that for employees under 65.

6. (a) *May an employer require that an older employee make greater contributions into a benefit plan as a condition of employment?*

The interpretation below, like the proposed interpretation, answers this question in the negative. The Department remains convinced that to impose such a requirement as a condition of *employment* would violate the special restrictions in section 4(f)(2). Such a requirement would force older workers, if they wanted to continue working, to accept less take-home pay as a result of higher contributions and in addition would impose an impermissible impediment to employment. Such a practice is illegal under the ADEA.

(b) *May an employer require that an older employee make greater contributions into a benefit plan as a condition of participation in the plan, in order for the employee to be able to receive the same level of benefits as a younger employee?*

The proposed interpretation answered this question in the negative, on the ground that the language and legislative history of section 4(f)(2) indicated that the provision contemplated adjustments in benefits, not adjustments in pay or in employee contributions which are a condition of participation in an employee benefit plan.

Upon reconsideration of this proposed position, and after reviewing comments, the Department of Labor has concluded that its original position is essentially correct. However, some refinements in that position are necessary, because in the Department's view there are very limited circumstances under which an older employee, in order to receive the same level of benefits as a younger worker, can be required, as a condition of continued participation, to contribute a greater amount than the younger worker.

In most situations, the Department continues to believe that a violation of the ADEA would occur if an older employee were required to contribute more than a younger employee for the same level of benefits. As indicated under heading 6(a) above, where participation in the employee benefit plan is *mandatory*, such a practice would violate the ADEA, because older workers, on the basis of age, would have no option but to receive less take-home pay than younger workers.

Where participation in the employee benefit plan is *voluntary*, somewhat different considerations apply. In such a situation, older workers are free to avoid reductions in take-home pay by declining to participate in the employee benefit plan. However, even where older workers voluntarily agree to participate in such a plan, the plan would not be

considered lawful where the cost of such participation to older workers is discriminatory on the basis of age. In order to avoid discriminatory costs, the proportion of the total premium borne by older workers cannot be more than that borne by younger workers.

The application of this principle can be illustrated with respect to the three different contribution arrangements for employee benefit plans in which participation is voluntary. The first such arrangement is one in which the employee-participant pays for the entire benefit in question. In such employee-pay-all plans, as noted under heading (1) above, it would not by unlawful to require older workers to contribute the full amount of the cost increase with age. In such a plan, older employees are treated no less favorably than younger employees, since all participants in the plan are required to pay the entire cost of the benefit, regardless of age. Employees are simply denied the advantage of continued membership in the plan if they are unwilling or unable to pay their own way like everyone else.

The second type of contribution arrangement in employee benefit plans in which participation is voluntary is the non-contributory (or "employer-pay-all") plan. In such plans, older employees cannot be required to contribute towards any of the age-related cost increase. If no employee-participants are required to make any contributions, there is obviously no age-based discrimination against older workers. However, if older workers are required to make contributions but younger workers are not, a violation of the ADEA would result. Such a requirement is discriminatory, even though the employer's contribution is no less for older than for younger workers, because in order to obtain any benefit from that contribution older workers must put in money of their own (that is, receive less take-home pay) whereas younger workers need not. (Of course, as explained elsewhere, an employer can reduce the level of benefits for older workers in order to avoid age-related increases in costs.)

The third type of contribution arrangement in employee benefit plans in which participation is voluntary is the contibutory plan, in which the employer and the employee share the premium cost. In such a plan, in order to avoid discrimination based on age, the proportion of the total premium borne by older workers cannot be more than that borne by younger workers. This principle can perhaps best by illustrated by a concrete example.

Assume a contributory group insurance plan to which the employer and the employee each contribute 50 percent of the total premium of $20 per month per employee, during a certain five-year age range. Further assume that in the next five-year age range the total premium increases to $30 per month per employee. The employee contribution could be required to increase to as much as $15 per month, since this amount is no more than 50 percent of the total premium cost, as is paid by the younger workers. The employer's contribution could not be less than $15 per month. It could not be lower—such as $10—since then the employee contribution would have to be greater than 50 percent of the total premium cost—in the example, $20. This would be discriminatory because in order to obtain any benefit from the employer's contribution older employees would have to match it with $2 of their own (out of their take-home pay) for every $1 of the employer's contribution, whereas younger employees would only have to match it dollar-for-dollar. The only way the employer contribution could be held at $10 would be by decreasing the level of benefits so that the total premium remained at $20 and the employee contribution at $10. (Alternatively, the employer could decrease coverage by a lesser amount—for example, so that the total premium increased to just $24. The employee contribution could be required to increase in relation to the resulting total increase—in the example, to up to $12.)

However, as the interpretation makes clear, older employees could be given the option, as individuals, to make the additional contribution necessary to prevent the reduction in benefits otherwise justified. Thus, the employee contribution could be permitted at employee option, but could not be required as a condition of participation in the plan, to increase to $20 in order to fund, along with the $10 employer contribution, the unreduced level of benefits whose total cost is $30.

7. How Would Section 4(f)(2), As Amended, Apply to Various Employee Benefit Plans?

The application of section 4(f)(2) to various employee benefit plans depends on whether reductions in benefit levels are justified by means of the benefit-by-benefit approach or by the benefit package approach. Under the benefit-by-benefit approach, as outlined above, reductions in the level of one benefit—such as group term life insurance—must be justified by an increase in the cost of that particular benefit, regardless of any adjustment in the levels of other benefits. The discussion in part A below describes the limits on reductions in benefit levels for four of the most common types of employee benefit plans—group term life insurance, group health insurance, long-term disability, and retirement plans—under the benefit-by-benefit approach. Employers who meet these standards (as set forth more precisely in § 860.120(f)) will be considered in compliance with section 4(f)(2). Although not specifically discussed herein, other plans within section 4(f)(2), such as short-term disability and accidental death and dismemberment, are subject to the same general principles.

Where reductions in any individual benefit are greater than those permitted under the benefit-by-benefit approach, such reductions must meet the standards of the benefit package approach. These standards are described in part B below.

A. Benefit-by-Benefit Approach.—(1) *Group term life insurance.* Where the level of group term life insurance benefits is reduced, on the basis of age, in direct correlation to the age-based increase in cost, no violation of the ADEA will result. The reduction may be made on the basis of average costs over a period of up to five years, but no longer. Where the level of group term life insurance benefits is based on the employee's wages or salary, such as two times base pay, increases in the cost of such coverage for older workers which are caused by increases in wages or salary cannot be taken into account. The reason for this is that such increases are not directly related to age. The interpretation sets forth examples of permissible adjustments in the level of group term life insurance benefits.

(2) *Health insurance.* It is still the Department's understanding that ordinarily health insurance coverage does not vary significantly with age up to age 65. Where employees are not now subject to mandatory retirement at that age, coverage after that age is almost invariably reduced to take account of Medicare. In view of the availability of Medicare starting at age 65, the interpretation takes the position that reductions in total health benefits (Medicare plus benefits from other sources) for employees age 65 to 70 will generally not be justified.

Comments and hearing testimony in this area have emphasized that there is more than one approach to the adjustment of health insurance coverage to take account of Medicare. The Department clearly intended to permit what is called a "carve-out" approach, under which regular health plan benefits are directly offset by benefits paid under

Medicare. Under this approach employees over 65 receive the same total health benefits as those under 65.

Other common approaches do not simply offset Medicare benefits actually paid but rather attempt to anticipate what will be paid under Medicare and supplement them with benefits which Medicare is not anticipated to pay. Under these approaches, which might be generally referred to as "supplement" approaches, employees over 65 might not receive the same total health benefits as those under 65: of some benefits (for example, professional service for which Medicare pays less than anticipated) they may receive less, and of some benefits (for example, prescription drugs not covered by either Medicare or the regular health plan but covered by the "supplement" plan) they may receive more.

Comments and hearing testimony have suggested that "supplement" approaches are used rather than the "carve-out" approach for administrative reasons, that they are not based on age stereotypes, and that they are not regarded as necessarily less favorable to employees. The Department takes the position that such Medicare "supplement" plans are a permissible alternative to a "carve-out" plan, provided that (1) their cost to the employer is no less than a "carve-out" plan would be, and (2) taken with Medicare benefits, they provide no less favorable benefits on an overall basis than a "carve-out" plan.

The specific question has been raised whether, in adjusting health insurance benefits to take account of Medicare, an employer may assume that eligible employees have taken advantage of available Medicare coverage. The Department takes the position that employers may not make such an assumption, unless they inform each eligible employee of the need to apply for Medicare coverage and provide any necessary assistance for making an application for benefits. Furthermore, where the employer's regular health plan requires no employee contribution or an employee contribution less than that required for Medicare "Part B" coverage, the employer must pay or contribute toward the "Part B" contribution so as to make the total benefits available to employees over 65 on the terms on which they are available to employees under 65. However, the employer's total contribution for Part B and the carve-out or supplemental plan would not have to be greater than the employer's highest contribution for health benefits for employees of any age under 65.

Some comments have suggested that some employers may be able to prove that despite the availability of Medicare their health insurance costs are higher for employees age 65 to 70 than for any younger employee group. Presumably any such employers would be ones with unusually comprehensive health insurance plans. In any case, the burden will be on any employer which reduces total health benefits for employees age 65 to 70 to produce sound and specific costs data to justify the reduction.

(3) *Long-term disability.* The proposed interpretation stated that age-based reductions in the level of benefits under long-term disability plans are permissible only where justifiable by age-related cost considerations. To supplement this position two alternatives were stated and comments were solicited with respect to the reasonableness of either or both. The first approach prohibited the cutting off of long-term disability benefits, on the basis of age, before age 70. The second alternative allowed benefit payments under long-term disability plans to cease at age 65 if the employee was disabled at age 60 or less, or to cease after five years (except that no payments need be made beyond age 70) with respect to disabilities occurring after age 60. A detailed explanation was offered for each of these alternatives in the supplementary information accompanying the proposed interpretation.

Almost every comment received by the Department offered views on the subject of long-term disability benefits. Most of these pointed out (as the Department was aware) that both alternative interpretations would have treated as unlawful the past practice under these plans of ceasing benefits at age 65 or at the age of eligibility for a full actuarially unreduced pension (if that age was other than age 65). Under this practice, workers who were disabled after age 65 or after normal retirement age would receive no long-term disability benefits at all. Thus, the employer would incur no long-term disability costs for such employees, whereas he would incur costs for younger employees. Section 4(f) (2) does not permit this treatment of older workers under the benefit-by-benefit approach, since workers can now continue working until age 70. The past practice would also adversely affect workers who are disabled just before age 65 or normal retirement age. Their benefits might cover only a few months, whereas workers who are disabled somewhat earlier would receive benefits for several years. Under a benefit-by-benefit analysis, this difference in treatment cannot be justifed under section 4(f) (2).

The Department has reassessed the two proposed alternatives thoroughly, and has concluded that although both are acceptable means of compliance, they are not the only options available.

The first alternative, in forbidding a cut-off in disability benefit payments until age 70, would have permitted an employer to avoid age-based benefit cost increase only by reducing the *level* of benefits. Another way of adhering to section 4(f) (2) cost justification principles is to reduce the *duration* of long-term disability payments. Under this approach, the minimum required duration of disability payments would depend upon the age at which an employee is disabled. For example, suppose an employee who is disabled at age 35 is entitled to long-term disability payments until age 65. In order to satisfy section 4(f) (2), the cost to the employer of insurance providing disability payments for an employee who is disabled at age 45, for example, must be no less than the cost to the employer of disability insurance for the 35-year-old. The same rule would apply to employees disabled at any other age.

The final interpretation set forth below, reflecting this approach, permits an employer to cut off disability payments at age 65 (or, for example, at normal retirement where that is not age 65) for workers who are disabled at relatively early ages. However, in order to assure equal costs in support of workers who are disabled at relatively later ages, the duration of their disability payments may have to extend beyond age 65. For any such older worker who is disabled before age 70, the employer must expend in support of his or her disability coverage an amount no less than the greatest amount expended in support of coverage for any younger worker. Where equal costs in support of disability coverage for older workers result in lesser benefits for such workers, the lesser benefits can be in the form of a shorter duration of benefits but at the same level as for younger workers.

A concrete example of this approach can be given. Suppose an employer, in line with a common practice in the past, cut off long-term disability coverage at age 65 for workers disabled at any age before age 65. It is likely that the greatest cost of such a plan, in terms of net annual claims costs, was for workers who were disabled at about age 61. (After age 61, the greater the age of the employee at the time of disablement, the less the cost of coverage until age 65,

because the duration of the disability payment declines more rapidly as a function of age than the probability of disablement increases.) In order to assure that workers who are disabled after age 61 have equal costs expended in support of their long-term disability coverage, their coverage must extend beyond age 65. The extent of the coverage depends on the age at which they are disabled and the rate of disablement at that age.

Statistics on the rate of disablement for employees over age 65 are scanty, but data are available for employees disabled just before age 65. Some information on this subject came from a comment prepared by the insurance company which provides group long-term disability insurance to more employers than any other insurer in the United States. Although the Department of Labor has not independently verified the accuracy of the insurance company's data or the assumptions on which they were computed, the data indicate how the duration of benefits could be reduced to avoid increases in costs. For any employer who cuts off long-term disability coverage at age 65 for workers who are disabled at age 61 or younger, the greatest cost expended for this benefit, if applied to workers disabled at later ages, would yield the following durations of benefits:

Age at disablement	Duration of benefits (in years)
61 or younger	To age 65
62	3½ years
63	3
64	2½
65	2
66	1¾
67	1½
68	1¼
69	1

If these statistics are based on reasonable actuarial data and reasonable extrapolations therefrom, then a long-term disability plan which provides at least this duration of benefits would be in compliance with section 4 (f) (2) under a benefit-by-benefit analysis. Thus, the Department's proposed second alternative, although it was not originally suggested on the basis of cost data, would be in compliance with section 4(f) (2). There are clearly other possible forms of compliance which are likewise somewhat more generous than the data would minimally require. For example, a plan might provide for benefits to age 65 or for four years, whichever is later (except that no benefits would have to extend past age 70). Another plan might provide for benefits to age 67 or for three years, whichever is later (except that no benefits would have to extend past age 70).

(4) *Retirement plans.* Comments and hearing testimony in this area have focused largely on the treatment of defined contribution plans. (The term "defined contribution plan" as used herein is synonymous with individual account plan.)

The proposed interpretation took the position that a defined contribution plan which was not "supplemental" could provide for the cessation of employer contributions after normal retirement age. Commenters have taken a variety of positions, including the following:

(1) That the distinction between "supplemental" and other defined contribution plans ought to be abandoned and all such plans treated alike, and

(2) That all "money purchase" plans ought to be deemed not to be "supplemental" and all other defined contribution plans (for example, profit-sharing plans) deemed "supplemental."

After reviewing these and other comments, the Department has concluded that, although in need of some clarification, the proposed interpretation was essentially correct.

The Department believes it should not ignore the clear legislative history which distinguishes between "supplemental" and other plans. In the absence of any indication that a specific technical meaning was intended, the Department has attempted to give the word "supplemental" its ordinary meaning. In response to specific comments and questions, the Department wishes to clarify its interpretation on one point, consistent with the ordinary meaning of the word "supplemental." The point concerns the situation where an employer has more than one retirement plan, but no one employee participates at one time in more than one plan. While the proposed interpretation might have been read to say otherwise, the Department would not in that situation deem any plan to be "supplemental," since as to any employee no plan "supplements" another. However, when any one employee participates at one time in more than one plan, as to that employee every plan but one is supplemental.

Another point raised by the comments relating to "supplemental" plans concerns what are sometimes called "floor" plans. A floor plan has a defined contribution component, but if the benefits available from that component are below a certain "floor" level, then extra benefits up to the "floor" level are provided. Some comments have suggested that a "floor" plan is a single plan with no "supplemental" plan involved; other comments have suggested that it is two plans with the defined benefit plan being "supplemental." On the basis of information now available to the Department of Labor, it will not necessarily take the position that a floor plan constitutes more than one plan, nor is it in a position to state an appropriate rule on floor plans generally.

Several comments asserted that the proposed interpretation appeared to be inconsistent with ERISA because it would have permitted an employer maintaining a non-supplemental defined contribution plan to exclude from participation in such a plan, on the basis of age, any employee who was hired after reaching normal retirement age. In this connection, section 202(a)(2) of ERISA (29 U.S.C. 1052(a)(2)) provides, in pertinent part:

> No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age, unless—
>
> (A) the plan is a—(i) defined benefit plan, or (ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury) * * *.

(See also section 410(a)(2) of the Internal Revenue Code, 26 U.S.C. 410(a)(2).) To the extent that "participation" within the meaning of section 202(a)(2) of ERISA would entail employer contributions, adherence to the rule provided in the legislative history of the ADEA Amendments of 1978 could not justify non-compliance with this (or any other) provision of ERISA. The interpretation states merely that it is not a violation of the ADEA to follow the rules it sets forth. However, in order to avoid any confusion on this point, § 860.120(f)(4) has been revised to state simply that no contributions need be made to a non-supplemental defined contribution plan on behalf of an employee hired after normal retirement age. Any specific determination as to compliance with the provisions of ERISA dealing with "participation" in defined contribution plans or as to compliance with Section 410 of the Code must be made by the Internal Revenue Service.

Some comments have raised questions as to the treatment of investment gains and losses and employee termination forfeitures in defined contribution plans. Because the legislative history refers only to the cessation of contributions after normal retirement age, the Department takes the following positions with respect to defined contribution plans:

(1) Older employees, including those working past normal retirement age, should receive no less favorable treatment because of age with respect to investment gains and losses than younger employees.

(2) Where employee termination forfeitures are not used to reduce employer contributions, they should not be allocated less favorably because of age to older employees, including those working past normal retirement age, than to younger employees.

With respect to defined benefit plans, many comments have raised questions as to the treatment of salary increases and benefit improvements after normal retirement age. The 1978 legislative history indicates an understanding that no adjustment to an accrued benefit under a defined plan is required on account of employment after normal retirement age. Accordingly, the interpretation takes the position that employees working past normal retirement age need not receive the advantage from salary increases and benefit improvements that other active employees receive.

It would not follow, however, that employees working past normal retirement age could be denied the advantage of a benefit improvement for current retirees. While the ADEA does not require that an employee get a greater benefit by choosing to work rather than to retire after normal retirement age, it does not permit an employee to be given a lesser benefit because of that choice, although the benefit may be paid later (beginning at the later actual retirement age). (Similarly, the payment of benefits may be suspended during reemployment. See ERISA section 203(a)(3)(B). See also 43 FR 59098, December 19, 1978.) To provide a lesser (and not merely later) retirement benefit would obviously discourage employees from continuing their employment and would be deemed a subterfuge to evade the purposes of the Act.

Questions have also been raised about the integration of Social Security benefits with defined benefit plan benefits. The Department takes the position that such integration is permissible, consistent with the general principles on the coordination of benefits where Government-paid benefits are available, with one limitation. For employees who actually retire at normal retirement age, the general practice is not to decrease defined benefit plan benefits because of a subsequent increase in Social Security benefits. (See ERISA Section 206(b).) In light of the principle discussed in the previous paragraph, the Department also takes the position that where an employee working past normal retirement age is denied because of age any upward adjustment in defined benefit plan benefits which is given younger active employees, that employee may not suffer any reduction in plan benefits because of an increase in Social Security benefits which current retirees would not suffer. Thus, where years of service in a benefit formula are "frozen" because of age at normal retirement age, the offset from plan benefits of Social Security benefits must generally also be "frozen" at that age. On the other hand, a plan need not "freeze" the Social Security offset at any age prior to actual retirement for employees who are given the full advantage of benefit adjustments (due to greater years of service, salary increases and benefit improvements) up to actual retirement age.

Finally, questions have been raised as to whether retirement benefits need to be paid to employees receiving long-term disability benefits who reach normal retirement age. Some comments have stated that an employee receiving both disability and retirement benefits might receive more than his or her full working salary. The legislative history makes clear that retirement benefits need not commence until actual retirement. The interpretation takes the position that an employee receiving long-term disability benefits as a salary replacement may be deemed not to have "actually retired" and therefore need not receive both benefits simultaneously.

B. *Benefit Package Approach.* A benefit package approach to compliance under section 4(f)(2) offers greater flexibility than a benefit-by-benefit approach. In essence it permits deviations from a benefit-by-benefit approach so long as the overall result is (1) no lesser cost to the employer and (2) no less favorable benefits for employees. As previously noted, part of the legal basis for a benefit package approach is the statutory purpose "to help employers and workers find ways of meeting problems arising from the impact of age on employment." In order to assure that such an approach is used for the benefit of older workers and not to their detriment, and is otherwise consistent with the legislative intent, it must necessarily be subject to limitations. These limitations are set forth in the interpretation and explained below:

(1) *A benefit package approach may apply only to employee benefit plans which fall within section 4(f)(2).* In other words, a benefit package approach does not expand the intended scope of section 4(f)(2).

(2) *A benefit package approach may not apply to a retirement or pension plan.* Such plans are of course within the scope of section 4(f)(2). However, as previously noted, the 1978 legislative history sets forth specific and rather comprehensive rules governing such plans. Unlike the general principles with respect to other plans under section 4(f)(2), these rules are not tied to actuarially significant cost considerations but are intended to deal with the special funding arrangements of retirement or pension plans, which were of concern to Congress. See, e.g., S. Rept. 95–493, 95th Cong., 1st Sess. (1977), pp. 13–16. It would be a departure both from the general principles of section 4(f)(2) and from the specific legislative history to apply a benefit package approach, which is based on the general cost principles, to a retirement or pension plan, which is specifically governed by other rules.

The interpretation therefore takes the position that variations from the special rules are not justified by variations from the benefit-by-benefit approach in other benefit plans. Thus, for example, an employer who does not make an age-based reduction in group term life insurance which could be justified under a benefit-by-benefit approach may not justify on that (or any other) basis an age-based reduction in employees' annual accrual of pension benefits prior to normal retirement age. Similarly, the interpretation takes the position that variations from the special rules governing pension and retirement plans do not justify variations from the benefit-by-benefit approach in other benefit plans. For example, an employer who does not cease pension accrual at normal retirement age (as a benefit-by-benefit approach would permit) may not justify on that basis a reduction in group term life insurance benefits greater than would be justified under a benefit-by-benefit approach.

(3) *A benefit package approach may not be used to justify reductions in health benefits greater than would be justified under a benefit-by-benefit approach.* Such benefits would appear to be a particular importance to older workers in meeting "problems arising from the impact of age" and were clearly of particular concern to Congress. Congressman Waxman stated in the 1978 legislative history that "[w]hile the conference committee did not specifically address the status of health benefits to older workers protected under this act," reductions should not be made "[i]n the absence of

actuarial data which clearly demonstrates that the costs of this service are uniquely burdensome to the employer" (124 Cong. Rec. H 2277, daily ed., March 21, 1978, emphasis added).

On the basis of this legislative history and the comments received on the original proposal, the interpretation below takes the position that the "benefit package" approach may not be used to reduce health insurance benefits by more than is warranted by the increase in the cost to the employer of those benefits alone. This position is set forth in § 860.120(f)(2). Any greater reduction would be deemed "a subterfuge to evade the purposes of [the] Act."

(4) *A benefit reduction greater than would be justified under a benefit-by-benefit approach must be offset by another benefit available to the same employees.* Thus, for example, a benefit available to all employees may not be "traded off" for a benefit available to relatively few. Otherwise, some employees could suffer clear age discrimination in that they would be deprived because of age of one benefit without any offsetting benefit being made a avilable to them.

(5) *Employers who wish to justify benefit reductions under a benefit package approach must be prepared to produce data to show that those reductions are fully justified.* Thus employers must be able to show that deviations from a benefit-by-benefit approach do not result in lesser cost to them or less favorable benefits to their employees. Obviously, the greater the deviation from a benefit-by-benefit approach, the greater will be the burden on the employer to show that older employees are being helped rather than hurt.

8. *What is the relationship of the ADEA and ERISA to State age discrimination laws?*

The ADEA does not preempt State age discrimination laws. See Section 14(a), 29 U.S.C. § 633(a). See also S. Rept. No. 95–493, 95th Cong., 1st Sess. (1977), p. 5–7. The question has arisen in the comments whether such State laws—to the extent that they relate to employee benefit plans—are nonetheless superseded under section 514 (a) of ERISA, 29 U.S.C. § 1144(a). This question was discussed by Senators Javits and Williams during floor consideration of the 1978 ADEA Amendments:

> Mr. JAVITS. Finally, Mr. President, it is understood that just as these age discrimination amendments do not interfere with ERISA, State age discrimination in employment laws also are not to interfere with ERISA. The ADEA itself, as pointed out in the Senate Report, does not preempt such State age dis [crimination laws. However, there should] be no question that the preemption rules of section 514(a) of ERISA shall be determinative regarding the preemption of State age discrimination laws which directly or indirectly establish requirements relating to employee benefit plans.
>
> ERISA's preemption of State age discrimination laws shall be determined without regard to section 514(d) of ERISA or the fact that the ADEA does not itself preempt State law.
>
> Mr. WILLIAMS. I concur in my friend's observations as they accurately state the controlling principles of law in this regard. Federal law will preempt State age discrimination statutes only to the extent that those laws relate to an employee benefit plan described in section 4(a) of ERISA and are not exempt under section 4(b) of ERISA. [124 Cong. Rec. S4451, daily ed., March 23, 1978. The portion in brackets was inadvertently omitted from the March 23, 1978, statement, but it was corrected on April 4, 1978 (see 124 Cong. Rec. S4767).]

9. *Effective Date and Enforcement.*

This interpretation indicates the construction of the law which the Department of Labor believes to be correct and which will guide it in the performance of its administrative and enforcement duties under the Act unless and until it is otherwise directed by authoritative decisions of the Courts or concludes, upon reexamination of the interpretation, that it is incorrect. See 29 CFR 860.1.

This interpretation is effective immediately. It replaces as of this date the less specific interpretation in old § 860.120.

With respect to benefit practices *prior* to this date, no employer will be subject to back wage liability for failure to comply with the new interpretation if the employer can prove that the noncompliance was "in good faith in conformity with and in reliance on" the old interpretation or on an opinion letter of the Wage and Hour Administrator. See section 10 of the Portal-to-Portal Act of 1947, as amended, 29 U.S.C. 259, which applies to actions under the ADEA. ADEA section 7(e)(1), 29 U.S.C. 626(e)(1).

As noted above, the old interpretation provided in relevant part:

> A retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of a older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage.

While the old interpretation was less specific than the new, the Department believes that some benefit practices could *never* be proved to have been in good faith in conformity with and in reliance on the old interpretation. One such practice would be a total cut-off on the basis of age of various benefits for employees between ages 40 and 65 or, since January 1, 1979, for employees between age 40 and 70.

With respect to benefit practices *after* the effective date of the new interpretation, appropriate enforcement policy will be determined on a case-by-case basis. Section 7(b) of the ADEA provides that before instituting any action, the Secretary of Labor shall attempt to eliminate any alleged unlawful practice and to effect voluntary compliance, through informal methods of conciliation, conference, and persuasion. 29 U.S.C. 626(b). Some comments have stated that it may be difficult to achieve prompt voluntary compliance with the new interpretation through any quick amendment of an employee benefit plan, particularly where such a plan is insured. These comments have emphasized the time involved in amending or creating insured employee benefit plans, particularly where changes cannot be made without the approval of a regulatory agency, such as a State insurance commission. This and other problems in achieving prompt compliance may appropriately be considered in the conciliation of individual cases. It will also be appropriate to consider whether prompt compliance could feasibly be achieved in spite of these problems through, for example, existing insurance products or partial self-insurance.

Finally, it should be noted that all the benefit practices specifically permitted under the proposed interpretation published September 22, 1978, would be in compliance with the final interpretation published now.

The Equal Employment Opportunity Commission, which will take on administrative and enforcement responsibility for the ADEA effective July 1, 1979, concurs with the interpretation and with this statement regarding enforcement.

This document was prepared under the direction and control of C. Lamar Johnson, Deputy Administrator, Wage and Hour Division. The principal authors were James B. Leonard, Counsel for Legal Advice, and Thomas J. Allen, Attorney, Office of the Solicitor, and Sandra K. Bollhoefer, Wage-Hour Analyst, Wage and Hour Division. They were assisted by staff from the Office of

the Solicitor and the Wage and Hour Division.

Accordingly, § 860.120 of Title 29, Code of Federal Regulations, is amended as follows:

§ 860.120 Costs and benefits under employee benefit plans.

(a) (1) *General.* Section 4(f)(2) of the Act provides that it is not unlawful for an employer, employment agency, or labor organization "to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such * * * employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individuals." The legislative history of this provision indicates that its purpose is to permit age-based reductions in employee benefit plans where such reductions are justified by significant cost considerations. Accordingly, section 4(f)(2) does not apply, for example, to paid vacations and uninsured paid sick leave, since reductions in these benefits would not be justified by significant cost considerations. Where employee benefit plans do meet the criteria in section 4(f)(2), benefit levels for older workers may be reduced to the extent necessary to achieve approximate equivalency in cost for older and younger workers. A benefit plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of benefits or insurance coverage. Since section 4(f)(2) is an exception from the general non-discrimination provisions of the Act, the burden is on the one seeking to invoke the exception to show that every element has been clearly and unmistakably met. The exception must be narrowly construed. The following sections explain three key elements of the exception: (i) What a "bona fide employee benefit plan" is; (ii) what it means to "observe the terms" of such a plan; and (iii) what kind of plan, or plan provision, would be considered "a subterfuge to evade the purposes of [the] Act." There is also a discussion of the application of the general rules governing all plans with respect to specific kinds of employee benefit plans. For a discussion of the provisions in section 4(f)(2) forbidding the failure to hire any individual or the involuntary retirement of any individual, see § 860.110 of this chapter.

(2) *Relation of section 4(f)(2) to sections 4(a), 4(b) and 4(c).* Sections 4(a), 4(b) and 4(c) prohibit specified acts of discrimination on the basis of age. Section 4(a) in particular makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age * * *." Section 4(f)(2) is an exception to this general prohibition. Where an employer under an employee benefit plan provides the same level of benefits to older workers as to younger workers, there is no violation of section 4(a), and accordingly the practice does not have to be justified under section 4(f)(2).

(b) *"Bona fide employee benefit plan."* Section 4(f)(2) applies only to bona fide employee benefit plans. A plan is considered "bona fide" if its terms (including cessation of contributions or accruals in the case of retirement income plans) have been accurately described in writing to all employees and if it actually provides the benefits in accordance with the terms of the plan. Notifying employees promptly of the provisions and changes in an employee benefit plan is essential if they are to know how the plan affects them. For these purposes, it would be sufficient under the ADEA for employers to follow the disclosure requirements of ERISA and the regulations thereunder. The plan must actually provide the benefits its provisions describe, since otherwise the notification of the provisions to employees is misleading and inaccurate. An "employee benefit plan" is a plan, such as a retirement, pension, or insurance plan, which provides employees with what are frequently referred to as "fringe benefits." The term does not refer to wages or salary in cash; neither section 4(f)(2) nor any other section of the Act excuses the payment of lower wages or salary to older employees on account of age. Whether or not any particular employee benefit plan may lawfully provide lower benefits to older employees on account of age depends on whether all of the elements of the exception have been met. An "employee-pay-all" employee benefit plan is one of the "terms, conditions, or privileges of employment" with respect to which discrimination on the basis of age is forbidden under section 4(a)(1). In such a plan, benefits for older workers may be reduced only to the extent and according to the same principles as apply to other plans under section 4(f)(2).

(c) *"To observe the terms" of a plan.* In order for a bona fide employee benefit plan which provides lower benefits to older employees on account of age to be within the section 4(f)(2) exception, the lower benefits must be provided in "observ[ance of] the terms of" the plan. As this statutory text makes clear, the section 4(f)(2) exception is limited to otherwise discriminatory actions which are actually prescribed by the terms of a bona fide employee benefit plan. Where the employer, employment agency, or labor organization is not required by the express provisions of the plan to provide lesser benefits to older workers, section 4(f)(2) does not apply. Important purposes are served by this requirement. Where a discriminatory policy is an express term of a benefit plan, employees presumably have some opportunity to know of the policy and to plan (or protest) accordingly. Moreover, the requirement that the discrimination actually be prescribed by a plan assures that the particular plan provision will be equally applied to all employees of the same age. Where a discriminatory provision is an optional term of the plan, it permits individual, discretionary acts of discrimination, which do not fall within the section 4(f)(2) exception.

(d) *"Subterfuge."* In order for a bona fide employee benefit plan which prescribes lower benefits for older employees on account of age to be within the section 4(f)(2) exception, it must not be "a subterfuge to evade the purposes of [the] Act." In general, a plan or plan provision which prescribes lower benefits for older employees on account of age is not a "subterfuge" within the meaning of section 4(f)(2), provided that the lower level of benefits is justified by age-related cost considerations. (The only exception to this general rule is with respect to certain retirement plans. See paragraph (f)(4) of this section.) There are certain other requirements that must be met in order for a plan not to be a subterfuge. These requirements are set forth below.

(1) *Cost data—General.* Cost data used in justification of a benefit plan which provides lower benefits to older employees on account of age must be valid and reasonable. This standard is met where an employer has cost data which show the actual cost to it of providing the particular benefit (or benefits) in question over a representative period of years. An employer may rely in cost data for its own employees over such a period, or on cost data for a larger group of

similarly situated employees. Sometimes, as a result of experience rating or other causes, an employer incurs costs that differ significantly from costs for a group of similarly situated employees. Such an employer may not rely on cost data for the similarly situated employees where such reliance would result in significantly lower benefits for its own older employees. Where reliable cost information is not available, reasonable projections made from existing cost data meeting the standards set forth above will be considered acceptable.

(2) *Cost data—Individual benefit basis and "benefit package" basis.* Cost comparisons and adjustments under section 4(f)(2) must be made on a benefit-by-benefit basis or on a "benefit package" basis, as described below.

(i) *Benefit-by-benefit basis.* Adjustments made on a benefit-by-benefit basis must be made in the amount or level of a specific form of benefit for a specific event or contingency. For example, higher group term life insurance costs for older workers would justify a corresponding reduction in the amount of group term life insurance coverage for older workers, on the basis of age. However, a benefit-by-benefit approach would not justify the substitution of one form of benefit for another, even though both forms of benefit are designed for the same contingency, such as death. See § 860.120(f)(1) of this section.

(ii) *"Benefit package" basis.* As an alternative to the benefit-by-benefit basis, cost comparisons and adjustments under section 4(f)(2) may be made on a limited "benefit package" basis. Under this approach, subject to the limitations described below, cost comparisons and adjustments can be made with respect to section 4(f)(2) plans in the aggregate. This alternative basis provides greater flexibility than a benefit-by-benefit basis in order to carry out the declared statutory purpose "to help employers and workers find ways of meeting problems arising from the impact of age on employment." A "benefit package" approach is an alternative approach consistent with this purpose and with the general purpose of section 4(f)(2) only if it is not used to reduce the cost to the employer or the favorability to the employees of overall employee benefits for older employees. A "benefit package" approach used for either of these purposes would be a subterfuge to evade the purposes of the Act. In order to assure that such a "benefit package" approach is not abused and is consistent with the legislative intent, it is subject to the limitations described in § 860.120(f), which also includes a general example.

(3) *Cost data—Five year maximum basis.* Cost comparisons and adjustments under section 4(f)(2) may be made on the basis of age brackets of up to 5 years. Thus a particular benefit may be reduced for employees of any age within the protected age group by an amount no greater than that which could be justified by the additional cost to provide them with the same level of the benefit as younger employees within a specified five-year age group immediately preceding theirs. For example, where an employer chooses to provide unreduced group term life insurance benefits until age 60, benefits for employees who are between 60 and 65 years of age may be reduced only to the extent necessary to achieve approximate equivalency in costs with employees who are 55 to 60 years old. Similarly, any reductions in benefit levels for 65 to 70 year old employees cannot exceed an amount which is proportional to the additional costs for their coverage over 60 to 65 year old employees.

(4) *Employee contributions in support of employee benefit plans—*

(i) *As a condition of employment.* An older employee within the protected age group may not be required as a condition of employment to make greater contributions than a younger employee in support of an employee benefit plan. Such a requirement would be in effect a mandatory reduction in take-home pay, which is never authorized by section 4(f)(2), and would impose an impediment to employment in violation of the specific restrictions in section 4(f)(2).

(ii) *As a condition of participation in a voluntary employee benefit plan.* An older employee within the protected age group may be required as a condition of participation in a voluntary employee benefit plan to make a greater contribution than a younger employee only if the older employee is not thereby required to bear a greater proportion of the total premium cost (employer-paid and employee-paid) than the younger employee. Otherwise the requirement would discriminate against the older employee by making compensation in the form of an employer contribution available on less favorable terms than for the younger employee and denying that compensation altogether to an older employee unwilling or unable to meet the less favorable terms. Such discrimination is not authorized by section 4(f)(2). This principle applies to three different contribution arrangements as follows:

(A) *Employee-pay-all plans.* Older employees, like younger employees, may be required to contribute as a condition of participation up to the full premium cost for their age.

(B) *Non-contributory ("employer-pay-all") plans.* Where younger employees are not required to contribute any portion of the total premium cost, older employees may not be required to contribute any portion.

(C) *Contributory plans.* In these plans employers and participating employees share the premium cost. The required contributions of participants may increase with age so long as the *proportion* of the total premium required to be paid by the participants does not increase with age.

(iii) *As an option in order to receive an unreduced benefit.* An older employee may be given the option, as an individual, to make the additional contribution necessary to receive the same level of benefits as a younger employee (provided that the contemplated reduction in benefits is otherwise justified by section 4(f)(2)).

(5) *Forfeiture clauses.* Clauses in employee benefit plans which state that litigation or participation in any manner in a formal proceeding by an employee will result in the forfeiture of his rights are unlawful insofar as they may be applied to those who seek redress under the Act. This is by reason of section 4(d) which provides that it is unlawful for an employer, employment agency, or labor organization to discriminate against any individual because such individual "has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this Act."

(6) *Refusal to hire clauses.* Any provision of an employee benefit plan which requires or permits the refusal to hire an individual specified in section 12(a) of the Act on the basis of age is a subterfuge to evade the purposes of the Act and cannot be excused under section 4(f)(2).

(7) *Involuntary retirement clauses.* Any provision of an employee benefit plan which requires or permits the involuntary retirement of any individual specified in section 12(a) of the Act on the basis of age is a subterfuge to evade the purpose of the Act and cannot be excused under section 4(f)(2).

(e) *Benefits provided by the Government.* An employer does not violate the Act by permitting certain benefits to be provided by the Government, even though the availability of such benefits may be based on age. For example, it is not necessary for an employer to provide

health benefits which are otherwise provided to certain employees by Medicare. However, the availability of benefits from the Government will not justify a reduction in employer-provided benefits if the result is that, taking the employer-provided and Government-provided benefits together, an older employee is entitled to a lesser benefit of any type (including coverage for family and/or dependents) than a similarly situated younger employee. For example, the availability of certain benefits to an older employee under Medicare will not justify denying an older employee a benefit which is provided to younger employees and is not provided to the older employee by Medicare.

(f) *Application of section 4(f)(2) to various employee benefit plans.*

(1) *Benefit-by-benefit approach.* This portion of the interpretation discusses how a benefit-by-benefit approach would apply to four of the most common types of employee benefit plans.

(i) *Life insurance.* It is not uncommon for life insurance coverage to remain constant until a specified age, frequently 65, and then be reduced. This practice will not violate the Act (even if reductions start before age 65), provided that the reduction for an employee of a particular age is no greater than is justified by the increased cost of coverage for that employee's specific age bracket encompassing no more than five years. It should be noted that a total denial of life insurance, on the basis of age, would not be justified under a benefit-by-benefit analysis. However, it is not unlawful for life insurance coverage to cease at age 70 or upon separation from service, whichever occurs first.

(ii) *Health insurance.* Ordinarily, health insurance coverage has not varied significantly with age up to age 65. The great variety of health insurance plans makes it difficult to offer a general guideline as to when, if ever, reductions in coverage might be justified by increased costs. Such reductions may not, however, be concentrated on certain items so as to make coverage less attractive to older workers.

(A) With respect to employees eligible for Medicare, it is not unlawful for an employer to "carve-out" from its own health insurance plan those benefits actually paid for by Medicare. Under such a "carve-out" approach, Medicare assumes primary responsibility for health care expenses under the employer's regular health insurance plan; the regular plan pays only for those expenses it insures against which are not actually paid for by Medicare. It is also not unlawful for an employer to place employees eligible for Medicare in a separate health insurance plan which supplements Medicare, *provided* (*1*) that the cost to the employer for such a supplemental plan is not less than the cost which would be expended to include such individuals in the regular health plan (with a Medicare "carve-out") and (*2*) that the supplemental plan provides benefits which are no less favorable than an employee eligible for Medicare benefits would receive under the employer's regular health insurance plan.

(B) An employer may not assume that eligible employees have taken advantage of available Medicare coverage, unless the employer informs each eligible employee of the need to apply for Medicare coverage and provides any necessary assistance for making an application for benefits. Furthermore, where the employer's regular health plan requires no employee contribution or an employee contribution less than that required for Medicare "Part B" coverage, the employer must pay or contribute toward the "Part B" contribution so as to make the total benefits available on terms which are no less favorable for employees over 65 than for employees under 65. However, the employer's total contribution for "Part B" and the "carve-out" or supplemental plan would not have to be greater than the employer's highest contribution for health benefits for employees of any age under 65.

(C) As a result of the savings to employers when benefits are available through Medicare, reductions in total health benefits for employees age 65 to 70 will generally not be justified. The total denial on the basis of age of employer-provided health benefits for older employees not eligible for Medicare would never be justified. It is not unlawful, however, for health insurance coverage to cease at age 70 or upon separation from service, whichever occurs first.

(iii) *Long-term disability.* It has been common in the past to cut off long-term disability benefits for all disabled employees and long-term disability coverage for all active employees at age 65. Since the Act protects employees and their expectations of employment from discrimination up to age 70, this practice can no longer be justified under a benefit-by-benefit approach. Under such an approach, where employees who are disabled at younger ages are entitled to long-term disability benefits, there is no cost-based justification for denying such benefits altogether, on the basis of age, to employees who are disabled at older ages. It is not unlawful to cut off long-term disability benefits and coverage on the basis of some non-age factor, such as recovery from disability. Nor is it unlawful to terminate benefits or coverage, on the basis of age, at age 70. Reductions on the basis of age before age 70 in the level or duration of benefits available for disability are justifiable only on the basis of age-related cost considerations as set forth elsewhere in this section. An employer which provides long-term disability coverage to all employees until the age of 70 may avoid any increases in the cost to it that such coverage for older employees would entail by reducing the level of benefits available to older employees. An employer may also avoid such cost increases by reducing the duration of benefits available to employees who become disabled at older ages, without reducing the level of benefits. In this connection, the Department would not assert a violation where the level of benefits is not reduced and the duration of benefits is reduced in the following manner:

(A) With respect to disabilities which occur at age 60 or less, benefits cease at age 65.

(B) With respect to disabilities which occur after age 60, benefits cease 5 years after disablement or at age 70, whichever occurs first. Cost data may be produced to support other patterns of reduction as well.

(iv) *Retirement plans.* (A) *Participation.* No employee hired prior to normal retirement age may be excluded from a defined contribution plan. With respect to defined benefit plans not subject to the Employee Retirement Income Security Act (ERISA), Pub. L. 93–406, 29 U.S.C. 1001, 1003 (a) and (b), an employee hired at an age more than 5 years prior to normal retirement age may not be excluded from such a plan unless the exclusion is justifiable on the basis of cost considerations as set forth elsewhere in this section. With respect to defined benefit plans subject to ERISA, such an exclusion would be unlawful in any case. An employee hired less than 5 years prior to normal retirement age may be excluded from a defined benefit plan, regardless of whether or not the plan is covered by ERISA. Similarly, any employee hired after normal retirement age may be excluded from a defined benefit plan.

(B) *Benefits.* In addition to the requirements as set forth elsewhere in this section, the following special rules apply to benefits provided under a retirement plan.

(1) A defined contribution plan may provide for the cessation of employer contributions after the normal retirement age of any participant in the plan. A defined contribution plan may also provide that no employer contributions shall be made on behalf of an employee who is hired after normal retirement age. However, these provisions apply only with respect to plans which are not "supplemental." Any defined contribution plan is deemed "supplemental" with respect to any employee who is a participant in it as well as in a defined benefit plan maintained by the employer. Where an employer has no defined benefit plan but two or more defined contribution plans, all but one of the defined contribution plans are "supplemental" with respect to those employees who are participants in them. The one defined contribution plan which is not "supplemental" could provide for the cessation of employer contributions after normal retirement age. The employer can designate which one of the defined contributions plans is not "supplemental".

(2) In a defined contribution plan, investment gains and losses and employee termination forfeitures are typically allocated to individual accounts instead of being used to reduce employer contributions. Where this is done, the allocations shall not be made less favorably on the basis of age to older employees (including those continuing to work past normal retirement age) than to younger employees. This rule shall apply regardless of whether or not the defined contribution plan is "supplemental."

(3) A defined benefit plan may fail to credit, for purposes of benefit accrual, service which occurs after an employee's normal retirement age.

(4) A defined benefit plan need not adjust actuarially the benefit accrued as of normal retirement age for an employee who continues to work beyond that age. (A defined contribution plan would have to pay the balance in the individual account.)

(5) A defined benefit plan need not provide for the accrual of benefits for an employee who continues to work after normal retirement age.

(6) A defined benefit plan may provide, and may be amended to provide, that retirement benefits will commence at the actual date of retirement rather than at normal retirement age for employees who choose to work beyond normal retirement age. Employees receiving long-term disability benefits as a salary replacement may be deemed not to have "actually retired" and therefore need not be simultaneously provided with retirement benefits.

(7) A defined benefit plan need not take into account salary increases and benefit improvements under the plan which take place after an employee reaches the normal retirement age specified in the plan with respect to those employees continuing their employment beyond that age. However, benefit improvements for retirees may not be denied to such employees who do not receive the advantage of benefit accruals and increases given younger employees.

(8) A defined benefit plan which includes offsets for Social Security and which ceases benefit accruals or any other increases at the normal retirement age specified in the plan may not offset the benefit receivable by such employees at actual retirement with the amount of Social Security benefit receivable at that time if that amount is greater than it was at the cessation of accruals. The total retirement benefit must be calculated on the basis of a Social Security benefit no greater than that receivable at the time when benefit accruals ceased under the employer's plan.

(2) *"Benefit Package" Approach*

A "benefit package" approach to compliance under section 4(f)(2) offers greater flexibility than a benefit-by-benefit approach by permitting deviations from a benefit-by-benefit approach so long as the overall result is no lesser cost to the employer *and* no less favorable benefits for employees. As previously noted, in order to assure that such an approach is used for the benefit of older workers and not to their detriment, and is otherwise consistent with the legislative intent, it is subject to limitations as set forth below:

(i) *A benefit package approach shall apply only to employee benefit plans which fall within section 4(f)(2).*

(ii) *A benefit package approach shall not apply to a retirement or pension plan.* The 1978 legislative history sets forth specific and comprehensive rules governing such plans, which have been adopted above. These rules are not tied to actuarially significant cost considerations but are intended to deal with the special funding arrangements of retirement or pension plans. Variations from these special rules are therefore not justified by variations from the cost-based benefit-by-benefit approach in other benefit plans, nor may variations from the special rules governing pension and retirement plans justify variations from the benefit-by-benefit approach in other benefit plans.

(iii) *A benefit package approach shall not be used to justify reductions in health benefits greater than would be justified under a benefit-by-benefit approach.* Such benefits appear to be of particular importance to older workers in meeting "problems arising from the impact of age" and were of particular concern to Congress. Therefore, the "benefit package" approach may not be used to reduce health insurance benefits by more than is warranted by the increase in the cost to the employer of those benefits alone. Any greater reduction would be a subterfuge to evade the purpose of the Act.

(iv) *A benefit reduction greater than would be justified under a benefit-by-benefit approach must be offset by another benefit available to the same employees.* No employees may be deprived because of age of one benefit without an offsetting benefit being made available to them.

(v) *Employers who wish to justify benefit reductions under a benefit package approach must be prepared to produce data to show that those reductions are fully justified.* Thus employers must be able to show that deviations from a benefit-by-benefit approach do not result in lesser cost to them or less favorable benefits to their employees. A general example consistent with these limitations may be given. Assume two employee benefit plans, providing Benefit "A" and Benefit "B." Both plans fall within section 4(f)(2), and neither is a retirement or pension plan subject to special rules. Both benefits are available to all employees. Age-based cost increases would justify a 10% decrease in both benefits on a benefit-by-benefit basis. The affected employees would, however, find it more favorable—that is, more consistent with meeting their needs—for no reduction to be made in Benefit "A" and a greater reduction to be made in Benefit "B." This "trade-off" would not result in a reduction in health benefits. The "trade-off" may therefore be made. The details of the "trade-off" depend on data on the relative cost to the employer of the two benefits. If the data show that Benefit "A" and Benefit "B" cost the same, Benefit "B" may be reduced up to 20% if Benefit "A" is unreduced. If the data show that Benefit "A" costs only half as much as Benefit "B", however, Benefit "B" may be reduced up to only 15% if Benefit "A" is unreduced, since a greater reduction in Benefit "B" would result in an impermissible reduction in total benefit costs.

(g) *Relation of ADEA to State laws.* The ADEA does not preempt State age

discrimination in employment laws. However, the failure of the ADEA to preempt such laws does not affect the issue of whether section 514 of the Employee Retirement Income Security Act (ERISA) preempts State laws which related to employee benefit plans.

Signed at Washington, D.C. on this 22nd day of May 1979.

C. Lamar Johnson,

Deputy Administrator, Wage and Hour Division.

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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 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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 January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

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Indian Affairs Bureau—

24536 4–25–79 / Organization of the Yurok tribe—voting for interim tribal governing committee; Qualification and procedures for preparing a voting list

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22730 4–17–79 / Nondiscrimination on the basis of handicap; final rule

22728 4–17–79 / Statement for the guidance of the public—organization, procedure and availability of information

List of Public Laws

Last Listing May 22, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–375–3030).

S.J. Res 80 / Pub. L. 96–12 To confer certain powers on the Presidential Commission appointed to investigate the Three Mile Island nuclear powerplant accident. (May 23, 1979; 93 Stat. 26) Price $.60.

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.

WASHINGTON, D.C.

WHEN: June 1, 15; July 6, at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235.

NEW YORK, NEW YORK

WHEN: May 29 and 30 at 9:30 a.m. (identical sessions).

WHERE: Federal Building, Conference Room 3A, 26 Federal Plaza, New York City.

RESERVATIONS: Call Ms. Dorothy Gemmallo, 212–264–3514.

BOSTON, MASSACHUSETTS

WHEN: June 13 and 14 at 9:30 a.m. (identical sessions).

WHERE: John F. McCormack Federal Building, Conference Room 208, Boston.

RESERVATIONS: Call James Mullen, 617–223–2868.

LOS ANGELES, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).

WHERE: Federal Building, Army Corps of Engineers Conference Room 7412, 300 N. Los Angeles Street

RESERVATIONS: Federal Information Center, 213–688–3800.

SAN FRANCISCO, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).

WHERE: Federal Building, Room 2007, 450 Golden Gate Avenue

RESERVATIONS: Call Mike Modena or Judy Barbee, Federal Executive Board, 415–556–0250.

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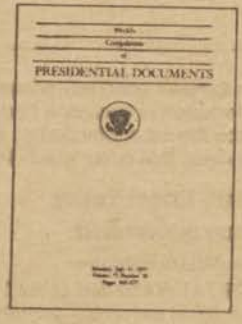

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